

Decision Notification

Application Details

Licence No.	57709281
Licence Class	Packaged Liquor & Sales
LGO Reference	
Application no.	202797
Premises Name	Liquorland
Premises Address	Mount Gambier SA 5290 11 Ferrers Street
Applicant	Liquorland (Australia) Pty Ltd
ABN/ACN	
Application Type	Application for a Liquor Licence

Outcome

Decision	Determined
Effective Date	15 Dec 2020

Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- The application has been advertised
- All approvals, consents or exemptions have been obtained

People

Premises

New Premises

The licensed area is outlined in red on the approved plan.

Capacity

The capacity of the venue is set at 0.

Authorisations

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	9:00 am to 10:00 pm	-
Tuesday	9:00 am to 10:00 pm	-
Wednesday	9:00 am to 10:00 pm	-
Thursday	9:00 am to 10:00 pm	-
Friday	9:00 am to 10:00 pm	-
Saturday	9:00 am to 10:00 pm	-
Sunday	9:00 am to 10:00 pm	-

Reasons for Decision

Liquorland (Australia) Pty Ltd (**the Applicant**) have applied for a packaged liquor sales licence (PLSL) in respect of a store proposed to be situated at 11 Ferrers Street, Mount Gambier SA 5290 (**the Site**), to be known as (**Liquorland Mount Gambier**).

As part of the application the Applicant has submitted a Community Impact Report (**CIR**), 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 Data Analysis Report**). It is the content of the CIR and expert evidence, submissions made to the licensing authority (**the Authority**), along with submissions lodged by the Australian Hotels Association (**AHA**) opposing the grant that my decision is based on.

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 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

(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 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, 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 has advised that the new Liquorland packaged liquor store is proposed as part of the development of a new Coles supermarket and associated shops in the Mount Gambier town centre; will be approximately 180 square metres in size, which is broadly comparable to the size of the typical Liquorland store, will stock around 1800 lines of liquor, and is proposed to be located near the entry of the proposed Coles supermarket, with entry to the store off the internal public mall.

The Site as proposed will comprise the Coles supermarket (3,750 square metres total floor space) and 10 adjacent retail specialty stores, and will be immediately South of the ALDI supermarket and 4 additional retail specialties.

The Ethos Urban Report states that the proposed Coles Mount Gambier site:

".....will occupy a prominent site with high-profile frontage to the surrounding streets (in particular Commercial Street East), with benefit from co-locating with the adjacent ALDI including shared parking and pedestrian connectivity. Vehicle entry to the site is provided via two entry points from Compton Street to the east, an entry point from Sturt Street to the south, and two entry points from Ferrers Street in the west" (2.14 Ethos Urban Report).

The premises will be separate from the adjacent Coles supermarket and will only be accessible from the common mall in the shopping centre which provides access to the supermarket, the proposed premises and other retail tenancies. The wall between the supermarket and the proposed premises is to be constructed of solid non-transparent material. Consequently, the proposed premises does not 'offend' the requirements in s 38(3) of the Act that the licensed premises must be 'physically separate' from premises used for other commercial purposes, as there will be a permanent barrier as required by s 38(4), and access via the common area of the shopping centre will be in conformance with the exception provided to s 38(4)(b), contained in s 38(5) of the Act (i.e.- access via a mall or thoroughfare in the shopping centre).

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 outside the Metropolitan area is the area within a five 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 5 kilometre radius of the site of the proposed store, as the area from which the Applicant expects to draw the majority of its customers, which Ethos Urban identify as the 'Primary Trade Area', but notes that the proposed store *"will serve a trade area that is extensive in geographic size due to the regional significance of Mount Gambier"*, which they identified as the "Secondary Trade Area".

In the case of *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 (the **Liquorland Park Holme decision**), Judge Gilchrist 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."

Consequently, although the proposed store will draw customers from well outside a 5 km radius (i.e. - from people living across the Limestone Coast; tourists and people passing through Mount Gambier, etc.), 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 5 km radius of the proposed store).

The 5 kilometre radius applied to determine the 'locality' is not in dispute and as noted by the AHA, this is consistent with the decision of the Court in *BWS Mt Gambier* [2013] SALC which determined the locality as being the entirety of the City of Mount Gambier.

