

Elliston Community Sports Centre Inc Decision

The Elliston Community Sports Centre Inc (**the Applicant**) has applied for an authorisation to sell liquor on the licensed premises for ‘consumption off’ the licensed premises pursuant to section 36(2) of the *Liquor Licensing Act 1997 (the Act)*, in respect of their existing Club Licence situated at 1 Memorial Drive, Elliston SA 5670.

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**) with supporting attachments, which included a letter from the District Council of Elliston and the Elliston Waterloo Bay Tourist Park.

This application may only be granted if the Authority is satisfied that the grant of the application is in the community interest. In determining this application under section 53A(2) of the Act, I must have regard to:

- the harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor;
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
- the nature of the business conducted or to be conducted under the licence (as prescribed).

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**), which state: *“The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

Pursuant to section 3(2) of the Act, when deciding whether or not to grant this application, I must have regard to the objects of the Act as set out in section 3(1) of the Act.

Section 3(1) of the Act relevantly provides that:

- (1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—
 - (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and
 - (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
 - (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
 - (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.
- (1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

- (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and
- (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
- (c) the adverse effects on a person's health; and
- (d) alcohol abuse or misuse; and
- (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

Additionally, section 53 of the Act gives the Authority "*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*", and section 53(1a) provides that the authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest.

Nature of the Applicant's business

The Applicant currently holds a Club Licence pursuant to section 36 of the Act at 1 Memorial Drive, Elliston SA 5670. The Club Licence was granted on 19 May 1998. The licence currently permits the sale of liquor for consumption on the licensed premises from 5am to Midnight, Monday to Friday, 5am to 1am on Saturday and 8am to Midnight Sunday. The applicant seeks to sell liquor on the licensed premises for consumption off the licensed premises from 6pm to 10pm Tuesday and Thursday, 5pm to 10pm Friday, and Midday to 10pm Saturday.

The Applicant has submitted that:

Elliston has a small isolated population of approx 370 (2016 Census), at present, due to the closure of the Elliston Hotel (the only licenced takeaway venue in Elliston), our community has been denied the ability to purchase small amounts of alcohol to use in their own homes. They are required to travel at least 60 kms to the nearest licenced takeaway premises in Venus Bay. Our club wishes to extend our licence to enable our community the opportunity to purchase without having to travel. Our club will only be open 2 nights a week where our residents can socialise and purchase small amounts of alcohol to take home with them.

The Applicant further submits:

We propose to add the ability to provide takeaway services to fill the void left by the closure of the Elliston hotel, we already provide a bar service where customers can come and drink, eat and socialise, we sell a variety of beers, premixed spirits, non-alcohol drinks, water plus a small range of confectionary. Finger foods are available along with nominated nights for meals.

The Applicant has provided a letter from the District Council of Elliston and the Elliston Waterloo Bay Tourist Park along with the application.

Locality

The premises is located outside of the Adelaide metropolitan area in a country town.

In accordance with the Guidelines, the Applicant has supplied with the application, a map and report of the locality generated through Consumer and Business Services' (CBS) Community Impact Portal (**the Portal**).

The Applicant has identified the locality as an area within a 10km radius of the Elliston Community Sports Centre.

I am satisfied that the Applicant has correctly identified the locality likely to be affected by the grant of the application.

Potential Harm

The Applicant has provided the following submissions in relation to the locality of the premises and the assessment of any potential harm to the community:

Of the 370 population (2016 census) there are 3.8% indigenous/Torres Strait Islander identified and the median age overall is 47years. While there are approx 70 school age children attending our Area School.

As a community club we take very seriously the responsible drinking observance, we have actively encouraged many of our community to complete their RSA training (14 at our last session) and one of our newest committee members has registered as a Responsible Person to ensure our club meets the highest standards. We are a small close knit community and look out for each other, 'SoberBobs' are always willing to drive people home and many walk in groups as their homes are nearby.

