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Roadhouse Liquor Store PLSL Decision (App. No. 212081)

John Jamieson Waters and Pamela Waters (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) pursuant to section 38 of the *Liquor Licensing Act 1997* (**the Act**), in respect of an existing premises situated at Shop 2, 88 Victor Harbor Road, Old Noarlunga, SA 5168.

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**), with supporting attachments, including letters from the applicant, Eighty Eight Seafood and Grill (adjoining business), Seaford Homestyle Roadhouse (adjoining business) and A.G.D. Pty Ltd (landlord).

It is the content of the CIAF and supporting attachments, submissions made to the Licensing Authority (**the Authority**) along with submissions lodged on behalf of Chinbiya Pty Ltd, trading as the **Aldinga Hotel**, IPG Management (SO) Pty Ltd, trading as the **Beach Hotel Seaford** and the Australian Hotels Association (SA) (**AHA**) opposing the grant, and submissions and 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:

- Applicant's Submission dated 25 July 2021 (**A1**) and Community Impact Assessment Form (**CIAF**)
- Australian Hotels Association (SA) submission dated 17 January 2022, objecting to the application (**AHA1**)
- Chinbiya Pty Ltd, trading as the Aldinga Hotel submission dated 19 January 2022, objecting to the application (**Aldinga Hotel Objection**)
- IPG Management (SO) Pty Ltd, trading as Beach Hotel Seaford submission dated 20 January 2022, objecting to the application (**Beach Hotel Seaford Objection**)
- Plan 'A' dated 25 January 2022 (**Plan 'A'**)
- Plan 'B' dated 25 January 2022 (**Plan 'B'**)
- Submission of Associate Professor Michael Livingston dated 5 July 2021 (**Professor Livingston 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**)
- Applicant's further Submission dated 25 January 2022 (**A2**)

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*

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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/artists 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

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- (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 section 57 of the Act have been met, in relation to such 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, 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. Section 53(1b) of the Act 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 packaged liquor store at Shop 2, 88 Victor Harbor Road, Old Noarlunga, which would be located within an existing single row shopping complex situated parallel to Victor Harbor Road.

The Applicant has described themselves as “an independent outlet” and states that they “*intend to take advantage of locally produced wines, gins, craft beers, spirits in general and commercial products*” (3.2, CIAF).

In addition to this the Applicant has submitted that it will produce an online service platform to market and supply products for pickup and delivery to local customers (3.2, CIAF).

The Applicant has advised that it will not provide accommodation, entertainment or food.

The Beach Hotel Seaford submits that:

“The applicant has provided no business plan or management plan as required by the mandatory guidelines” and that “no stock list has been provided to enable any assessment of the detail of the proposal” (11.6 and 8.6, Beach Hotel Seaford Objection).

In the Applicant’s response to the objectors, it reiterates that it is an independent store and describes the proposed offering as a boutique store with the expectation to sell premium wine and spirits. In addition, the Applicant has stated that it “*will allow a greater range and choice and the ability to showcase the local product the store is surrounded by*” (pg1, A2).

The Applicant has stated that online ordering “*will be implemented at a later date, more than likely in the second year, once we know our local clientele*” (pg3, A2).

Community support for the proposed business

The Applicant has supplied three letters of support for the proposed business from a number of adjoining businesses including Eighty Eight Seafood and Grill and Seaford Homestyle Roadhouse, and from the prospective landlord A.G.D. Pty Ltd which identify positive commercial, customer and employment impacts as the reasons for their support of the proposal.

In addition to this Eighty Eight Seafood and Grill submits that they will be able to purchase liquor from the premises for their business.

The objectors submit that there “*appears to be no consultation with nearby residents*” (5.4, Aldinga Hotel Objection), and no evidence of community support or support from the community and sporting clubs mentioned in the CIAF (5.3, Aldinga Hotel Objection).

Locality

The Guidelines provide a guide for applicants in relation to the ‘locality’ applicable to their application, and state 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 in the Adelaide Metropolitan area is the area within a 2 kilometre radius of the site of the relevant premises.

In relation to the applicable locality the Applicant submits: “*Roadhouse, Shopping Complex, Shop 2, 88 Victor Harbor Road, Old Noarlunga SA 5168 is proposed so as to draw customers to the local shopping complex which in turn would generate economic benefits to the other complex employers and to the region in general*” and that “*the nearest bottle shop in the vicinity has a distance of approximately 3 kilometres from the proposed position of Roadhouse Liquor Store so the proposed position would not be detrimental to any other liquor store in the area*”. The Applicant expects to draw customers from the approximate 52,000 vehicles that pass by the vicinity on a daily basis.