Ekistics and Ethos Urban have excluded a number of other PLSL outlets such as the South Australian Hotel, Jen's Hotel, Mac's Hotel and the Federal Hotel from consideration/discussion as regards the current availability of take away liquor in the locality. The AHA submit that the expert reports ignore the availability of 'consumption off' liquor from these hotels, given that the hotels all either currently do sell take away liquor, or can sell take away liquor given that they hold General and Hotel licences (pg.3 AHA Submission). 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 the locality was ranked 15 out of 70 Local Government Areas across South Australia (i.e. - 14 Local Government Areas have a lower rank) (pg. 22 Ekistics Report). The SEIFA index shows that Mount Gambier was marginally less disadvantaged in 2016 than it was in 2011 with its rank increasing from 13 to 15 over that 5 year period (pg. 36 Ekistics Report).

The Ekistics Report notes that the locality has a lower rate of unemployment (6.47%) than the overall rate across South Australia (7.5%), and has experienced greater population growth than other major regional areas in the State (pg. 34 Ekistics Report).

The Ekistics Report provides a breakdown of crime rates across various recordable offence types for Mount Gambier compared to the State averages. Offences intended to cause injury and property damage offences were higher in Mount Gambier than across the State as a whole; whereas criminal trespass and theft and related offences were lower in Mount Gambier than across South Australia as a whole.

It is clear from the table provided that "theft from shop" (7%) does not appear to be a prevalent problem within the

locality compared to the State average for "theft from shop" (8.4%), (pg. 37 Ekistics Report).

Ekistics cautions that SAPOL crime statistics do not identify what proportion of crime is related to the consumption of alcohol. I agree with Ekistics that it is difficult to draw any specific conclusions from the crime statistics in relation to the subject land and proposed liquor store.

Potential Harm

The Applicant, through its lawyers, wrote to a number of stakeholders and organisations, inviting comment on the application, and received one response from Drug and Alcohol Services South Australia, on behalf of the Department of Health and Wellbeing, which is considered in more detail below.

The Applicant has submitted that "*in general, 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 an additional liquor store in association with the proposed Coles supermarket*" (pg.32 CIR).

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 of the Report) to mitigate the risk of harm to the community, and ultimately concludes:

"the proposed liquor store is not anticipated to increase the risk of harm to the community. In any event, Liquorland Australia will address any potential impacts associated with the proposed liquor store through the implementation of a range of robust and best practice operating policies and procedures to minimise any potential harm or health impacts to 'at-risk' groups" (pg.39 Ekistics Report).

The Applicant is a large and experienced liquor sales business with significant resources, well developed policies and procedures, and a strong history of compliance in South Australia.

A number of policies are contained at Attachments F - I of the CIR, 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 submits 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.

South Australia Police (SAPOL) have not objected to the application.

The City of Mount Gambier council have not objected to the application.

Cultural, recreational, employment or tourism impacts

The Applicant submits that the store will employ around 6 staff in various capacities, including: a full time store manager; a full time team member; 1 part time team member; 2-3 casuals; and additional staff at busy times of year such as Christmas (3.2.7 CIR).

Ethos Urban estimates that in addition to any consumer benefits: "*the Liquorland store would directly generate 6 to 8 jobs in the local area*" (4.25 Ethos Urban Report).

I am satisfied that if the application were to be granted that it will result in an increase in employment in the locality.

Social impact and impact on the amenity of the locality

The Ekistics report contends that the proposed offering will have a positive impact on the amenity of the area:

"The proposed liquor store will provide an added convenience for the customers of Coles, as well as surrounding shops including the nine (9) other retail tenancies on the subject land, as well as the recently constructed ALDI Store immediately to the north, by allowing customers to purchase liquor while also shopping for their weekly groceries and household needs. For example, customers will be able to select a bottle of wine to complement food purchased in the supermarket.

Given that the locality currently only provides one co-located liquor and supermarket offer, the proposed liquor store will provide increased choice and competition for customers in terms of the range of liquor available for purchase in the locality. It is noted that the proposal is the only co-located liquor store providing a convenience offer in the Mount Gambier town centre.