The Applicant has identified community buildings and facilities in the locality and has made the following submissions as to how the grant of the application may impact on persons using those buildings and facilities:

We do not believe there will be any great impact on the school or hospital, we intend to trade on limited hours, this will be limited to football/netball training nights, Friday nights while the Elliston Hotel is closed, and Home Game Saturdays abiding by the hours already set on our existing licence. As our club is a Community/Sporting Club it is situated in the Sporting Precinct - a recreational area, but the way in which it is sited within the grounds is quite isolated away from other areas where young people may congregate

The Applicant has submitted as follows in relation to minimising any potential harm:

The Elliston Community Sports Centre is located at 1 Memorial Drive, Elliston. The Licenced building is located centrally within the Sporting Precinct, we have a population of approx 370 (2016 Census). The average median age being 47yrs with 3.8% identifying as Indigenous/Torres Strait Islander. Our crime statistics are relatively low as is the unemployment rate.

At present with the closure of the only licenced takeaway venue - The Elliston Hotel, and the remaining licenced venues being the Elliston Golf Club open on Sundays, the Elliston Apartments, a Motel complex and the other licence for wine production and sales. As stated before in this submission, our community will be required to travel at least 60kms one way to purchase any alcohol for off licenced premises consumption, putting them at risk of drinking and driving. Having researched the State, Suburb,

Indexes, SEIFA 2016 Index 'Table 1' for Elliston SA Our usual resident population is 373, the index of Relative Socio-economic Advantage and Disadvantage decile is 3, the Index of Economic Resources decile is 3, and the index of education and occupation decile is 5. As outlined in 4.1, we have a high number of RSA trained volunteers and a committee member that has completed the Responsible Persons training.

Our committee is committed to providing a takeaway service to our community in a limited capacity, large amounts of alcohol sales will not be permitted, and as our training requires, we will identify those who are at risk and refuse service. Our current licence has a responsible person exemption, we wish for the exemption to remain, we are a volunteer organisation and do not wish to extend our opening hours over and above the training nights, home game days and the Friday nights will only continue until the Elliston Hotel reopens and resumes its takeaway trading. We would like to put in place the arrangement that - 'The exemption from Responsible Person requirements is granted on the condition that a responsible person must be contactable by phone at all times the premises is open for trade.'

Neither SAPOL nor the District Council of Elliston have objected to the application.

Social Impact and Amenity

The Applicant has provided the following submissions in relation to the locality of the premises and the assessment of any social impact on the community:

The Elliston Community Sports Centre is located at 1 Memorial Drive, Elliston. The Licenced [sic] building is located centrally within the Sporting Precinct, we have a population of approx 370 (2016 Census). The average median age being 47yrs with 3.8% identifying as Indigenous/Torres Strait Islander. Our crime statistics are relatively low as is the unemployment rate.

At present with the closure of the only licenced takeaway venue - The Elliston Hotel, and the remaining licenced venues being the Elliston Golf Club open on Sundays, the Elliston Apartments, a Motel complex and the other licence for wine production and sales.

As stated before in this submission, our community will be required to travel at least 60kms one way to purchase any alcohol for off licenced premises consumption, putting them at risk of drinking and driving. Having researched the State, Suburb, Indexes, SEIFA 2016 Index 'Table 1' for Elliston SA Our usual resident population is 373, the index of Relative Socio-economic Advantage and Disadvantage decile is 3, the Index of Economic Resources decile is 3, and the index of education and occupation decile is 5.

According to the Area Report, the Elliston Area School and the Elliston RSL Memorial Children's Centre are within the locality.

The Area Report also shows that there are five licensed premises in the locality including the Applicant's licensed premises. These licensed premises (excluding the Elliston Community Sports Centre) are as follows:

- Elliston Golf Club
- Elliston Apartments
- Cooke Brothers Wines
- Elliston Hotel

Cultural, Recreational, Employment and Tourism Aspects

The Applicant has provided the following description of the Cultural, Recreational, Employment and Tourism benefits for the locality:

The Elliston Community Sports Centre Committee are a completely volunteer run organisation, our sole aim in providing the ability of our community to purchase takeaway alcohol is to ensure that they are able to do so safely, without having to travel at least 120kms to do so.

