

LIQUORLAND MCLAREN VALE

Application for Packaged Liquor Sales Licence

Liquorland (Australia) Pty Ltd (**the Applicant**) has applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated within the McLaren Vale Central Shopping Centre at 130 Main Road, McLaren Vale (**the Site**), to be known as Liquorland.

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**), with supporting attachments, which included putting forward evidence from three experts: Ekistics Planning and Design, a firm of consultant urban social planners (**the Ekistics Report**); Ethos Urban Pty Ltd, a firm of consultant retail economic shopping analysts (**the Ethos Urban Report**); and Data Analysis Australia Pty Ltd, a firm with expertise in the analysis of survey and geographical data, statistics and survey design (**the DAA Survey Report**). It is the content of the reports and expert evidence, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged by the Australian Hotels Association and Samuel's Gorge Winery opposing the grant, and submissions and evidence in reply by the Applicant, that my decision is based on.

For ease of reference the following submissions and documents are referred to throughout the decision with the abbreviations noted below:

- Applicant's Submissions / Community Impact Assessment Form, (**CIAF**)
- Ekistics Community Impact Assessment Report dated October 2020 (**Ekistics Report**)
- Ethos Urban Report dated August 2020 (**Ethos Urban Report**)
- Data Analysis Australia Survey dated June 2020 (**the DAA Survey Report**)
- Australian Hotels Association (SA) submissions dated 1 December 2020, objecting to the application (**AHA1**)
- Samuel's Gorge Winery submissions dated 25 November 2020, objecting to the application (**SGW1**)
- Applicant's Further Submission dated 31 December 2020 (**A2**)
- Submission of Associate Professor Michael Livingstone dated 5 July 2021 (**Professor Livingstone Submission**)
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)
- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)
- Letter from the Australian Competition and Consumer Commission (**ACCC**) to the Liquor and Gambling Commissioner dated 23 June 2021 (**ACCC Letter**)
- Applicant's further submission dated 7 July 2021 (**A3**)
- Applicant's final Submission dated 29 September 2021 (**A4**).

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 *Liquor Licensing Act 1997* (**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.”*

The Guidelines generally impose an obligation upon an applicant to include with the application a community impact submission that, if relevant, is expected to address a range of matters, including: the applicant’s products/services in terms of key features and potential customers; business/professional experience, in particular relevant knowledge, experience and competency in relation to the service of liquor; general description of facilities and services; relevant construction details (e.g. materials, finishes, acoustic treatment, etc.); details of any food, including menu; liquor services (e.g. bar) and range of liquor; types of entertainment; types of accommodation; a statement as to whether the community supports the proposed business, including providing evidence of such support; and a statement as to why the granting of the application is in the community interest.

Applicants are also required to provide, where applicable: a map and report regarding the locality generated through Consumer and Business Service’s (**CBS**) Community Impact Portal; a business plan/plan of management; and a site or property plan, floor plan and/or photographs/artist’s impressions of the site/building.

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 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.

The Applicant must also satisfy the Authority that the pre-requisites in s 57 of the Act have been met, in relation to matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions in respect of the proposed premises have been obtained.

Additionally, s 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 s 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. Section 53(1b) requires that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

Nature of the proposed business

The Applicant is proposing to open a Liquorland packaged liquor store at the McLaren Vale Central Shopping Centre. The store will be approximately 180 square metres in size, which is largely comparable to the typical size of a Liquorland store adjacent to a major supermarket (pg. 15 CIAF). It is proposed that the store will be located within an existing tenancy at the centre

The Shopping Centre itself is separated into two parts, the older part of the centre has a direct frontage into Main Road and is referred to as the "upper centre". The lower part of the shopping centre sits approximately 6 metres below the older part and is referred to as the "lower centre" (pg. 14 CIAF), both parts of the centre are accessible from Main Road.

The "lower" part of the centre is comprised of a full-line Coles Supermarket, (approximately 3750 square metres of floor space) and a number of other small retail speciality stores including: (at the time the report was prepared) a Terry White Chemmart, Ellis Butchers, Jae's Kitchen, and a Flight Centre.

Pedestrian access to the Coles supermarket is via a shared mall area. The proposed liquor store will be to the south-western side of the Coles supermarket, facing the car park, with access proposed via the shared mall area. According to the applicant, the Liquorland store will be well screened from the surrounding public realm (p.11 Esketics Report).

The "upper" part of the centre is comprised of a Romeo's Foodland Supermarket (approximately 1600 square metres of floor space) and a number of other retail tenancies including a "Browse in and Save" discount store, fashion store, coffee shop, an ANZ Bank

branch, a Commonwealth Bank branch, real estate agent, fitness centre, beauty salon, and a BWS packaged liquor store.

The layout of the shopping centre is detailed at Appendix 1 to the report and includes “at-grade” car parking, located to the west and south of the facility. In addition, there is a separate “at-grade” car parking area, located further to the north of the Shopping Centre, on the opposite side of the Linear Park reserve.

The Applicant has advised that the proposed Liquorland store will offer approximately 1600 lines of stock, which comprises a range of wines, beers, spirits and ready to drink/premixed drinks, as well as various other types of non-alcoholic drinks and snack products (pg. 30 Ekistics Report).

In addition to the standard range, the store manager may order liquor products from “extended lines”, and given the characteristics and location of the store, it is likely that the range at this particular store will have a larger representation of local wines.

The price for products in Liquorland stores is uniform throughout South Australia. As a result, Liquorland does not ‘price beat’ or ‘price match’ at individual store level to ensure that liquor from Coles Liquor stores is sold in a responsible manner.

The proposed store is comparable with the typical size of a Liquorland store adjacent to major supermarkets, which is usually between 150-250 square metres of floor space. It will function as a typical walk-in bottle shop offering a range of packaged liquor for sale to the public. There is no drive through facility, the store will have a separate entrance from the supermarket and customers will not be able to access the store directly from the supermarket.

The Ethos Urban Report states that the proposed site:

“... is a strong supermarket-based shopping centre which meets the basic day-to-day grocery shopping needs of the surrounding community.

The upper centre has a particular focus on meeting basic convenience needs of local residents, as well as tourists, visitors and passing trade. In contrast, the lower centre includes a major supermarket and specialty shops with a greater emphasis on meeting the more comprehensive grocery and day-to-day needs of residents, with a more limited, although still notable, role serving tourists and other non-residents.” (2.20 – 2.21 Ethos Urban Report)

The premises will be located adjacent to the entrance to the Coles supermarket. I have reviewed the plans and the Ekistics report and am satisfied that the proposed premises do not offend the requirements of s 38(3) of the Act that licensed premises must be “physically separate” from premises used for other commercial purposes, as access to the store will be via the common area mall of the shopping centre, in accordance with the exception provided to s 38(4)(b) contained in s 38(5) of the Act.

Locality

The Guidelines provide a guide for applicants in relation to the ‘locality’ applicable to their application, and states that applicants are required to identify the geographic area from which they expect to draw customers having regard to the intended nature of the business of the licensed premises.

The Guidelines speak of the locality as referring “to the area surrounding the licensed premises/proposed licensed premises and is the area most likely to be affected by the grant of the application”.

The Guidelines suggest as a guide that the locality of licensed premises within the Metropolitan area is the area within a two-kilometre radius of the site of the relevant premises.

Expert evidence in this matter, provided by Ekistics and Ethos Urban on behalf of the Applicant identifies the 'locality' as being the area within a 2-kilometre radius of the site of the proposed store, in accordance with the Guidelines. The Ekistics Report also refers to customers from outside the two-kilometre radius as follows:

The 2km locality radius captures the entire town of McLaren Vale and also extends to surrounding peripheral areas, which predominantly consist of viticultural land, as well as low density residential (rural) living areas and also captures a portion of the suburb of Tatachilla which is located to the west.