More specifically, the proposed liquor store will have an immediate benefit through the direct employment of staff who will work within the store. This increase in employment may also extend to other retail tenancies on the subject land and within the immediate locality, which may benefit from the likely increase in visitation to the site.

We also note that locating the proposed liquor store at the subject land, within the City Centre Zone, appropriately responds to the overarching intent of the Development Plan to deliver a 'hierarchy' of integrated 'activity centres' across the Council area. Specifically, the 'City Centre Zone' seeks to cluster and deliver a wide range of services and provide choice, including retail choice, to encourage the economic and shared use of facilities, which are highly accessible 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 and vibrancy of the city centre, as desired by the Mt Gambier (City) 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 opportunities; as well as ensuring that the city centre continues to operate as a desirable integrated activity centre, aligned with key policy drivers of the State" (pgs. 30-31 Ekistics Report).

It is clear that a large number of customers will shop at the proposed shopping centre each week. Ethos Urban considers that it is reasonable to expect that the new Coles store will generate more than 3,000 transactions on a typical day, with higher levels at peak trading periods, and that the adjacent ALDI store will also generate consistent visitation and sales at the proposed Liquorland from people seeking convenient access to packaged liquor during the same shopping trip (4.8 - 4.9 Ethos Urban Report).

Ethos Urban state that the proposed co-location of a packaged liquor outlet with a major supermarket: "*is of benefit to segments of the population for whom 'just in time' shopping is their contemporary expectation. For example, time-poor or mobility limited segments of the population will be able to make purchases of take home liquor in association with other day-to-day shopping trips to the adjacent Coles, ALDI and specialty shops which are of considerable lifestyle benefit in terms of time, accessibility and convenience*" (4.27 Ethos Urban Report).

The AHA has questioned the accuracy of certain statements in the expert reports, having identified several additional liquor outlets within the locality which sell take away liquor, and they submit that there are already an adequate number of take away liquor stores to service the locality.

The AHA has also noted the current BWS application for a PLSL in Mount Gambier, and states that neither the Ekistics or the Ethos Urban Reports make any mention of this application, despite the fact that the advantages and benefits said to accrue from the Liquorland application (such as convenience and ease of access) are identical to those said to accrue from the BWS application.

I agree with the expert evidence tendered on behalf of the Applicant that the proposed offering will be likely to appeal to many customers frequenting the shopping centre who wish to purchase packaged liquor at the same time. Many people in the local community can be expected to take advantage of the proposed premises, and many will find this very convenient.

This additional convenience for some members of the community, whilst not sufficient to satisfy the 'community interest' test on its own, is a factor that may be considered by the Licencing Authority when performing the evaluative exercise of determining whether or not it is in the community interest to grant the application.

Community support for the proposed business

The Applicant engaged Data Analysis Australia (DAA) to undertake a survey and has provided some evidence of community support for the application.

DAA surveyed 300 respondents in a telephone survey. The DAA findings are summarised at paragraph 4.10 on pages 16-17 of the Data Analysis Report:

- *The new Coles supermarket will be substantially used by many residents of Mount Gambier. A significant majority of these shoppers and indeed residents as a whole support the proposal for there to be a Liquorland store adjacent to the Coles and Aldi supermarkets;*
- *over half the respondents (61%) believe that it "makes sense" to have a liquor store located next to a supermarket, and a significant proportion of residents, particularly those who already purchase takeaway liquor, will be likely to use the proposed Liquorland store;*
- *The primary reason for this support is the convenience associated with purchasing takeaway liquor on the same trip used for supermarket shopping. While a strong majority of residents currently use the Dan Murphy's as their preferred store and many will continue to do so, this convenience will mean that many will use the proposed Liquorland store for at least some of their takeaway liquor purchases;*
- *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 towards the lower end of the ranged observed in many similar surveys;*
- *It is clear that if the proposed Liquorland store is approved then it will be used by local residents for a significant part of their takeaway liquor purchases; and*
- *While the survey does not directly indicate how shoppers from out of Mount Gambier will use the store, it is a*

reasonable assumption that those who use the new Coles or the existing Aldi supermarkets would also use the Liquorland store at least some of the time.