The risk of our community members drinking and driving will increase, by providing this service they are able to buy smaller quantities, socialise with others while on premise and return to their homes without the risk of being on the open roads driving at higher speeds and risk drinking at the same time. Many of our residents walk to and from the club and 'Sober Bobs' are always on hand to drive if required. There will be no additional employment as all service is provided by RSA trained volunteers and our Club is a Community not for profit club committed to serving our community.

Public Interest

The Applicant has provided the following submission in relation to public interest and how the additional liquor outlet will benefit the local and broader community:

This is an application to vary our licence conditions to allow takeaway, the benefit to our community is that while the Elliston Hotel remains closed our community will be able to purchase small amounts of liquor to consume in their own homes if they desire to.

Decision

I am satisfied the applicant has identified the relevant locality most likely to be affected by the grant of the application.

The Applicant has provided a description of the club, facilities and services currently offered to the community, and has detailed the club's potential customers for takeaway liquor sales.

The Applicant is required, as part of the community impact assessment to detail its products/services in terms of key features in relation to its application to sell liquor for consumption off. The Applicant has not provided details of the range of liquor it intends to stock or how this product may be different in comparison to what is already available in the locality.

The Applicant has supplied 2 letters in support of the application.

The application has not attracted any objections.

The Applicant has provided an analysis of community buildings, facilities and areas within the locality, and has submitted that it does not believe there will be any great impact on the school or hospital as they intend to trade limited hours.

The Applicant has not identified any 'at-risk' groups or sub-communities within the locality.

The Applicant has asserted it has a high number of RSA trained volunteers and a committee member that has completed the Responsible Persons training.

The Applicant has submitted that its committee is committed to providing a takeaway service to their community in a limited capacity, and that large amounts of alcohol sales will not be permitted, and that in line with their training they will identify those who are at risk and refuse service.

The Applicant has provided an analysis of the social profile information in relation to the population, the location of existing licensed premises in the locality, and the category of licences held by those outlets.

The Applicant has identified 3 other licensed premises in the locality.

The first of which is the Elliston Apartments. The Elliston Apartments holds a Residential Licence, which authorises the licensee to sell liquor on the licensed premises at any time to a resident on licensed premises for consumption on or off the licensed premises.

The second is Cooke Brothers Wines. Cooke Brothers Wines holds a Liquor Production and Sales Licence, which authorises the licensee to sell liquor by direct sales transactions and the sale of liquor for consumption off the licensed premises, restricted to the licensee's product only.

The third is the Elliston Hotel, the Elliston Hotel holds a General and Hotel Licence which authorises the licensee to sell liquor on the licensed premises for consumption off the licensed premises.

The authorised hours for the sale of liquor for consumption off the licensed premises for the Elliston Hotel are Monday to Saturday 5am to midnight and Sunday 8am to 9pm.

At the time the Applicant lodged this application with the licensing authority the Elliston Hotel licence was suspended and had been suspended since 15 June 2022.

On 8 September 2022, the licence was transferred to a new licensee and the suspension was lifted.

The Applicant's Community Impact Assessment relies heavily on the fact that the Elliston Hotel was not operating. However, even if the Elliston Hotel had remained closed at the time of the determination of this application, I would still be required to consider it in the context of this application.

I note that the Act defines "licensed premises" to mean:

licensed premises means premises in respect of which a licence is in force and includes premises for which the licence is currently under suspension.

The Elliston Hotel is located approximately 300 metres from the Elliston Community Sports Centre.

I note that in the *Hove Sip n Save* [2021] SALC 7 (**Hove**) Licensing Court decision, Gilchrist J observed at [135]:

In the past, this Court has said that it is not in the public interest for there to be a proliferation of bottle shops selling essentially the same range of liquor within short compass of another.

Although the Applicant is not a bottle shop, it proposes to sell liquor in a way that a bottle shop would, essentially sale of liquor for takeaway. The Elliston Hotel is authorised to trade in a similar manner.

In addition to this, I note that in *Nuriootpa Cellars* [2009] SALC 12, the Licensing Court refused an application for a Packaged Liquor Sales Licence (formerly known as a Retail Liquor Merchants Licence), albeit under the former 'needs test'. In this case, the proposed premises for the Packaged Liquor Sales Licence was located 350 metres from the Vine Inn.