The AHA submits that the Applicant’s “*reference to “locality” suggests that the Applicant has not properly considered this concept as it relates to liquor licensing. The geographic situation of the proposed business is not the “locality”. The amount of traffic passing is of questionable relevance. The proposed store is on the main road between Adelaide and McLaren Vale, Victor Harbor and surrounds. There is no necessary correlation between passing vehicular traffic and customers.*” (7-8, AHA1).

The Beach Hotel Seaford submits that the Applicant has not provided a description of the “*locality*” of the proposed business (5.1.1, Beach Hotel Seaford Objection).

The Applicant has submitted in reply that:

We are located between an arterial road ‘Victor Harbor Road and South Road’ and the Onkaparinga River. Our locality is a commercial precinct. Our neighbours include a Liberty Service Station, Sarah Homes, OTR and Bunning’s. This site is not located in residential streets such as the Old Noarlunga Hotel and Port Noarlunga Hotel etc. Due to our location and local land use, we have limited walk/pedestrian traffic to the centre. This means the majority or almost all

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visits to the centre are by vehicle and as a direct act to purchase from our centre. The location of the fore mentioned local licensees cannot stake such claim. (pg2, A2)

The Applicant provided Location and Area Reports, generated from CBS' Portal, with their application, which suggest the Applicant has applied a radius of 2km to determine the locality.

The Applicant has not provided a copy of the traffic report referred to in their application.

Potential Harm

Harm minimisation is a key component of the community interest test, underpinned by the first object of the Act: to ensure 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 (s 3(1)(a) of the Act).

The Applicant submits that based on its inquiries with Onkaparinga Council, there are no at-risk groups that would be adversely affected by the proposed liquor store (4.1, CIAF).

The Applicant adds however that the proposed liquor store is situated in a shopping complex that would potentially be frequented by young children and teenagers, but states that they will ensure that their business policy and required signage is on display, to address the issue of underage access to the store (4.1, CIAF).

This would include signage that:

- It is against the law to sell to persons under the age of 18 years and that no one under the age of 18 years is permitted in the store unless accompanied by an adult
- Patrons who may appear to be under the age of 25 years may be required to produce Identification regarding their proof of age to purchase products from the store (4.1, CIAF).

The Applicant submits that staff would also have to be conscious of potentially intoxicated customers attempting to purchase liquor, and has stated that signage in this respect would be made clearly visible so that people who appear intoxicated may be refused service at management's sole discretion (4.3, CIAF).

In relation to training, the Applicant has submitted that staff will be required to have undertaken some form of dispute resolution training, to avoid any confrontation escalating with intoxicated persons or underage youth who are disgruntled by the store's business policy (4.3, CIAF).

In addition to the policy referenced above, the Applicant has submitted: *"During festive seasons or times where high volume customer may be coming through the store we could engage the services of security guards to ensure our Business Policies are being implemented and maintained"* (4.3, CIAF).

In relation to whether there are any community buildings, facilities and areas within the locality, the Applicant notes that the proposed location for the store is a built up area "with all kinds of community buildings", but goes on to state that as far as it can be shown there are no schools, child care facilities, hospitals or places of worship (4.2, CIAF).

The Applicant notes that there are a number of sporting and recreational clubs within a 2 kilometre radius of the proposed store, including a Karate Club, the Old Noarlunga Football Club, and the Old Noarlunga Tennis Club.

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The Applicant states that the Old Noarlunga Primary school is situated approximately 2 kilometres away on the other side of the Onkaparinga River and that the only other venue that may be of relevance is the Green Leaves Early Learning Centre at Seaford Heights, which is further away again, and that the Elder Care Seaford Retirement Village is approximately 1.5 kilometres away (4.2, CIAF).

The Applicant submits that their business policy will ensure that any impact from the position of the store will be minimised (4.2, CIAF).

The Applicant states that they have over 10 years' experience in managing an independent bottle shop, and that with their knowledge of the industry, they believe in their brand as a "*standalone (Not Corporate) Liquor shop*" (A1).

The Aldinga Hotel submits that:

The Applicant has indicated that they have made enquiries to the Onkaparinga Council, and there are no adverse risk groups effected by the proposed liquor store. The Applicant has not provided any evidence of the correspondence between itself and the Council, nor has a letter of support been referenced in its CIAR (5.2, Aldinga Hotel Objection).

The Aldinga Hotel has referred to the review of the South Australian Liquor Licensing Act 1997 that was carried out by the Hon. Tim Anderson QC (**Mr Anderson QC**), noting the risks associated with packaged liquor, the focus on the community interest, and his observation that "*Australians now drink more alcohol at home and 80% of all alcohol consumed in Australia is packaged liquor purchased from off-premises outlets*", and have submitted that the Applicant has not: outlined its strategies to minimise harm in relation to its proposed online sales; detailed how its online system will protect against minors purchasing alcohol or the potential harm to the community; or how the grant would be in the community interest. Additionally, the Aldinga Hotel submits that the introduction of online sales effectively expands the locality beyond 2 kms in an area that is already well serviced by liquor outlets (4.14, 6.1 – 6.3, Aldinga Hotel Objection).