The McLaren Vale Town Centre provides a range of shopping, office, business, community, tourist and recreational facilities for the local area and visitors/tourists, all generally oriented along Main Road.

Given its location within the Town Centre, the subject site is readily accessible for most of the McLaren Vale population, including those residing outside of the Town, within the 2km locality radius. Other than the general alignment of the surrounding road network, there are no significant physical barriers to access of the site.

Notwithstanding, in our view, given its location and function, the McLaren Vale Town Centre serves a much wider catchment than the designated 2km locality. It is highly likely that residents outside of the 2km locality, within those wider peripheral areas and surrounding settlements are likely to utilise McLaren Vale for their retail and servicing needs. (Ekistics Report p15)

Ethos Urban also provide some trade area analysis, which they consider to be an appropriate analytical tool (3.4, Ethos Urban Report), and consider that the proposed offering will have a Primary Trade Area (**PTA**) representing an approximate 2km radius from the site and that *"Liquorland will draw most of its sales from people living in the PTA"* (3.7, Ethos Urban Report). Ethos Urban define a Secondary Trade Area (**STA**), *"representing a wider geographic area that reflects the lack of alternative supermarket, liquor and significant other retail destinations in nearby townships, and the draw of Coles as the dominant supermarket serving residents of the McLaren Vale region. Despite the relatively longer travel distance, residents of the STA will be regularly visiting McLaren Vale in order to undertake their grocery and other shopping requirements, with this potentially including visits and purchases at the proposed Liquorland as part of their normal shopping patterns"* (3.4, Ethos Urban Report).

In the case of *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 (**the Liquorland Park Holme decision**), Gilchrist J observed at [20] that:

".....locality is now focused upon the local community and is much more focused on primary trade catchment areas, as opposed to secondary catchment areas."

It is important to recognise that the proposed Liquorland store will draw a higher than average share of sales from well outside a 2km radius due to the regional appeal of McLaren Vale as a visitor and tourist destination (i.e. overnight visitors to the region including holiday homeowners or part time residents are more likely to visit a major supermarket than "day trippers"). (3.13 Ethos Urban Report). However, it is clear from the Park Holme decision that the Authority's focus for considering impact on the locality in this matter is the Primary Trade Area (i.e. a 2km radius of the proposed store).

Ekistics has identified the following 3 standalone liquor stores in the locality (pg. 4 Ekistics Report)

- a BWS packaged liquor store (125 metres away within the same shopping centre);

- a Thirsty Camel bottle shop with drive through facility (attached to the McLaren Vale Hotel 700 metres away); and
- Australian Boutique Premium Wines, a “boutique cellar door” specialising in wine sales (300 metres away).

On the basis of a population of 3096 people in 2016, Ekistics has calculated the existing density of liquor stores in the locality as one liquor store per 1032 people. With the addition of the proposed store to the locality, the density would become 774 people per liquor store. (pg. 19 Ekistics Report)

This is relevant when calculating the liquor licence density for the locality in light of ‘proliferation’ considerations and is considered in more detail below.

Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the Australian Bureau of Statistics (**ABS**) that ranks geographic areas in Australia according to relative socio-economic advantage and disadvantage. The indexes are based on information from the five-yearly Census. Ekistics notes that a 2km radius could not be used for this purpose as the ABS only provide SEIFA data based on defined geographical areas such as suburbs and Local Government Areas (LGAs), and that “*the ABS data which applies to the state suburbs of McLaren Vale and Tatchilla provide a relatively close match to the defined radius and has therefore been used for the purpose of this exercise*”.

A table was provided showing that in 2016, McLaren Vale had a percentile score of 65% “*which indicates that approximately 65% of state suburbs have a SEIFA index lower than McLaren Vale (i.e. 65% are more disadvantaged), while 35% are higher (i.e. are less disadvantaged)*”. Similarly, the neighbouring suburb of Tatchilla had a percentile score of 89% “*which indicates that approximately 89% of state suburbs have a SEIFA index lower than McLaren Vale (i.e. 89% are more disadvantaged), while 11% are higher (i.e. are less disadvantaged)*” (7.2, Ekistics Report). The average of both suburbs indicates a 2016 percentile of 77% for the ‘locality’.

The SEIFA index shows that McLaren Vale was marginally less disadvantaged in 2016 than it was in 2011 with its rank increasing from 1029 to 1034, over that 5-year period, as was Tatchilla, also increasing its rating from 1069 to 1072 over the same period (7.2, Ekistics Report).

The Ekistics Report notes that the locality has a lower rate of unemployment (6.8%) than the overall rate across South Australia (7.5%), and has experienced a lower rate of population growth than other major regional areas in the State (pg. 38 Ekistics Report).

Whilst the applicant was not able to provide specific data for tourism or visitor numbers, the City of Onkaparinga “Tourism Strategic Plan 2019-2023” highlights the importance of tourism to the economy of McLaren Vale, which attracted over 1.2 million visitors, generated \$210 million in visitor expenditure and supported 2485 local jobs in 2017. The Strategic Plan seeks to increase the number of visitors to 1.6 million by 2023 and identifies McLaren Vale as a key component of the City’s tourism brand (pg. 25 Ekistics Report).

The Ekistics Report provides a breakdown of crime rates across various recordable offence types for McLaren Vale compared to the State average. Ekistics cautions that SAPOL crime statistics do not identify what proportion of crime is related to the consumption of alcohol. It is noted that the most common offence within the locality is ‘theft and related offences’. This statistic also includes ‘theft from shop’, which is considered to be most relevant statistic to the proposed store. At page 42 Ekistics states:

'Theft from shop' accounted for approximately 4.7% of total offences within the locality. This statistic is well below the rate for South Australia, where 'theft from shop' accounted for approximately 8.4% of the total offences recorded. Accordingly, this suggests that 'theft from shop' is not a prevalent problem within the locality.

Potential Harm

The Applicant, through its lawyers, wrote to a number of stakeholders and organisations, inviting comment on the application.

The Applicant submits:

Other than population growth, proportion of younger persons, family household composition and home ownership, the locality exhibits fairly typical demographic characteristics and there is no indication that there is a particular element of the community which might be adversely affected by the introduction of the proposed liquor store. (pg. 38 CIAF).

Ekistics identifies a number of potential 'at risk' sub-communities at 4.4 of their Report and details the established harm minimisation measures that will be utilised by the Applicant (in section 5.1 of the Report) to mitigate the risk of harm to the community, and ultimately concludes:

There are recognised community benefits associated with the proposed liquor store, and on balance, these benefits outweigh the potential harm that may arise in association with a new store within the shopping centre. In any event, Liquorland Australia will address potential impacts through the implementation of a range of robust and best practice operating policies and procedures to minimise potential harm or health impacts to 'at-risk' groups. (pg. 45 Ekistics Report)

The Applicant is a large and experienced liquor sales business, with significant resources and well-developed policies and procedures, and a strong history of compliance in South Australia. A number of policies are contained at Attachments G – J of the CIAF, including Coles Policies for Responsible Service of Liquor and Tobacco; Coles Licensing and Compliance Booklet; Coles Responsible Promotion and Advertising of Alcohol Policy; and Coles School Uniform Policy.

The Applicant states at paragraph 4.2.7 of the CIAF that it is committed to implementing a number of site-specific security measures to ensure that any impact to the community is minimised, including:

- anti-theft bottle caps;
- security film on external glass;
- bright lighting throughout the store;
- an alarm system which is monitored off-site; and
- CCTV cameras covering the entire store.

Additionally, staff will be provided with a "security pendant" - a mobile device that will allow staff to alert police to a threatening situation occurring in the proposed store.

The applicant has stated that the security measures to be implemented at the proposed site are more robust than the security measures offered by other liquor stores in the locality and

should minimise the instances of theft or anti-social behaviour. These measures may lessen the impact of the store on the local community and surrounding premises (page 27 CIAF).