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 CIR); the Department of human Services; the department of Aboriginal Affairs; the Chief Executive Officer, City of Mount Gambier; Chief Executive Officer, Department for Education; and the Officer in Charge, Mount Gambier Police Station, inviting comment on the application.

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, drawing attention to a number of potential community impact considerations, including the proximity of the proposed premises to various schools, aged care facilities and kindergartens.

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, CIR). The research referred to is not cited or included with the letter.

Submission from the AHA opposing the application

A submission opposing the grant of the application was received from the AHA, which I summarise as follows:

- the objects of the Act have 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;
- the AHA accepts that the locality identified by the Applicant is correct, but apart from this is of the view that there is very little in the expert reports relied upon by the Applicant that is accepted: "*many of the conclusions expressed do not withstand scrutiny of are simply wrong*";
- the AHA asserts that the vast bulk of investment of \$15m in construction will have nothing to do with Liquorland and that in the event the application is refused, another alternate tenant will be sought. Consequently, the "*actual investment related to the Liquorland is as little as zero, and at best is a contingent relatively small amount*";
- the AHA disputes the accuracy of assertions in the Ekistics and Ethos Urban Reports that various hotels in the locality do not sell packaged liquor (i.e. - South Australian Hotel, Jen's Hotel, Mac's Hotel and the Federal Hotel). Each of these premises holds a General and Hotel Licence and either does sell, or can sell, take away liquor. The expert reports ignore the availability of 'consumption off' liquor from these hotels;
- there are multiple options for liquor within a few hundred metres of the proposed site;
- the application for a new BWS store in Mount Gambier was advertised in June 2020. Neither the Ekistics or the Ethos Urban Report makes any mention of this application, despite the fact that the advantages and benefits said to accrue from the Liquorland application (such as convenience and ease of access) are identical to those said to accrue from the BWS application;
- the normalisation of the purchase of alcohol with perishables and other grocery staples is not in the interest of

- the community and is likely to increase the risk of harm within the community;
- there is potential for harm wherever packaged liquor is sold. AHA submits that the aggregation of packaged liquor outlets can increase that risk, and submits that "chain" outlets increase that risk further (citing research by Morrison, C. and Smith, K. (2015) *Disaggregating relationships between off-premises alcohol outlets and trauma*, Canberra, on behalf of the Foundation for Alcohol Research and Education (FARE), and research by Livingston, M. (2017) *Packaged Liquor in Victoria: 2001-2016*, Canberra, on behalf of FARE); and
 - the onus is on the Applicant in respect of the critical question as to whether the granting of the application can be said to be in the community interest, and the Applicant has not discharged the onus cast on it by s 53A of the Act.

Decision

The Applicant and experts engaged by the Applicant adopted a 5 kilometre radius in determining the locality, as the area most likely to be affected by the granting of the application. This is not in dispute and I agree that the Applicant has correctly identified the locality.

The AHA has objected to the application, stating, among other things, that: "*the locality is already adequately supplied with liquor options. The proliferation of outlets leads to increased risk of harm. That is enhanced with chain outlets. The within application does not discharge the onus cast upon the applicant. The application must be refused*".

The Ekistics Report considers the liquor store density for the locality and states that:

"The existing density of liquor stores in the locality capable of selling packaged liquor is relatively low and equates to a density of one liquor store per 3,047 people (based on the 2016 Census data). This is well below the density of 22 liquor stores per 10,000 people that the NSW Bureau of Crime Statistics (BOSCAR) has indicated (amongst other factors) may result in an increase in alcohol related harm.

With the addition of the proposed liquor store to the locality, the density will become 2,742 people per liquor store, still well below the density threshold referred to by BOSCAR.

In our view, Mount Gambier town centre services a much wider catchment and population base than the 5 km locality specified within the Guidelines, and therefore it is anticipated that the actual density is much lower" (pg. 38 Ekistics report).

Ekistics based its liquor store density calculations on the assumption that there are 9 liquor stores in the locality where packaged liquor can be purchased, and 27,419 people residing in the locality (2016 Census).