The AHA have made similar submissions to the Aldinga Hotel in relation to the review conducted by Mr Anderson QC and the recent amendments to the Act following his review, and point out that a greater possibility of domestic violence can be attributed to people drinking more at home and in private places, and that:

Section 3(1)(c) provides that the object is to ensure, as far as practicable, that the sale and supply of liquor is consistent with the expectations and aspirations of the public.

That the objects of the Act have been amended to provide a greater focus on minimising the harm that may be caused from the consumption of liquor, in particular harm caused to children, vulnerable people and communities (whether in whole or part).

There is very little by way of harm minimisation in the application. The only references are to compliance with the law, which is not enough. The application is drafted in such a fashion as to not recognize that selling packaged liquor is a serious business - see Hove Sip N Save. (5 - 6, AHA1).

The AHA submits that "*the Applicant speaks of things that "could" happen and of staff having to be conscious of adverse customer reactions. This merely states the problems that may arise in a PLSL outlet without providing any solutions.*" (10, AHA1).

The AHA also contends that:

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There has been no apparent consultation with local communities or businesses that may be affected-for example, the businesses and schools identified in 4.2 appear not [to] have been canvassed (9, AHA1).

The Beach Hotel Seaford contends that no real inquiries have been made by the Applicant as to 'at-risk' groups within the locality:

No real attempt has been made to analyse likely at risk groups in the community nor of the measures to be taken to minimise the risk of liquor related harm – refer Liquorland Parkholme and Hove Sip 'n' Save at paragraph 104. (11.14, Beach Hotel Seaford Objection).

The Beach Hotel Seaford submits that there are a number of deficiencies in the application (outlined at 5.1 – 5.1.17, Beach Hotel Seaford Objection), including the following matters:

- The applicant has provided no submission as to the locality of the proposed business, a critical factor in assessing public and community interest.
- There is no reference or submissions as to the Area or Locality reports.
- The submission ignores a number of schools, places of worship and other community facilities.
- Numerous local community buildings and facilities have been totally ignored.

At 4.2 of the Community Impact Assessment form the applicant states:-

“As far as it can be shown there are no schools, childcare facilities, hospitals, places of worship” (presumably in the locality).

That is contrary to the information contained in the Area Report, ignoring 3 schools listed in that Report. It also ignores the Old Noarlunga Uniting Church, Seaford Meadows Scout Group and numerous other local facilities. The submission states that the Old Noarlunga Primary School is 2 kms away – that is plainly wrong – it is closer to 500 metres away.

There is no assessment of population or licence numbers in any defined locality which is necessary for an assessment as to the likely proliferation of liquor licences raising public interest and discretion matters. – refer decisions of the Licensing Court in Hove Sip 'n' Save and Liquorland Parkholme.

No real description of the professional experience in the industry of the applicant (or applicants, as the case may be) – refer Hove Sip 'n' Save at paragraph 109:-

“But what it does mean is that applicants for such a licence need to be able to demonstrate to the Licensing Authority that they have a thorough understanding of what the responsible sale of alcohol entails, and demonstrate that they have policies and plans in place to ensure that they, and those who will work for them, will do all that is reasonably possible to minimise the harm and potential for harm caused by the excessive or inappropriate consumption of liquor”

The Beach Hotel Seaford refers to the Guidelines issued by the Commissioner, 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 Beach Hotel Seaford submits that: the Applicant has not provided any (or adequate) material to discharge the onus; the submission material is misleading and superficial and does not address key harm and social issues, is wrong in a number of key factual aspects and should be given little if any weight; and that to grant the application could lead to an undesirable proliferation of such licences, contrary to the public and community interest (11.23 Beach Hotel Seaford Objection).

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In response to the objectors' submissions, the Applicant submits in reply:

With all due respect the local and nearest school may be of only 1.2-2km away, however we are separated by the Onkaparinga River and an arterial road. This can also be said for the local Eldercare Facility, to access our site incidentally by foot you would need to cross a 7 lane arterial road.

Please also note that the Old Noarlunga pub shares a fence with the local primary school. I expect temptation, opportunity and locality would be created by this union and not one separated by major obstructions such as a river.

On -line ordering etc.

This form of shopping will be implemented at a later date, more than likely in the second year, once we know our local clientele

This store is looking to be progressive with both the local shopping habits but also with prevailing health standards.

At no time does it provide the opportunity for a minor to purchase alcohol from its store. This would be illegal and hold the licensee to legal action. This may be foreign to the Aldinga and Old Noarlunga Hotels as they are old establishments however the use of touch free technology is a way of the current and future retail market.