South Australia Police (**SAPOL**) and the City of Onkaparinga have not objected to the application.

Given the high number of PLSL applications by Liquorland and BWS currently before the Authority, I considered it was appropriate to call for general submissions on harm pursuant to s 78 of the Act from Associate Professor Michael Livingston (**Professor Livingston**), the Royal Australasian College of Surgeons (**RACS**) and Australia's National Research Organisation for Women's Safety (**ANROWS**).

Submission of Associate Professor Michael Livingston

Michael Livingston is an Associate Professor at the National Drug Research Institute, Curtin University. He says that he is currently one of the preeminent international researchers examining the relationships between the availability of alcohol, alcohol consumption and alcohol-related harm.

The aim of Professor Livingston's submission is *"to provide a broad overview of the best available current evidence on the links between alcohol-availability and alcohol-related harm to assist the Commissioner in making appropriate decisions."*

Professor Livingston notes that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets, with this figure steadily increasing. He submits that:

"Substantial international research literature links the density of alcohol outlets in a neighbourhood to the rate of alcohol-related problems experienced in that neighbourhood."

Professor Livingston refers to the book *Alcohol: No Ordinary Commodity* released by the World Health Organisation which provides a general summary of the international research literature, and notes that policies aimed at regulating the physical availability of alcohol are considered to be some of the most effective policy options available to governments trying to limit or reduce harm from alcohol.

Professor Livingston sets out the findings of various international studies that focus on packaged liquor including:

- The density of packaged liquor outlets matters significantly, especially where changes in availability are dramatic, such as the introduction of beer to grocery stores in Finland and the introduction of wine to supermarkets in New Zealand.
- Episodic heavy drinking and heavy drinking by young people occur more frequently in neighbourhoods with higher densities of packaged liquor outlets.
- Packaged liquor density is associated with higher rates of public violence and other crime as well as higher rates of less visible harms including partner violence and child maltreatment, and chronic disease.

In terms of findings on the impact of packaged liquor outlets taken from Australian studies, Professor Livingston notes that: *"it is assumed in most cases (especially for off-premises outlets) that increased density means increased availability, which means increased consumption (and thus harm)."*

Professor Livingston then refers to Melbourne studies and submits that:

- There is growing local evidence linking the density of packaged liquor outlets to heavy drinking and alcohol problems.
- Longitudinal analysis of some studies showed positive associations over time between the density of packaged outlets and rates of domestic violence, general assaults and alcohol-specific disease.
- In an average postcode, a 10% increase in the density of packaged liquor outlets would lead to approximately:
 - 1% increase in assaults recorded by police and a 0.5% increase in hospitalisation due to assault;
 - 3.3% increase in family violence incidents recorded by the police;
 - 1.9% increase in hospitalisations due to alcohol-specific chronic disease.
- The density of packaged liquor outlets at the local level was positively associated with rates of episodic risky drinking.
- Each individual outlet does not contribute to major increases in harm, however, the cumulative effects of increasing availability can be substantial.

In relation to the influence of neighbourhood characteristics Professor Livingston says:

There is growing evidence that the relationships between outlets and harms vary across neighbourhood types. Studies from the USA have shown larger effects for outlet density in socio-economically disadvantaged areas, in areas with low levels of social disorganisation and in neighbourhoods with higher levels of public housing or industrial areas.

He goes on to say that similar evidence is being developed in Australia, with a suggested 2% increase in assaults and a 12% increase in family violence following a 10% increase in packaged liquor outlets in disadvantaged suburban postcodes of Melbourne.

Professor Livingston discusses four Australian studies that consider the influence of outlet characteristics, and summarises the evidence as follows:

Taken together, the evidence here is suggestive that granting licences for large chain outlets, which are likely to sell more alcohol at cheaper prices than smaller outlets will increase the risk of negative consequences in a neighbourhood more substantially than other kinds of packaged liquor outlets, although the evidence is relatively limited and remains contested.

Professor Livingston also considers casual pathways and notes that recent data may suggest that *“expanding alcohol availability affects the consumption of only a small number of marginalised or heavy drinkers, while the impact on the majority of the population is limited.”*

In conclusion, Professor Livingston submits that:

There is a wealth of high-quality, peer-reviewed research that demonstrates significant positive associations between the density of packaged liquor outlets at the local level and a wide range of negative outcomes.

.....

Where other neighbourhood characteristics have been examined, researchers generally find that outlets have larger impacts in areas of socio-economic disadvantage than in more advantaged neighbourhoods. There is suggestive evidence that big-box liquor stores may

contribute more to alcohol problems than smaller stores, on the basis that they will sell more alcohol.

Submission of the Royal Australasian College of Surgeons

Dr John Crozier, Chair RACS (Australia and New Zealand) Trauma Committee, and Mr Peter Bautz, Chair RACS SA Trauma Committee provided a submission on behalf of RACS.

Referring to statistics provided by the Australasian College for Emergency Medicine, they submit that *“Overall, the estimated one in eight hospitalisations relating to alcohol misuse continue to represent a significant and concerning proportion of health system workload.”*

Details of the detrimental effects caused by alcohol related harm as witnessed by South Australian surgeons are provided as follows:

Orthopaedic surgeons repair shattered limbs, and general surgeons operate on internal organs smashed in car crashes – many of which are alcohol related. Faciomaxillary surgeons repair shattered faces from acts of alcohol fuelled (65 per cent) interpersonal violence.

Neurosurgeons perform time critical surgery draining blood from the skulls of inebriated patients following low energy falls or coward punched victims. South Australian surgeons also treat and manage the chronic medical aspects of primarily preventable alcohol related harms. Alcohol misuse is a casual factor in more than 200 diseases and injury conditions, including cirrhosis of the liver, inflammation of the gut and pancreas, heart and circulatory problems, sleep disorders, male impotency and eye disease. Excessive alcohol consumption also raises the overall risk of cancer, including cancer of the mouth, throat and oesophagus, liver cancer, breast cancer and bowel cancer.

They discuss research and studies conducted in relation to alcohol harm and injury, and submit that:

There is a positive relationship between alcohol outlets (general, on premise and packaged) and increased rates of violence. Additionally, there is a sharp increase in domestic and non-domestic violence where there are more than two hotels and one bottle shop per 1,000 residents with licensed premises being the third most common Australian setting for assault leading to hospitalisation.

.....

There is also substantial evidence in Australia and internationally that regulating the physical availability of alcohol, through outlet density restrictions, is one of the most effective ways to reduce its negative impacts.

Dr Crozier and Mr Bautz note the 2017 amendments to the Act relating to harm minimisation, and refer to the Object of the Act under section 3(1)(a) which states that the sale and supply of liquor is to occur in a manner that minimises harm and the potential for harm caused by the excessive or inappropriate consumption of liquor.

They point out the lack of publicly available crime data available in South Australia relating to the involvement of alcohol in criminal offending (unlike other jurisdictions such as New South Wales) and suggest that this is a barrier to rigorous evidence-based policy.

Dr Crozier and Mr Bautz submit that in light of the amendments to the Act relating to harm minimisation:

The onus should not be placed upon opponents to demonstrate why the overwhelming national and international empirical evidence base is relevant and should be applied to the specific local context. Instead the onus should be placed upon the applicant to demonstrate via independently verified research (not industry funded and developed) why the local context should be considered differently to the empirical evidence base.

Citing a number of Australian studies, Dr Crozier and Mr Bautz submit that in Australia:

- about half the reported cases of interpersonal violence, domestic violence and sexual assault are related to excessive alcohol consumption;
- alcohol use is often associated with more severe acts of violence reported to the police; and
- the severity of violence has been shown to increase with the amount of alcohol consumed.