It can be seen by applying similar arithmetic and logic to that adopted by Judge Gilchrist in the Liquorland Park Holme

matter that the locality is not 'awash' with liquor.

If one accepts the AHA's submission that there are 4 additional hotels where packaged alcohol either is (or potentially could be) sold from, and for the sake of abundant caution assumes that BWS' PLSL Mount Gambier application (Application No.202062) may also be granted (which is uncertain given the Commissioner's recent decision to refuse the BWS Cumberland Park PLSL application on the basis that it did not comply with 'physical separation' requirements in s 38 of the Act), there would be 15 liquor stores / outlets within the locality selling packaged liquor. Dividing this number by the population figure (27,419) would mean that in the event the application is granted there will be 1 takeaway liquor facility for every 1827 people in the locality.

This is slightly higher density than the State average figure of around one take away liquor facility for every 2000 residents referred to in the Liquorland Park Holme decision (which was calculated based on the numbers in the Review carried out by the Hon Tim Anderson QC in 2016 when South Australia had a population of a little over 1.6 million, and there were over 800 facilities that could or were selling take away liquor; which his Honour acknowledged as being a 'rubbery' figure).

I note that 1 takeaway liquor facility for every 1827 people in the locality (on the more conservative calculation) is also under the density figure cited by BOSCAR as problematic: *'the BOSCAR bulletin indicated that, once the density of packaged liquor outlets exceeds .75 per 1,000 residents, there is a corresponding increase in the rates of alcohol related harm'* (pg.19 Ekistics Report).

This confirms that regardless of whether one adopts the figures used by the Applicant's experts to calculate liquor store density, or adds an additional 5 stores to the liquor density calculation (the 4 hotels noted in the AHA submission plus the proposed new BWS store) the locality is not 'awash' with liquor licences in either case, and it cannot be said that the application should be refused on the basis of 'proliferation'.

Applying the evaluative exercise that the Act requires, involves weighing the positive aspects of the proposed application with the negative aspects in order to determine whether granting the application is in the community interest.

The range of products the Applicant is proposing to provide is significant (around 1800) and granting the application would be likely to result in an increase in convenience for those shopping in the locality who wish to purchase packaged liquor products when shopping at the shopping centre. Many of the local community can be expected to take advantage of the proposed premises, and many will find it to be very convenient.

I have considered and have had regard to the objects of the Act, as required by section 3(2) of the Act, in determining the application. I have also considered the AHA's submissions in light of his Honour Judge Gilchrist's decision in *Liquorland Park Holme*.

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.*"

I note that SAPOL and the City of Mount Gambier have not objected to the application.

The Applicant, through its lawyers, wrote to a number of stakeholders and interest groups advising them of the intention to lodge a PLSL application and inviting comment on the proposed application. The only response received was from Marina Bowshall, State Director of Drug and Alcohol Services South Australia, on behalf of the Department of Health and Wellbeing, drawing attention to a number of potential community impact considerations, including the proximity of the proposed premises to various schools, aged care facilities and kindergartens.

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, CIR). The research referred to is not cited or included with the letter, and consequently I need to be cautious not to place too much weight on this statement.

The observations of Judge Gilchrest at [43] - [44] in the Liquorland Park Holme matter are applicable and relevant to this application and the questions of risk and harm that it poses:

"..... 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. **If there was evidence that there were a greater number of such vulnerable persons in this community as opposed to the general population or that this locality was already awash with take away liquor facilities, such matters might tip the balance in determining that it is not in the community's interest to grant the application.***"

(Emphasis added)

I have considered 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, and I am satisfied on the material before me that the risk of harm posed by the proposed licence is low. 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 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 employment opportunities and it is likely that some of these opportunities would be for the benefit of members of the relevant community.

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey of 300 people.

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.

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.

In my view the application is not inconsistent with the objects of the Act, and is not contrary to the public interest. I am satisfied that granting the application is in the community interest.

Consequently, pursuant to s 53A(1) of the Act, Liquorland's application for a PLSL at Mount Gambier is granted.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

15 Dec 2020