Of course, anyone may order goods online without age identification, this has been done many times with minors using their parent's cards to rack up massive phone and gaming bills. The difference being that although this may be achieved the product is not being delivered electronically Just like all outlets Pizza, KFC, Uber etc. verification can only really be achieved at collection.

Online and delivery has been addressed above, **No ID No GET** pretty simple – This is the way all stores are going due to Covid and new shopping habits. Woolworths has added click and collect to all their stores in the state combined with Big W the list goes on. This is not something to complain about but a movement to join in the ever-changing retail market. Window shopping is slow and online is today. A check of the BWS and Dan Murphy's online stores elaborate this.

They have worked on the front line for almost a combined 15 Years, we are well aware of the harm excessive consumption of alcohol has on the community, we see regular customers three or four times a week, these customers are never aggressive or rude, we serve on average 1500 to 1800 customers a week, there is however one or two customers are refused the sale of alcohol due to intoxication, detected on their unbalance walking, eye contact and speech, after they complain at the operator, and we are told where to go, they leave the store. Because they frequent the shop quite often, they do come back and apologise (pg5, A2).

The Applicant submits that it will take steps in relation to domestic violence:

Domestic Violence

Steps to be taken

- In store signage in relation to AMA health directions and standard drink advice
- DL brochures on the counter that reflect the same
- Web site to have all the fore mentioned data
- On line sales, an order cannot be placed without reading the health ADVICE and ticking the approve box
- On line sales, order cannot be placed without ticking the age specific tick box. This would list it is an offence to order here if you are below the age etc..
- Pickup will only be secured by proof of age at collection/delivery. (pg4, A2).

The Applicant asserts that the benefit of the proposal to the local area is demonstrated by "*the ability to showcase the entire region and not just that of the affiliated liquor suppliers*" and

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observes that the “*higher density of licensees for the area is indicative of the nature of the local produce and region*” (pg4, A2).

The Applicant has outlined a number of harm minimisation measures, as summarised below:

- Display business policy
- In store signs –
 - “Against the law to sell to persons under the age of 18 years
 - no one under the age of 18 years is permitted in the store unless accompanied by and [sic] adult
 - patrons who may appear to be under the age of 25 years that they May [sic] be required to produce Identification”
- Dispute resolution training for staff
- In store signage in relation to AMA health directions and standard drink advice
- DL brochures on the counter that reflect the same
- Web site to have all the fore mentioned data
- On line sales, an order cannot be placed without reading the health ADVICE and ticking the approve box
- On line sales, order cannot be placed without ticking the age specific tick box. This would list it is an offence to order here if you are below the age etc..
- Pickup will only be secured by proof of age at collection/delivery.

The Applicant states that it may engage the services of security guards during peak periods.

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

Given the high number of PLSL applications currently before the Authority, the Commissioner considered it appropriate to call for general submissions on harm pursuant to section 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 polices aimed at regulating the physical availability of alcohol are

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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.

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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.

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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.

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.

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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.

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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.

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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."

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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.

Cultural, recreational, employment or tourism impacts

The Applicant submits that the proposed offering will draw consumers to the local shopping complex and that this will generate economic benefits for the other shops within the complex and to the region in general.

The Applicant states that the nearest bottle shop is approximately 3 kms from the site, and consequently the proposed offering will not be detrimental to other liquor stores in the area and will provide a community service to the local area.

The Applicant has noted that previous traffic forecasts suggest that approximately 52,000 vehicles pass by the vicinity on a daily basis, and that consequently there is the potential to draw in customers not only for the proposed liquor store, but to the adjoining retail outlets in the shopping complex (3.1, CIAF).

The Applicant states that in the event the application is granted and the store begins to trade at a profit, that there is the potential to grant sponsorship to recreational groups within the locality, and names several clubs that might be recipients of such grants (6.1, CIAF).

The Applicant has submitted that the store would stock a wide range of international products to cater for the diverse cultural demands of the locality.

The AHA submits that that Applicant’s statement that “*if a profit is shown then the store has “the potential” to sponsor local groups*” is both speculative and vague.

The Beach Hotel Seaford submits that “*The only community benefit outlined by the applicant is a vague reference to sponsoring sporting groups, and increasing human traffic to the area.*”

The Applicant submits in reply that it is their intention to contribute to local clubs and organisations, but is reluctant to commit to any specific quantum:

Without successfully trading and realising a profit/loss and understanding the staffing hours required to operate, everything is speculation and based on experience and advice from industry mentors through the supply and delivery sector. As you can only imagine due to the last 2 years of Covid restrictions I expect the goodwill has changed drastically for most retail and commercial businesses. This is not something that can be easily estimated. A fixed commitment to any charity or organisation cannot be guaranteed and would be reckless and immoral and hence the nature to mention in a vague statement. (pg3, A2).