Following the outbreak of COVID-19, there were reports from those on the front line of an increase in incidents of domestic violence, which led the United Nations to declare a 'Shadow Pandemic' *"to describe how the epidemic of domestic violence exists simultaneously with, but in the shadow of and obscured by the COVID-19 pandemic."* Figures released by SAPOL indicate that the incidence of domestic violence in South Australia increased by 11% in 2020 compared to 2019. Dr Crozier and Mr Bautz report that the increase in domestic violence also coincided with an increase of \$3.3 billion in turnover in the Australian alcohol retail sector in 2020.

Dr Crozier and Mr Bautz make the following submission in conclusion:

Therefore, at a time of increased stress, pressure and uncertainty placed upon individuals and families, further saturation of outlet density across Adelaide and South Australia is the wrong move and sends an incorrect message to the community. It also stands in stark contrast to the harm minimisation of the object of the Act and sets a dangerous precedent for future applications.

Submission of Australia's National Research Organisation for Women's Safety

Ms Padma Raman PSM, Chief Executive Officer, provides a submission on behalf of ANROWS, which is an independent, not-for-profit company established under Australia's *National Plan to Reduce Violence Against Women and their Children 2010-2022*. The primary function of ANROWS is to provide an accessible evidence base for developments in policy and practice design for prevention and response to violence against women in Australia.

Referring to a report of the Foundation for Alcohol Research and Education released in 2015, Ms Padma advises that:

In Australia, alcohol is involved in around half of all domestic and family violence (DFV) assaults reported to police, with incidents of violence increasing on days when male partners were drinking.

ANROWS conducted research in 2017 and released a report on the links between alcohol consumption and domestic and sexual violence against women, finding that this link can manifest in a number of ways such as:

- perpetration of violence against women;
- the use of alcohol to victimise women; and
- women using alcohol as a coping strategy to deal with violence, which has a range of flow-on effects including an increased risk of further violence, a reduced ability to engage in treatment programs and an increased likelihood of losing custody of children.

In 2017, ANROWS conducted and reported on the *National Community Attitudes towards Violence against Women Survey* to examine people's understanding of the role of alcohol and other drugs in excusing men's violence or victim-blaming women. The results showed that "a small and declining proportion of Australians believe in these notions of alcohol use to excuse or blame women."

The research conducted by ANROWS in 2017 recommended "that any alcohol-specific interventions (at government, community or individual levels) designed to reduce violence against women need to reflect the complexity of the connection between alcohol consumption and violence against women."

In 2015 ANROWS produced a collaborative report entitled *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* that made specific recommendations on improvements around the regulation of alcohol including its availability and pricing and the culture around alcohol, as well as "cross-sector collaboration with DFV response services, peak policy agencies, mental health, and other drug services to facilitate a holistic approach to overcome the harm caused by alcohol consumption."

Ms Padma submits that "planning for the geographic location of the sale and supply of alcohol should be considered and developed in collaboration with Aboriginal and Torres Strait Islander peoples and organisations." Responses to violence against women in these communities "need to be holistic and community driven." A research report conducted in 2020 suggested that "responses should be led by local Aboriginal and Torres Strait Islander organisations such as healing, trauma counselling and alcohol and other drug rehabilitation."

In a study conducted in May 2020 by the Australian Institute of Criminology examining the impacts of the COVID-19 pandemic on DFV, women reported increased alcohol consumption in the three months from February 2020. Another study on the impact of alcohol-related harm in families and alcohol consumption during COVID-19 "highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families."

In relation to gambling and increased alcohol consumption, a study funded by ANROWS in 2020 "found that violence was more likely to escalate where there was problem gambling present, whether by the man or the woman." It was reported that alcohol or drug use by a partner dramatically increased their gambling activities and that women were fearful of their safety and the safety of their children where gambling losses led to alcohol and drug fuelled violence.

Ms Padma provides the following summary and recommendation:

Alcohol does not, in itself, cause DVF, and cannot be used to excuse violence. However, alcohol is connected to the perpetration of violence in a number of ways – for example, alcohol use can increase the severity of violence. When examining the sale and supply of alcohol,

consideration should be given to the complex relationship between alcohol consumption and violence against women. This consideration should also recognise other contributing factors, including the impact of disasters like bushfires and the COVID-19 pandemic, as well as the links between alcohol consumption and problem gambling.

The Applicant has addressed the submissions of Professor Livingston, RACS and ANROWS in its Further Submissions dated 29 September 2021 (A3).

The Applicant refers to *Liquorland Park Holme* at paragraph 44 to outline the approach of the Court in relation to the object of harm minimisation, noting that it has also been the approach of the Authority to subsequent applications, that:

- a) The object of harm minimisation contemplates that the sale and supply of alcohol may result in some harm to some members of the community, but on balance, there is not an unacceptable increase in the level of harm.
- b) The objective of harm minimisation is one of several objectives that must be considered and balanced against one another.
- c) Many applications by their nature are unlikely to give rise to significant harm provided that the risks are properly addressed.

The Applicant submits at paragraph 48:

There is simply no evidence of an unacceptable increase in the risk of harm in McLaren Vale if this application were to be approved. None of the further material provided to the Commissioner even attempts to demonstrate that there is such an unacceptable risk in the particular circumstances. Liquorland refers to its CIAR and previous submissions on this issue.

The Applicant engaged Dr John Henstridge CStat, AStat, Chief Statistician, Managing Director Data Analysis Australia Pty Ltd to provide his expert opinion on the submission of Professor Livingston. At paragraph 52 the Applicant refers to pages 1-2 paragraphs 2-4 of Dr Henstridge's report where he submits:

While the Submission of Livingston provides a survey of available evidence, it bears little clear relevance to the situation in South Australia and the decisions concerning liquor licensing in South Australia.

.....

Overall the research that Livingston references needs to be substantially improved before it can assist in decision making at the level of individual licences.

At paragraph 54 the Applicant notes that Dr Henstridge is critical of Professor Livingston's conclusions and theories for a number of reasons, including a failure to provide data that includes or references South Australia, ignoring other more important local factors that may provide a fuller explanation for the variations in harm, and relying in part on unsophisticated statistical analysis.

At paragraph 61 it is noted that Professor Livingston suggests that the size of the particular premises is an important matter. The Applicant points out that the proposed Liquorland store has only 171 square metres of selling area.

The Applicant concludes its review of Professor Livingston's submission at paragraph 62, by submitting:

Ultimately the difficulty with Professor Livingston's research is that it does not inform the critical issue in this case namely whether the grant of this application for a modest size bottle shop in the main regional shopping centre in McLaren Vale would cause an unacceptable level of further harm in the community. Dr Henstridge states at page 12 paragraph 26:

"I understand that the Submission was made in the context of several current licence applications, including the Liquorland applications in Mt Barker and McLaren Vale.

- a) Both these applications are in modest sized towns within easy distance of Adelaide with their own unique characteristics.
- b) None of the studies referenced by Livingston focus on such environments. For example, Livingston's own studies are all based on metropolitan Melbourne. Extrapolating their findings to very different environments is at best tenuous and at worst potentially misleading."

The Applicant addresses the RACS and ANROWS submissions together at paragraphs 61 - 65 as the comments relate equally to both. The Applicant submits that both submissions fail to provide any analysis or commentary on the locality of the application or the McLaren Vale community and demographic. It is further submitted that the submissions *"fail to address the core function of the community impact test which is based on an assessment of the impact on the supply and sale of liquor within that locality."*

The Applicant says at paragraph 65:

"While we appreciate and acknowledge the expertise and fundamental services provided by these agencies, the responses do not address the application or the particular weighing exercise that is required in this case."

Cultural, recreational, employment or tourism impacts

The Applicant submits that the store will employ up to 6 staff in various capacities, including: a full-time store manager; one full time team member; one part time team member; 2 or 3 casual staff; and additional staff at busy times of year such as Christmas (7.1.1 CIAF).