In that decision Rice J concluded:

197. Bearing in mind the onus, in my view, the applicant has failed to satisfy the Court that licensed premises already existing in the locality do not adequately cater for the public demand. Generally, there is a very mobile population moving around the Barossa Valley for the full gamut of reasons. The times and distances to travel to and from any of these particular bottle shops is not great and certainly not prohibitive. Such travel is "...an ordinary incident of country living" (per von Doussa J in *Nepeor Pty Ltd v The Liquor Licensing Commission and Others; Miniben Pty Ltd v Liquor Licensing Commission and Others* (1987) 46 SASR 205 at 220). The need to travel did not go beyond mere inconvenience. The population has increased significantly and will continue to do so as developments are completed, but the majority of the people are mobile and the existing licensed premises of the Tanunda Cellars and Barossa Brauhaus have greatly improved their facilities and the Vine Inn could do much better. The fact that none of these premises is ideal is not determinative.

198. I should also mention the aspect of the discretion. Even if this application was a close contest or the applicant had fulfilled the onus, I would not have exercised my discretion in favour of the application. Undue proliferation of licences is a basis upon which a licence may be refused in the exercise of the discretion. However, I do not think there is a basis for that reason here. Rather, in this case, the proposed premises are but a short distance to the Vine Inn, which would leave two bottle shops in close proximity. In my view, that is simply unnecessary, not least because there would be a significant duplication of liquor lines.

Applying the decisions of *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 and *Hove*, I can proceed from the premise that the addition of a new take away liquor facility will have some negative consequences. The Court said:

... common experience informs us that for many in the community, alcohol is a problem. Excessive consumption of alcohol carries with it serious health risks. It can fuel domestic violence. It can shatter relationships and cause families to become dysfunctional. It can cause social problems and result in violent and anti-social behaviour. It can cause financial problems and result in people making risky and poor decisions. It can be assumed that some of the relevant community will be afflicted by these issues. It can be assumed that some will be alcohol dependent and that some of these will be attempting to abstain from drinking or reduce their consumption. The addition of another take away liquor facility will increase the opportunities for such persons to obtain alcohol. Passing an attractive liquor outlet when walking in and out of a supermarket increases the risk for those for whom alcohol is a problem, to succumb to the temptation to buy it.

I also note that Gilchrist J observed in *Hove* that members of the public were expected to put up with some inconvenience in meeting their takeaway liquor needs [at 138].

In this case there are a number of take away liquor facilities within a relatively short distance of the proposed premises and for those who want to 'one stop shop' there is a perfectly adequate take away liquor facility that will fulfil that need less than two kilometres

away on the same side of the road. Under the former 'needs test' members of the public were expected to put up with some inconvenience in meeting their take away liquor needs. In this case, any inconvenience that the members of this locality have in meeting their take away liquor needs barely touches the scale. In other words, this licence is not 'needed' either by reference to the former 'needs test' or at all.

I am of the view that persons residing in a small country town with limited access to food and fuel, would not have an expectation to have more than one takeaway liquor facility in light of the very small population serviced by same.

I am also of the view that a travelling tourist in the region would also not expect to have access to multiple venues from which to purchase takeaway liquor.

In my view no community expectation or aspiration arises that that there would be multiple premises from which to purchase takeaway liquor in a location such as Elliston or that there would be 2 premises selling takeaway liquor located within such a short distance of one another.

I note that from the 2016 Census, there were only 373 people in Elliston. This is consistent with the Applicant's submission that the population of Elliston is 370. I note that in addition to this the Applicant has submitted that there are approximately 70 school age children attending the Area School.

This suggests that there are approximately 300 persons in Elliston of legal drinking age.

The Elliston Hotel presently provides takeaway liquor products. There is no suggestion that this is inadequate to cater for the 300 odd residents in the locality of legal drinking age, or for tourists passing though. Nor I am satisfied that the proposed offering is in any way different to what is currently available in the locality.

For the reasons set out above I am of the view that it would not be in either the community interest or public interest to grant this application.

The application to sell liquor for consumption off the licensed premises pursuant to section 36(2) of the Act is refused.

Paul Bertram

Senior Hearings Delegate