Social impact and impact on the amenity of the locality

The Applicant has stated that the proposed store is located within the Roadhouse Shopping complex situated in the vicinity of a major intersection of Seaford Road and Main South Road Old Noarlunga, and referred to an attached document in support of the application downloaded from the Onkaparinga website which addresses licensed venues, population and unemployment and various other matters.

The Beach Hotel Seaford submits that the Applicant has referred to “attached documentation” in support of the application from the Onkaparinga website, but notes that no such material was attached to the application, and contends that the Applicant has not nominated a locality for the proposed business, and that there has been a lack of analysis by the Applicant in relation to the population of the locality, crime statistics and social profile information, unemployment data, population numbers, SEIFA data and the content of the Location or Area Reports.

In relation to licensed premises in the location, the Beach Hotel Seaford makes reference to a letter from Pamela and John Waters which refers to the Aussie Inn, Beach Hotel and McLaren Vale Hotel in the context of those being the closest competitor PLSL outlets.

The Beach Hotel Seaford goes on to submit that:

- No reference is made to the existing BWS packaged liquor sales licence at Seaford despite it appearing in the Area report, nor were there any references to the Old Noarlunga Hotel, also referred to in the Area report.
- No real assessment has been made of the variety of outlets located in close proximity to the subject site or of any deficiency in the range, convenience or nature of outlets available for the public.
- The suggestion that the nearest bottleshop is 3 kilometres away is plainly wrong.
- The Location report filed by the applicant itself refers to at least 2 within a 2km radius. There are more within a 3km radius. The Beach Hotel appears to be on the 2km radius.
- There is already a range of liquor outlets available in and about the locality, providing convenient access to liquor in a range of facilities – bottle drive-in and walk-in, free-standing and attached to hotels.
- No real assessment has been made of the existing packaged liquor outlets in the locality, and submissions as to their proximity are incorrect.
- No assessment as to “proliferation” of packaged liquor outlets in the locality can be made based on the application material provided.

The Aldinga Hotel has referred to the review of the licensing regime in 2016, by Mr Anderson QC and his observation “*that a consistent theme was that the liquor industry should generally not be allowed to increase the number of liquor outlets and trading hours without a balancing exercise, involving an assessment of the potential risk of harm caused by excessive consumption or misuse of liquor.*”

The Aldinga Hotel asserts that:

There are already a significant number of liquor stores within the 2km locality and surrounds of the proposed licensed premises. Whilst the ‘needs’ test no longer forms part of the legislation, it is to be noted that the objects of the Act, expressed in s 3(1) are that there is a need to ensure that the sale and supply of liquor occurs in a way that minimises harm and the potential for harm caused by excessive or inappropriate consumption of alcohol. It is submitted that given the significant number of liquor stores in the vicinity, there is an added risk of harm if this licence were to be granted, particularly given the proposed online sales model.

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The Aldinga Hotel describes a number of existing PLSL outlets in and around the locality to advance their submission that the locality is already well served by existing packaged liquor outlets, noting the approximate distance between these outlets and the proposed offering: Victor's Place (400 metres); The Old Noarlunga Hotel (1.5 kms); BWS Seaford (2.6 kms); Cellarbrations Seaford (2.4 kms); The Port Noarlunga Hotel (4 kms); Mick O'Shea's Irish Pub (4.1 kms); and Dan Murphy's Noarlunga (7.3 kms).

In response, the Applicant submits (pgs1-3, A2):

Victors Place. This is the nearest licensee and is a winery / craft brewery and will have an opportunity to sell through this store. This boutique outlet does however only showcase their own product as does all of the wineries to the region. The Old Noarlunga Hotel, Aldinga Hotel and big box (Dan Murphies etc) stores have affiliations with the major breweries and wholesalers etc. Thus limiting the selection and product variety that they both supply on tap and sell via retail sales. This store is independent of the big boys in town i.e. CUB, Woolworths etc. and hence allows a greater range and choice and the ability to showcase the local product the store is surrounded by.

The store is located in a wine/ craft beer and liquor production area.

As we are within a wine region why not take your search further and include the additional 50-60 wineries within under a 10km range. This is in part what this store is supporting.

I reiterate this is a boutique store with the expectation to sell premium wine and spirits and not a big box store.

With all due respect to the determination in regards to licensing 2016 by Mr Anderson QC, the local area and surrounds have changed greatly. This finding is now 6 years old and does not account for the gross expansion of local housing and amenities to a developing area. It certainly identifies the correlation between outlets to community issues but does not identify that developing areas be without choice and the ability to shop locally.

If read correctly I expect in summary this finding is more relevant to established areas of minimal growth and high facility outlets in relation to housing density. Since this finding in our locality alone i.e. within 1km of our site we have changed from having 3 local service stations today, to having today 6 service stations with an additional one in planning stages. The adjoining suburb of Huntfield Heights is on the verge of adding an additional 2 -3000 houses (currently under planning review and the new development act enacted last year).