Ethos Urban estimates that in addition to any consumer benefits: *"the Liquorland store would directly generate 6 to 8 jobs in the local area"* (4.19 Ethos Urban Report).

Social impact and impact on the amenity of the locality

Ekistics contends that the proposed offering will have a positive impact on the amenity of the area for a number of reasons, as discussed below.

Ekistics submit that the liquor stores currently within the locality are not particularly convenient for customers of Coles or the adjoining specialty stores and do not offer a 'one stop' shopping experience *"when compared to the provision of a liquor store within a sheltered environment, adjacent to the Coles Supermarket and car parking area"* (pg35, Ekistics Report).

Ekistics submit that the proposed offering will provide added convenience for customers of Coles and the surrounding shops in the Shopping Centre, and for the McLaren Vale township more generally, by allowing customers to purchase liquor whilst shopping for their groceries and household needs.

Ekistics contends that there are no other co-located liquor and supermarket offers within the locality and suggest the proposed offering will provide increased choice and competition but

concede that “*the existing standalone BWS is located in relative proximity to the proposed liquor store*” (pg35, Ekistics Report).

Ekistics also contend that the proposed offering will result in economic investment in the town centre, and employment opportunities for those employed in the store, and that this positive impact on employment may extend to other shops and services in the Shopping Centre and the township generally from a likely increase in visitation to the centre.

Ekistics notes that Liquorland Australia have advised that they aim to support local markets and will include a range of products that support South Australian producers (around 200), with a minimum of 40 wines from McLaren Vale, as well as beers from local brewers.

Ekistics submits that locating the proposed offering at the subject site within the Neighbourhood Centre Zone appropriately responds to the intent of the Development Plan to deliver a ‘hierarchy’ of integrated ‘activity centres’ across the Council area, and that:

Specifically, the ‘Neighbourhood Centre Zone’ seeks to cluster and deliver a wide range of services and facilities, including retail, to provide for the frequent and regularly recurring needs of a community and to encourage the economic and shared use of facilities, which are highly accessible REF 00918-001 | 23 October 2020 36 to residents, workers and tourists alike. In this way, the proposed liquor store will deliver increased consumer choice and directly contribute to the intended function of the centre, as desired by the Onkaparinga Development Plan.

Location of the proposed liquor store within an ‘existing centre’ also directly responds to State Planning Policy (SPP) No. 9 (Employment Lands) as specified within South Australian State Planning Policies, May 2019. The State policy identifies that ‘activity centres’ are a key pillar of the South Australian economy and enable more equitable and convenient access to a range of services and activities within a single trip (as distinct, from multiple trips to different locations). In particular, SPP 9 identifies that ‘existing centres’ should be the ‘primary place for commercial and retail activity’.

In summary, we are of the view that the proposed liquor store will bring multiple benefits to the locality, including the provision of increased choice and convenience for residents, workers and tourists; economic investment; direct and indirect employment benefits; as well as ensuring that the town centre continues to operate as a desirable integrated neighbourhood centre, aligned with key policy drivers of the State.” (pgs 35-36 Ekistics Report)

Ethos Urban note that the Coles supermarket at McLaren Vale “*has a very important role in serving residents of the surrounding PTA (the locality within 2km) with basic fresh food, grocery and household items. Furthermore, the centre is also very important in serving residents of the wider region, including rural areas and towns (such as McLaren Flat and Willunga) within the STA. This role is enhanced by the presence of other complementary uses, including other specialty shops in direct proximity of both Coles and the proposed Liquorland.*” Approximately 3000 customers enter the shopping centre each day. (4.5 - 4.6 Ethos Urban Report).

At paragraph 4.7 Ethos Urban state that:

“the proposed Liquorland will be highly convenient for people wishing to combine supermarket and basic grocery with liquor shopping trips at a single integrated location. That is, by co-locating a Liquorland with Coles McLaren Vale, a high share of local residents will have their convenient access to take-home liquor significantly enhanced relative to the current situation.”

Community support for the proposed business

The Applicant has provided evidence of community support for the application.

The Applicant engaged Data Analysis Australia (**DAA**) to undertake a survey in June 2020.

DAA surveyed 207 respondents in a telephone survey. The DAA findings are summarised at paragraph 4.10 on page 18 of the Data Analysis Report:

The Coles supermarket is used by almost all residents of McLaren Vale itself. A significant majority of these shoppers support the proposal for there to be a Liquorland store adjacent to the Coles supermarket. This support is shared by the users of the second most popular place for supermarket shopping, Romeo's Foodland, that is also close to the proposed Liquorland.

The primary reason for this support is the convenience associated with purchasing takeaway liquor on the same trip used for supermarket shopping. This is best understood from the perspective of the currently most used liquor outlet, the BWS store, being located away from the most popular supermarket. The only other outlet apart from wineries is the Hotel Bottleshop and no major destination outlet such as a Dan Murphy's is within 10 km. Hence if the Liquorland store was approved it might be expected to achieve a significant share of the takeaway liquor market in McLaren Vale.

Residents were particularly supportive of the proposal for the Liquorland store to showcase local wines. It is interesting that while residents have some preference for purchasing directly from wineries, it is clear that they do for only a small proportion of their purchases. Hence if a local store supplied local wines it is likely that it may become a means of supporting local wineries while still being convenient.

At the same time, respondents are highly conscious of the need for the responsible service of alcohol and appear to believe that the proposed store will provide this. Indeed, concerns raised in relation to encouraging excessive drinking and the potential to increase anti-social behaviour or crime in the area are distinctly lower than that observed in many similar surveys.

The Applicant notes that 72% of survey respondents indicated that they would use the proposed store if the application is granted.

In order to improve the shopping experience for its customers, Coles conducted an Australia-wide survey of Flybys Members who shop at their supermarkets and liquor stores in 2020. Customers were required to nominate their three main "*pain points*" from a range of options such as look and feel of the store, car parking, width of aisles, and customer service at checkouts.

The survey for the existing Coles store at McLaren Vale was conducted between 1 April and 30 June 2020, with 298 customers completing the survey. The Applicant advises that 39% of respondents nominated the lack of having a bottle shop/liquor store adjacent to the supermarket as the most significant pain point. In comparison, 7.3% of respondents of all surveys across the country nominated the lack of having a bottle shop/liquor store adjacent to the supermarket as one of their three most significant pain points.

The Applicant submits at page 35 of the CIAF:

The fact that almost 40% of the survey Respondents indicated they would like to be able to shop at a liquor store adjacent to the supermarket indicates that a significant proportion of shoppers have a demand to purchase liquor when they do their supermarket shopping compared with shoppers at other locations where it can be implied that the demand to purchase liquor is satisfied by outlets already existing in those localities.

The Applicant also wrote to various key stakeholders and interest groups relevant to the locality notifying them of the intention to lodge an application for a PLSL outlet at the Site, including: The Department of Health and Wellbeing (Attachment D of the CIAF); the Department of Aboriginal Affairs; the Chief Executive Officer, City of Onkaparinga; Chief Executive Officer, and the Department for Education.

The Applicant received one response from Marina Bowshall, State Director of Drug and Alcohol Services South Australia, on behalf of the Department for Health and Wellbeing. Ms Bowshall also noted the SA Government's commitment to reducing alcohol related harm, and stated: *"there is a growing body of evidence linking the physical availability of alcohol to the risk of violence, including domestic violence. Recent Australian research has also found a strong association between increased proximity to off-premises licensed outlets and alcohol consumption at levels associated with risks of short-term harm at least weekly"* (Attachment E, CIAF). The research referred to is not cited or included with the letter.

ACCC response to invitation to provide a submission

On 9 June 2021 I wrote to the ACCC referring to an earlier letter dated 21 December 2020 that I had received from the ACCC and inviting the ACCC to make a submission outlining any competition concerns in relation to the interests of consumers that may be relevant when determining whether application is in the community interest or has public interest implications.

Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital Division of the ACCC responded to my request by letter dated 23 June 2021. Mr Leuner advised that *"the ACCC does not propose to make a written submission"* as it does not have any jurisdiction or authority in relation to the current Liquorland and BWS PLSL applications.

Mr Leuner goes on to say:

"However, in principle ACCC acknowledges that there is the potential for competition concerns to be raised if Coles and Woolworths are able to expand further via the grant of new liquor licences in local retail markets where they already have a significant presence.

We also recognise that over time, the granting of new licences to Coles and Woolworths could undermine the competitiveness and viability of independent liquor retailers, including by:

- *saturating the market and reducing sales for independent retailers;*
- *raising barriers to entry and/or expansion, such as marketing costs; and/or*
- *increasing Coles and Woolworths' relative buying power at the wholesale level."*

Mr Leuner sets out the following factors that the ACCC considers in its assessment of competition in local retail markets that are discussed in detail in the ACCC's merger guidelines:

- The appropriate geographic boundary of the market
- Market concentration in the local market
- The closest competitors to the new site
- The degree of competitive constraint provided by independent retailers on Coles and Woolworths liquor stores
- The extent of barriers to entry to further stores opening in the area.

The Applicant provided various submissions in reply to the effect that the ACCC material is not relevant to the determination of the application and that I could place no weight on this material.

I consider as general propositions that it is desirable to have a competitive market for consumers and undesirable to have market saturation or market dominance by any one licensee. To whatever extent that matters of competition may be relevant to determining if the grant of a PLSL application is in the community interest or in balancing public interest considerations, I consider that it is relevant that this particular applicant does not currently operate any other packaged liquor stores in the locality, and on that basis I do not hold concerns that the grant of this particular application will result in diminished competition, market saturation or market dominance by the Applicant in the locality.

Submission of Samuel's Gorge Winery

The following submission was received from Mr Justin McNamee on behalf of Samuel's Gorge Winery opposing the application:

I and my business strongly object to the granting of this liquor licence. It is not in the community interest to have yet another commercial (not privately owned) retail outlet (without food and seating facilities) in the main street of McLaren Vale. Secondly another liquor retail outlet will impact on the viability of existing winery liquor outlets.

The Applicant notes that this is the only objection received from a holder of a liquor production and sales licence, and submits at paragraphs 43-46:

...the matters raised in the submission, whilst undoubtedly reflecting the personal views and preferences of the author, in no way give rise to any reason why the application should be refused.

Further, the submission makes a distinction between commercial and privately owned retail outlets. That is not a ground for refusing the application.

Further, a PLSL store is not expected or permitted to provide food or seating for consumption.

Finally, and although the issue is not relevant to the Commission's consideration, the premises are not "in the main street" nor visible from the main street but are accessed primarily from the carpark to the rear of the Shopping Centre.

AHA's Submission and the Applicant's submissions in reply

A submission opposing the grant of the application was received from the AHA (AHA1), which is summarised below, together with the submissions in reply received from the Applicant (A2).

Harm minimisation and the Objects of the Act

The AHA notes that packaged liquor equates to approximately 80% of liquor sales consumed in Australia, and that the application must satisfy the community interest having regard to harm that may be caused to the community or a group within that community.

Further, the AHA maintains that in accordance with the objects of the Act, the sale and supply of liquor is consistent with the expectations and aspirations of the public, and the "public is not a very small survey sample with questions weighted toward a particular answer."

The McLaren Vale Community

Australia is divided into a number (approximately 65) of designated wine regions pursuant to the provisions of the *Wine Australia Act 2013* (Cth) and the statutory instruments made under that Act. McLaren Vale is one of those protected Geographical Indications pursuant to Part VIB of that Act.

There are over 100 cellar door outlets in the region, and according to the AHA, tourism is a significant drawcard to the region and a major source of income for many local businesses. The objector asserts that the application makes no reference to the local businesses and has not engaged with the business owners or customers.

The AHA submits at paragraph 10:

This is not merely another “unremarkable” application for a bottle shop in an “average” suburb of greater Adelaide. This is an application for a bottle shop in a very small locality which survives economically on the back of boutique, usually family-owned business, with which that bottle shop will directly compete. It is neither in the interests of that community, nor of the public generally, for the application to be granted. This has special significance in a locality comprising just over 3000 peopleand where it must be accepted that viticulture, winemaking and wine retailing using the McLaren Vale brand are crucial to the area’s economic and social prosperity.”

Density of outlets

Whilst the AHA accepts that the present availability of liquor in the region is not a reason to grant or refuse an application, there is a relationship between outlet frequency, population and harm.

The AHA submits there is no good reason to exclude the Australian Boutique Premium Wines outlet from density considerations as it holds a packaged liquor sales licence, and despite its limited offerings, its licence category permits the sale of a full range of packaged liquor products.

The AHA submits there are at least another 116 licensed premises in the locality that permit the sale of liquor for “consumption off” which should be taken into consideration when analysing the potential for harm created by “another chain store with no real or substantial connection to the locality.”

The AHA makes the following observations in respect to the existing liquor outlets in the locality:

There is, as identified in the application, an existing BWS store very close to the proposed outlet, sharing the same carpark and within easy walking distance, even when pushing a shopping trolley. The so-called “one stop shopping convenience” is already available. There is nothing identified in the application that Liquorland will supply that BWS and the remaining PLSL outlets cannot. This is not merely a rehashing of the need or demand test. It is real analysis of what the community expects, and what the community can presently obtain. The plain facts are that liquor is already available while shopping for groceries or other staples. A full range is available from the BWS and from other outlets. and it must be questioned whether any real and tangible positive will accrue to the locality if yet another factory style PLSL outlet is permitted to operate in it.

In addition there is the drive through bottle shop of the McLaren Vale Hotel, branded as a Thirsty Camel. It carries an extensive range both for drive through and walk-in customers with a dedicated McLaren Vale wine section and knowledgeable local staff. The Hotel has been recently and extensively renovated and has a significant connection with the local community.

- The freehold of the hotel is owned by the well-known winemaking family, Hardy.
- The hotel employs a significant number of local staff- as at November that number is 45.
- “Schooner” (an Australian Galah) is a pet housed, owned and cared for by the Hotel drive through and is a real attraction for visitors and tourists, greeting customers and bidding them farewell with a cheery “See ya later”. This is precisely the sort of thing that delights the purchaser and is a quirk of a local outlet that cannot be replicated by a “cookie cutter” model of a chain store that is to all intents and purposes identical to every other Liquorland in the state. (paragraphs 16-17 AHA1)

The Applicant’s response refers to the Ethos Urban report to confirm that the Coles supermarket is important to the township and surrounding area. Whilst it accepts that the supermarket is ‘technically’ in the same shopping centre as the existing BWS store, in practice the shopping centre is divided into 2 separate parts at distinctly different levels, such that shoppers would need to drive between the two, rather than walk. (para. 7 A2)

The AHA notes a perceived inconsistency in respect of the Applicant’s calculation of outlet density, stating that the Applicant has used the following alternate methods of calculation:

1. *residents per outlet* (dividing the number of residents by the number of liquor outlets in the locality). In this case the relevant figures are 3100 residents divided by 4 outlets, achieves a figure of 774 people per store; and
2. *outlets per 1000 residents* which results in 0.75 outlets per 1000 people.

The AHA argues that these figures can be misleading and the important factor to consider is that the *lower* the figure in *residents per outlet*, or the *higher* the figure in *outlets per 1000 residents*; both mean a higher concentration of liquor outlets per person in the locality (pg. 6 AHA1).