Plan 'A' shows the current expansion plans for an additional 400 houses. This is a new suburb only existing for the last 5 years with the inclusion of 4-500 recently built.

Plan 'B' shows the new suburb of Port Noarlunga South. The blocks in red have only this year started construction for services and roads. This will create almost 800 houses along with the almost 300 recently built between this new subdivision and the rail in the last 2 years.

This is also mirrored with Seaford Meadows, Moana Heights and Seaford Rise adding 1-2000 homes within 4km range. This type of commercial and economic growth is as a result of the local housing and business activity in the area.

This finding does not address the practicality of its reasoning in a wine region and the community expectations that goes with it.

The higher density of licensees for the area is indicative of the nature of the local produce and region.

With respect to the Applicant's submission that there has been and will be an expansion of housing and therefore population growth for neighbouring suburbs to the proposed premises, the Authority can only consider the current population for the locality for the purposes of

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calculating the liquor licence density for the locality in light of any potential 'proliferation' considerations.

The Applicant in its response to the submissions has also made reference to the local "Preservation Act" and states that this "*Act was introduced to the area to limit development that does not compliment the local wine region*".

The Applicant also submits that:

The proposed store is located in a commercial zone as planned by council and Planning SA to do precisely what they propose. These zones are set out to place businesses of this nature together in prominent locations to service the community needs. The zones are planned to allow for retirement homes and schools and be in appropriate locations to compliment the community. The prominent location on an arterial road is in keeping with all of the state. These zones separate residential and public spaces from commercial business. This is hence why the establishment of some 6-7 petrol stations, Bunning's, etc. in our vicinity.

I expect it is in the community interest that all commercial business be placed in the relevant zones as determined by local council planners and the SA planning commission, not as dictated by current competition.

The Applicant's reference to the "Preservation Act" may be reference to the *Character Preservation (McLaren Vale) Act 2012*, which is an Act to provide measures to protect and enhance the special character of the McLaren Vale region; and for other purposes. I note that the proposed premises is not within the area defined as the McLaren Vale district in the *Character Preservation (McLaren Vale) Act 2012*, and do not consider this to be relevant to my consideration of whether the grant of this application would be in the community interest.

The Applicant has not provided the Authority with a copy of any document downloaded from the "Onkaparinga" website as part of their application.

Further to the submissions made by the Beach Hotel Seaford canvassed above, the Beach Hotel Seaford submits that the application material is insufficient and states:

There is no evidence of consent from the owner of the site to an application for packaged liquor sales licence to be held by John Jamieson Waters and Pamela Waters and consistent with Section 72 the Licensing Authority "*must not grant*" the application."

There is no evidence of the necessary approvals for planning building and related approvals for the proposed liquor store to operate at this location and on that basis the application "*must not be granted*" – refer Section 57(2).

The site is located at a busy intersection with hazardous access in and out of the site, raising safety issues, and the premises will not be of a sufficient standard – refer s57(1)(a).

The Beach Hotel Seaford asserts that the proposed offering provides no contemporary community expectation and submits that:

- The subject site is located in a small group of shops including a seafood restaurant, bakery, pizza and chicken shop.
- The small group of shops is not of a size or range that there would be any contemporary community expectation of a packaged liquor sales licence being located at this site - refer Hove Sip 'n' Save at paragraph 128.
- This will not be a "one stop shop" situation.
- There is no suggestion of any "inconvenience" in purchasing liquor in the locality – refer Hove at paragraph 138 and 139.

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In addition to the response submitted by the Applicant, as detailed above, the Applicant has also stated (A2):

My first thoughts are, why do we have opposition from a business approximately 11km away and not from the direct businesses they have listed. If this was of such concern I would expect opposition from Old Noarlunga Pub, Victors Place etc. This is from a licensee with no direct connection to the site. Also note that this establishment has gone through extensive redevelopment at great expense. This is also including a new drive thru outlet on the opposite side of the road to the hotel. Together with the addition of a local ALDI and OTR to the area. This would only have been achieved on the back of local development and housing growth in the area.

This is a direct response to limit competition in the local market. All of the mentioned businesses have gone through major redevelopments of late that showcase precisely how profitable the market is. Highlight the difference between boutique and big box (pub) and their own property expansions following local demand.

None of the licences listed in the opposition to this application cater to the market you do. They are limited by big brand purchasing and do not showcase the entire region. THIS STORE IS NOT BIG BOX.

Applicant's submissions in reply to the submissions made by Professor Livingston, RACS and ANROWS

The Applicant was invited pursuant to section 78 of the Act to provide written submissions addressing the submissions made by Professor Livingston, RACS and ANROWS.