If it is accepted that the “trigger point” of density saturation is 0.75 liquor outlets per 1000 residents, it is the AHA’s position that if this application were granted, “*McLaren Vale packaged liquor outlets will be well inside the danger point*”. Noting that this calculation does not take into consideration an additional 116 licences in the locality permitting sales of take away liquor. (pg. 7 AHA1)

The Applicant submits that the density of liquor outlets in a locality is not of itself a relevant matter under the Community Impact Guidelines, and that it is only relevant in the context of considering the risk of unacceptable harm, and points to its experience as a liquor retailer and policies and procedures in reply.

The Applicant maintains that despite the AHA’s submissions, the locality of McLaren Vale is not “awash with take –away (liquor) facilities” such that it could be inferred that the grant of this application would give rise to such unacceptable harm.

The Applicant submits at paragraph 36 of its response, that it is appropriate to take into account the tourist population when assessing the relevant locality, and that such an approach has always been accepted by the Court.

“Once it is recognised that the centre is designed to serve the surrounding rural population and tourists the proposition that there is a risk of harm because the locality is awash with facilities is unsustainable.

Further, the observations of Judge Gilchrist in Parkholme at paragraph [45] are telling. If there were a particular risk in this mature and relatively affluent community, it would be

expected that one of the agencies that Liquorland engaged with would identify such a risk particular to the locality and they have not. (para. 37 A2)

Community Support

The AHA argues that the Applicant's assertion that as the area is a visitor and tourism destination, the Coles supermarket will be used by overnight visitors to the area who are also likely to purchase their liquor from the proposed Liquorland store is 'questionable' and 'unsupported by any real evidence' (pg.9 AHA 1). The AHA maintains that the only community engagement was via telephone surveys, which is an unreliable source as the survey is anonymous, and the questions are tailored to evoke positive responses. It should also be noted that only 209 people out of 9000 residents in the locality participated in the survey.

In response, the Applicant submits at paragraph 39:

There is no basis for the AHA's attempt to discredit the expert evidence of Dr Henstridge as to the professional survey conducted by DAA. It is telling that no other statistical information is provided, nor is any professional critique of the survey proffered.

The survey was conducted using the same method as the survey accepted by the Court in Parkholme. Using the measure of support identified by Judge Gilchrist in Parkholme at [34], it can be seen that 68% of those expressing any opinion supported the proposal. That figure was higher for only persons who purchased packaged liquor.

Further the results of the Flybuys Survey strongly support that survey. Unsurprisingly given the nature and importance of the supermarket, (and the fact that in practice it operates as a distinct centre from where the BWS is located) the provision of one stop shopping is a matter of considerable importance to the customers of this centre." (para 41-42 A2)

Public Interest Discretion

The AHA makes the following submission in respect of the public interest discretion:

It is accepted that s 53 (1) prevents the licensing authority from taking into account the economic effect of the grant of the licence on other licensees in the area. It is submitted that this qualification plainly means other licensees holding the same type of licence, and that there is no prohibition on taking into account the negative effect on other types of licences, such as Liquor Production and Sales. Additionally, it is submitted that in any event there is no prohibition on taking into account the negative employment effect the grant of this licence would have. Inevitably, a Liquorland with a dedicated McLaren Vale section will cannibalise sales from such production cellar doors, leading to an equally inevitable loss of employment at those 116 cellar door facilities which will not be commensurate with the 3 or 4 new jobs at the Liquorland store. Concomitant with that, other local businesses-cafes, restaurants, antique shops, petrol stations and so on-will suffer from loss of business if a McLaren Vale aficionado can simply visit the Liquorland store and obtain what would otherwise involve the patronising of such businesses. The economic trickledown effect cannot be known in full; all that can be stated with certainty is that it will be adverse.

The application should be refused. This is not a "small" or "unremarkable" bottle shop application in a typical suburb. This is an application that, if granted, will harm the local community both in terms of liquor saturation and in terms of reduced tourism and economic activity, reduced employment and the dilution of those unique qualities that make McLaren Vale what it so appealingly is. (pg. 14 AHA1)

Decision

The relevant locality

The Applicant adopted a two kilometre radius in determining the locality, as the area most likely to be affected by the granting of the application. I am satisfied that the Applicant has correctly identified the locality, noting this captures the entire township of McLaren Vale and extends to surrounding peripheral areas primarily consisting of viticultural land and low density residential (rural) living.

The community interest test

Having identified the relevant locality, I now turn to consider whether the grant of this application is in the relevant community interest. This involves an evaluative exercise that weighs the positives and negatives that will come with the grant of a new licence and therefore a new take away facility for the purchase of take away liquor in the relevant locality.

On the positive side, I have considered the policies, procedures and staff training the Applicant has identified to mitigate risk to the community and am satisfied that the risk posed by this application is fairly low and will be appropriately mitigated by the risk mitigation measures and policies identified by the Applicant.

The Applicant is an experienced and reputable licensee who operates an established business with well-developed policies and procedures, which I consider will adequately mitigate the risk of harm to vulnerable members of the community.

I note South Australia Police and the City of Onkaparinga have not objected to the application.

I agree with the Applicant's submission that the proposed liquor store will not impact the activities conducted on any community buildings and facilities which are situated within the locality.

The proposed premises will provide limited employment opportunities and it is likely that some of these opportunities would be for the benefit of members of the relevant community.

There is no reason why the application should be refused on the basis of the matters outlined in s 57 of the Act such as the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or prejudice to the safety or welfare of children attending nearby kindergartens and schools. The relevant consents and development approvals are in place to permit development of the proposed premises.

On the negative side, it is of significance that McLaren Vale is a designated wine region with over 100 cellar door outlets and tourism is a significant drawcard and major source of income for many local businesses. While the Applicant has indicated it aims to support local markets, local products will represent a small percentage of its 1600 lines of stock, thereby potentially impacting cellar door purchases which local businesses depend on, which may negatively impact on tourism and these local businesses. I am precluded by s 53(1) of the Act from taking into account the potential economic impact of the grant of this application on other licensees in the locality affected by the application, however I must consider the impact that the application might have on tourism. The presence of another packaged liquor store might offer an easy alternative and could discourage tourists from wine tasting experiences that the region offers.

Another negative impact to consider is the impact on licence density in the event this application is granted. Granting this application would result in a density of one liquor store per 1,032 people, excluding Australian Boutique Premium Wines (based on 2016 Census data), and one store per 774 people if Australian Boutique Wines is included. Either figure is considerably higher than the State average figure of approximately one take away liquor facility for every 2000 residents referred to by Gilchrist J in *Liquorland Park Holme* (which His Honour acknowledged as being a 'rubbery' figure), and I note that His Honour's calculation is consistent with Table 4.1 in the Ekistics Report where dividing the State population (from the 2016 Census) by 833 licensed premises would equal a State average of one store per 2,012 people. I am also mindful that there are around 116 other licensed premises in the locality that permit the sale of liquor for "consumption off" which would further increase the saturation of liquor availability in the locality. The high liquor licence density and high availability of liquor in the locality weighs against the grant of this application.¹

I take guidance from the Licensing Court's approach in *Cellarbrations Mannum* [2021] SALC 42 which considered the grant of a packaged liquor sales licence in respect of premises situated in a shopping centre on the outskirts of Mannum, a regional town in the Mid-Murray Council. The application was the first stand-alone packaged liquor store in the township as Mannum's two take away liquor stores were each adjoined to a hotel on the Main Street. Gilchrist J stated at [121]:

It must be accepted that having three take away liquor facilities in a fairly small country town raises legitimate issues of concern. But my concerns have been allayed by the fact that the new facility is towards the outskirts of the town, some distance away from the two hotels, it is a different type of facility, being a stand-alone bottle shop as opposed to being part of a hotel, and the fact that it is likely that a number of its customers will be those who for now purchase their take away liquor outside of Mannum.

By contrast, McLaren Vale township already has:

- a drive-through bottle shop adjoined to Hotel McLaren 700 metres from the proposed premises; and
- a stand-alone take away liquor outlet (BWS) operated by a reputable major retailer 125 metres distance away and within the same shopping centre complex.

Considering the matters the Court had regard to in *Mannum*, this is not a different type of facility, nor is it some distance away from existing takeaway offerings. On the contrary, the close proximity to the existing BWS store is in my view, a significant consideration weighing against the Applicant in the balance of satisfying the community interest test.

While the Applicant accepts the close proximity of the BWS store, it submits the proposed Liquorland store would be the only co-located (liquor and supermarket) store providing a *convenience* offer within the McLaren Vale township.

I accept that general convenience and the desire for "one-stop shopping" is a factor to weigh in the balance of whether an application might be in the community interest, however in my view, convenience does not equate to elimination of all inconvenience. The remarks of King CJ in *Lovell v New World Supermarket Pty Ltd* applied by Gilchrist J in *Hove Sip n Save* [2021] SALC 7 at [136] are apposite:

¹ *Liquorland Park Holme* at [44].

Inconvenience in gaining access to the required liquor is undoubtedly relevant to the determination of the question whether the public demand for liquor in the locality cannot be met by the existing facilities but it is not of itself decisive. If, for example, there existed an accessible first grade bottle shop at a distance of, say, 200 or 300 metres from the shopping centre, it would be absurd to suggest that the demand for liquor by customers of the shopping centre could not be met simply because they would have to drive their cars a short distance from the general shopping centre in order to obtain their liquor. To attempt to provide access to a full range of liquor for everybody who is without the use of a motor car would result in a wholly undesirable proliferation of liquor outlets with consequent deterioration of the standards in the service of liquor which are necessary in the public interest. It is, however, a matter of degree.

In refusing an application for a packaged liquor sales licence at a shopping centre in *Hove Sip n Save*, Gilchrist J found the community interest test could only be met in that case by concluding that it is sufficient that some of the relatively small number of the local community who visit the Hove Shopping Centre would find it convenient to have the option of purchasing take away liquor as part of that visit. Gilchrist J concluded:

If this was sufficient to meet the community interest test, it is difficult to see how a licensing authority could refuse any application made by an experienced licensee for the grant of a packaged liquor sales licence in respect of any premises in the vicinity of a supermarket that does not already share an alignment with a take away liquor facility.²

I take into account there is some community support for the application, consisting of the results contained in the DAA Survey Report, with 207 valid responses obtained from a cross-section of the community, in which 59% of respondents supported the proposal for a Liquorland store in the McLaren Vale Shopping Centre, 72% of respondents said they would use the liquor store if the application were granted. However, a response of 59% in support is inadequate to persuade me that the application is in the community interest, particularly in light of the Court's views expressed above.

Before reaching my conclusion as to whether, on balance, the application is in the community interest, I will outline my concerns in relation to harm as they are relevant, in my view, to both community interest and public interest.

The Public Interest discretion

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)*".

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, and section 53(1b) provides that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

The Applicant's submission regarding the convenience of the direct co-location of the Liquorland's position to Coles is a factor I consider to be relevant to the question of public interest. In *Hove*, Gilchrist J cited factors relevant to the exercise of the public interest discretion:

In *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd* Doyle CJ discussed a number of factors relevant to the exercise of the public interest discretion. He made the point

² *Hove Sip n Save* [2021] SALC 7 at [138].

that the discretion must be exercised for a purpose consistent with the Act, and to advance or to maintain principles and policies found in the Act, or which the Court in its experience finds appropriate or necessary in the proper application of the Act.' Having cautioned against the Court using 'the discretion as a basis for imposing views about what is desirable' he stated that it could do so if the views were 'firmly linked to the principles on which the Act operates or is administered.'³

The object of the Act is to regulate and control the promotion, sale, supply and consumption of liquor. This includes 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. Relevantly, harm includes adverse effects on a person's health and alcohol abuse or misuse.

I consider minimisation of harm and the potential of harm is a relevant consideration to weigh against co-location of takeaway liquor and supermarkets. The proposed premises are positioned directly in front of the Coles supermarket to the right as you enter the mall.

With direct convenience (walking past on the way to and from Coles) comes easy access, exposure to discounts and sales, convenient incidental purchases and thereby personal consumption of alcohol which may otherwise have been avoided. In my view, the 125 metres distance which the consumer must either intentionally walk or drive to access the existing packaged liquor store after their grocery shopping at Coles creates a positive barrier between the all too easy purchase that direct co-location of liquor and supermarkets provides.

Applying the decisions of *Park Holme* 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 behavior. 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.⁴

I have carefully considered the submissions by RACS, ANROWS and Professor Livingston, and consider that I can place some weight on these submissions, at least at a general level, despite the submissions to the contrary by the Applicant. Alcohol causes significant harm in the community and it is for this very reason that alcohol is a highly regulated product. I consider it is relevant that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets and this proportion has been steadily increasing.⁵ I also consider the following submission from ANROWS has general application and relevance:

Other recent research into the impact of alcohol related harm in families and alcohol consumption during the COVID-19 pandemic highlighted that the changes to alcohol

³ *Hove Sip n Save* [2021] SALC 7 at [131].

⁴ *Hove Sip n Save* [2021] SALC 7 at [104].

⁵ Professor Livingston submission at p. 1 citing Euromonitor International (2019) *Passport: Alcoholic drinks in Australia* (London, Euromonitor).

consumption during large-scale disasters may increase harm in families (Farrugia & Hinkley, 2021). For example, women with carer responsibilities were found to be at greater risk of increasing alcohol consumption and alcohol-related harm. The findings indicate that there is a need for greater community awareness of the connection between alcohol consumption due to COVID-19 and the risk of alcohol-related harm.⁶

I agree with the conclusion drawn by Dr Crozier and Mr Bautz in the RACS Submission:

Therefore, at a time of increased stress, pressure and uncertainty placed upon individuals and families, further saturation of outlet density across Adelaide and South Australia is the wrong move and sends an incorrect message to the community. It also stands in stark contrast to the harm minimisation of the object of the Act and sets a dangerous precedent for future applications.⁷

While the effects and impacts of the COVID-19 pandemic may ease, the observations above are in my view, nonetheless relevant to highlight that as Liquor and Gambling Commissioner, I must proceed with extra caution in considering packaged liquor store applications co-located with supermarkets which would have the effect of increasing the accessibility and exposure of alcohol to residents in that community.

For those reasons, I consider the considerations of harm are not only relevant to community interest (that is, affecting the locality), but also the public interest as to grant this application, would in my view, create an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores with supermarkets. As noted by the Court in *Hove*, the legislature has made a clear policy decision not to go down this path.

I am also mindful of the objects of the Act, including the object to “*facilitate the responsible development of the licensed liquor industry...*”. In my view, granting this application would not be consistent with the responsible development of the licensed liquor industry. Rather, granting this application would be a further step towards proliferation and would provide a precedent that would support the wholesale alignment of packaged liquor and shopping centres, which is not desirable in circumstances where the approval of this application will provide little more benefit to the community than providing even more convenience in a locality where there is already ample convenience and an existing BWS store a short walk from Coles and the Site of the proposed offering.

Conclusions

On balance, I am not satisfied that the grant of the application is in the community interest.

Further, I exercise my unqualified discretion to decide that the application should not be granted on the grounds that it would set an undesirable precedent.

These findings take into account the existing takeaway offerings in McLaren Vale, the nature of the wine and tourism based industries in McLaren Vale, the higher than average liquor licence density in the locality, and the close proximity of the proposed premises to a stand-alone packaged liquor store operated by a major retailer.

⁶ ANROWS Submission at pp. 2-3.

⁷ RACS submission at p. 4.

Furthermore, the potential harm caused by the increased co-location of liquor stores and supermarkets is a factor which is inconsistent with the objects of the Act and the intention of Parliament.

In all of the circumstances, it would not be in the public interest to allow this application.

Dini Soulio

Liquor and Gambling Commissioner

25 February 2022