The Applicant has made submissions in reply to the submissions of Professor Livingston, RACS and ANROWS. In these submissions the Applicant has responded with a number of irrelevant submissions (including arbitrary comments toward the objectors) which I need not repeat here.

The Applicant has referred to their previous response and notes the following measures:

The Proposed measures include:

- Visible instore signage.
- Information brochures at the counter and all points of sale
- Hold points in all online purchases that require the purchaser to read relevant documentation.

Information to be included:

- Reference to knowing your limit (average standard drink consumption tables) and information
- Guidelines form The Australian Medical Association
- Information in regards to the serious effects of drinking and domestic violence.
- Links and references to the attached studies
- Outcomes from SAPOL and relevant fines for offences
- Contact detail for helplines and support businesses and charities"

The Applicant asserts that it is their intention to address the issues 'head on' at the point of sale with the proposed measures above.

in relation to the submissions of Professor Livingston, the Applicant submits that:

The paper does not address the scenario of a growing population in rapidly growing and expanding communities.

It also does not address the change in density and outcome in relation to localities with their main income is derived from wine and beverage sales and well as production. These may include the Napa Valley in the USA, possibly Champagne in France or even the Barossa Valley in South Australia.

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In our last response we outlined and attached plans as approved by the South Australian Planning Commission and also the attached plans provided by the South Australian and Planning Portal. These plans demonstrate not only the current growth of the surrounding suburbs but also the planned expansion into the near future.

This growth only aids in diluting the density of outlets per head of population in our local community and surrounding suburbs.

.....

All of the additional documentation submitted still does not address the fact the store is located in the outer metropolitan area in a fast-growing community. We are not located in the inner suburbs where the addition of the store would create a significant change to the outlet density ratios.

With the recent growth of all of the southern suburbs we can only expect an increase in liquor outlets along with supermarkets, green grocers etc.

The Applicant notes that the proposed outlet is on the doorstep of McLaren Vale wine region and that it is to be expected that the (licence) density in these regions will be greatly different to that of inner Adelaide suburbs and regional communities.

The Applicant acknowledges that the impact of domestic violence in the community is tragic and that all steps to limit its occurrence need to be taken, and notes it will take the steps outlined and at 'point of sale':

The effects of domestic violence in the community are tragic and all steps need to be taken where possible to limit its occurrence. There are however many factors that contribute outside in the community such as unemployment, inability to meet the cost of living, COVID 19, drugs (illegal and prescription), discrimination, prejudices and obesity etc. These issues are huge and need to be addressed as a community and also in a local and federal government setting.

There are also studies that support the drinking of a glass of red wine and the eating of dark chocolate in small and regular intervals having a positive effect on one health of the heart. The decisions to include such outlets in our community need to be made at a community level in State and Federal Government legislation. Acts of parliament make changes to the legislation that we all hope make positive changes to our ways of living. It is hoped that these changes reflect our standards as a community as a whole.

The best we can do is take the steps we have outlined and continue to face these issues at point of sale. We fully support changes to licencing that would affect all licensees to adopt similar measures. We are certainly open to any suggestion of what ways we can further address the matters raised in the objections.

.....

The store we propose is only a small boutique outlet that sells primarily local produce at the doorstep of a world-renowned wine region. The product we wish to sell is enjoyed by 79.2% of the population on an annual basis. The store is sensibly located on an arterial road in a commercial zone. This zone has been planned and supported by the local council and State Government for the very purpose of our application.

Decision

The relevant locality

In my view the Applicant has not adequately defined the 'locality' and has not clearly identified the area most likely to be affected by the grant of the application.

Planning approvals, standard of premises and landlord's consent

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I am satisfied that the Applicant has the relevant planning approvals required under section 57(2) of the Act, and has obtained landlord's consent as required by s 72 of the Act.

I am satisfied that the proposed premises would be of a sufficient standard as required by section 57(1)(a) of the Act, and place no weight on the submissions relating to hazardous access or that the premises will not be of a sufficient standard.

The community interest test

The Applicant has not provided a detailed description of the proposed business or a clear description of their products or services in terms of key features and potential customers.

Whilst the Applicant has explained that they expect to draw customers from traffic passing the proposed premises, they have provided little by way of analysis of those persons in transit passing the proposed premises.

In addition to this, the Guidelines require applicants to provide, where applicable, a business plan/plan of management. The Applicant had not initially supplied a business plan/plan of management with the application.

Pursuant to section 78(1)(a) of the Act, the Commissioner requested a copy of the Applicant's business plan/plan of management.

The Applicant has supplied a copy of the business plan.

The business plan provides little expansion on the information already provided to the Authority and does not provide a detailed description of the proposed business or a clear description of the products or services to be provided in terms of key features and potential customers.

The information contained in the business plan describes the company ownership structure and the company management structure as John Waters and Pamela Waters as directors of the company which is trustee of the trust. This is not consistent with the application for the licence.

The Applicant has supplied 3 letters in support of the application, with each of the authors standing to gain financially, either directly through the payment of rent, or indirectly through a potential increase of business to the shopping complex from the grant of the application. There is no evidence that the Applicant has consulted with the community (i.e. surveys, petitions, etc) and there is no evidence that the community at large supports the application.

It is not sufficient for the Applicant to assert that the benefit of the proposed licensed premises will be its ability to showcase the entire region.

The Applicant has not made independent inquiries in relation to any at-risk groups or sub-communities in the locality, and has not consulted with any local organisations.

The Applicant has provided some analysis of community buildings, facilities and areas within the locality, however, as pointed out by the objectors, this analysis is incomplete and has missed a number buildings and facilities.

The Applicant has not provided a statement about how the grant of the application may impact on persons using the buildings/facilities/areas in the locality other than to state that the "*Business Policy would ensure any impact of the position of the store would be minimised.*"

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The Applicant has not provided a copy of their business policy with the application.

Pursuant to section 78(1)(a) of the Act, the Commissioner requested a copy of the Applicant's business policy referred to throughout their application. The Applicant did not comply with this request.

In *Hove Sip n Save* [2021] SALC 7 (**Hove**) Gilchrist J observed at [109]:

In this case the applicant has no experience in selling take away liquor. That is not to say that only an experienced retail liquor seller can be granted a packaged liquor and sales licence. But what it does mean is that applicants for such a licence need to be able to demonstrate to the licensing authority that they have a thorough understanding of what the responsible sale of alcohol entails, and demonstrate that they have policies and plans in place to ensure that they, and those who will work for them, will do all that is reasonably possible to minimise the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.

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 business/professional experience, in particular relevant knowledge, experience and competency in relation to the service of liquor.

The Applicant has asserted that they have years of experience working in the industry, but have provided limited detail about this experience in their application.

The remarks of Gilchrist J at [103] in *Hove* are apposite:

The community assessment test

Whilst it must be accepted that the abolition of the 'needs test' has removed a significant barrier in connection with applications for licences to sell take away liquor, the effect of the legislative changes is not all the one way. The imposition of the requirement to comply with the community impact assessment guidelines has significantly upped the ante in connection with an applicant's obligation to satisfy a licensing authority of its awareness of the vulnerabilities of its potential customers and its knowledge, experience and competency in relation to the responsible service of liquor, especially to vulnerable persons.

Given the deficiencies in the application and lack of analysis by the Applicant in respect of such things as the 'locality' and potential at-risk groups that might be impacted by the grant of the application, I am not satisfied that the Applicant has sufficient awareness of the vulnerabilities of its potential customers, and also have some concerns as to the Applicant's knowledge, experience and competency.

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 submission by the Applicant that these submissions have not considered growing populations and expanding communities.

As detailed in Professor Livingston's submission, the submission does not deal with specific local issues relevant to applications, but aims 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.¹

The Applicant submits that:

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The store we propose is only a small boutique outlet that sells primarily local produce at the doorstep of a world-renowned wine region.

As observed by Professor Livingston:

Each individual outlet does not contribute to major increases in harm, however, the cumulative effects of increasing availability can be substantial.

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.¹

The statistical information provided by the Applicant from the South Australian Government and SA Health confirms that alcohol is readily available in the community at large.

I agree with the Applicant that an additional shop in the shopping complex may result in an increase in customers frequenting the complex and provide some economic benefits to the other store holders within the complex, and therefore to the region in general.

I agree with the AHA and Beach Hotel Seaford that the statement by the Applicant in relation to the potential sponsorship of local groups and clubs is ambiguous and uncertain and I place no weight on this asserted benefit.

In response to the Applicant's statement that "*the store would stock a wide range of international products to cater for the diverse cultural demands of the locality*" this seems somewhat inconsistent to the many assertions by the Applicant throughout their application, community impact submission and response to submissions that they will stock local products.

The Applicant has provided little analysis of the information contained in the Location and Area Reports obtained from CBS' Community Impact Portal.

The Applicant has not provided any analysis of crime and unemployment statistics in relation to relevant council areas.

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

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.

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

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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.

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 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.²

I am concerned by the deficiencies apparent with this application. The Applicant has not adequately addressed a number of factors and matters in respect of the application and I am not satisfied that the grant of this application is in the community interest.

I also agree with the Beach Hotel Seaford's submission that there would not be any contemporary community expectation that a takeaway liquor outlet would be contained as part of the retail offerings in a complex of this size and nature.

Accordingly, the application for a PLSL for the Roadhouse Liquor Store is refused.

² *Hove Sip n Save* [2021] SALC 7 at [104].