

LIQUORLAND BERRI

Application for a Packaged Liquor Sales Licence

Liquorland (Australia) Pty Ltd (**the Applicant**) has applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at the Riverland Central Plaza, Kay Avenue in Berri (**the Site**), to be known as Liquorland.

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**), with supporting attachments, which included putting forward evidence from three experts:

- Ekistics Planning and Design, a firm of consultant urban social planners (**the Ekistics Report**);
- Ethos Urban Pty Ltd, a firm of consultant retail economic shopping analysts (**the Ethos Urban Report**); and
- Data Analysis Australia Pty Ltd, a firm with expertise in the analysis of survey and geographical data, statistics and survey design (**the DAA Survey Report**).

It is the content of the reports and expert evidence, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged by the Australian Hotels Association and submissions and evidence in reply by the Applicant, that my decision is based on.

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

- Applicant's Submissions / Community Impact Assessment Form, (**CIAF**);
- Ekistics Community Impact Assessment Report dated January 2022 (**Ekistics Report**);
- Ethos Urban Report dated 19 January 2022 (**Ethos Urban Report**);
- Data Analysis Australia Survey dated October 2021 (**DAA Survey Report**);
- Australian Hotels Association (SA) submissions dated 7 March 2022, objecting to the application (**AHA1**);
- Applicant's submissions in response to AHA1 dated 1 April 2022 (**A2**);
- Submission of Associate Professor Michael Livingstone dated 5 July 2021 (**Professor Livingstone Submission**);
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)

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- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)

This application may only be granted if the Authority is satisfied that the grant of the application is in the community interest. In determining this application under section 53A(2) of the *Liquor Licensing Act 1997 (the Act)*, I must have regard to:

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

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

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

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

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

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Section 3(1) of the Act provides that:

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

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

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

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

Additionally, s 53 of the Act gives the Authority "*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority*

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considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)”, and s 53(1a) provides that the authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest. Section 53(1b) requires that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

Nature of the proposed business

The Applicant is proposing to open a Liquorland packaged liquor store at the Riverland Central Plaza in Berri. The store will be approximately 231 square metres of floor space. The proposed store is comparable in size to a typical Liquorland store co-located with a full line supermarket such as the existing Coles supermarket (20, CIAF).

The shopping centre comprises of a full-line Coles Supermarket, as well as other major retailers including Kmart and Cheap as Chips, among roughly 17 other associated speciality shops including fashion and accessory stores (pg 4, Ethos Urban Report). Pets Domain occupies premises on the same allotment as the shopping centre. There is an Aldi Supermarket, which is on a separate allotment, but shares common facilities with the centre. There is also Covid-19 vaccination centre that has been recently added (16, CIAF). The layout of the proposed Liquorland store is detailed at Appendix 3, Ekistics Report. The security and CCTV layout is detailed at Appendix 4, Ekistics Report.

The Shopping Centre is well-accessible by local public transport and has approximately 660 carparks on-site, in addition to a further 90 carparks provided by the Aldi supermarket (16, CIAF).

The Applicant has advised that the proposed Liquorland store will offer approximately 1622 lines with an approximate break down of lines consisting of 12.4% beer, 47.5% wine, 21.1% spirits, and 12.1% RTD. These percentages are similar to those in all Liquorland stores (3.2.6, CIAF). In addition, the store will carry approximately 112 “non liquor” items, making up 6.9% of the total lines (3.2.6, CIAF).

Product pricing is uniform in all Coles Liquor stores. As a result, Coles do not ‘price beat’ or ‘price match’ at an individual store level, assisting in ensuring that liquor is sold in a responsible manner (3.2.6, CIAF).

The Ethos Urban Report states that the proposed site:

“...offers a convenient shopping facility for packaged liquor that is in a location already well patronised by people using the Riverland Central Plaza. At this location the store will provide

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a 'one stop' liquor and grocery shopping option for customers also using the full-line Coles Supermarket and other shops in the Riverland Central Plaza.” (2.11 Ethos Urban Report).

The Liquorland store is proposed to be located adjacent to one of two mid-mall northern entrances to the Riverland Central Plaza. Access will be via the internal shopping centre mall (pg 10, Ekistics Report). The tenancy in which the store is proposed is the site of the former Just Jeans store. I am satisfied that no s 38(3) separation issues arise out of this application.

Locality

The Guidelines provide a guide for applications 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*”.

For areas outside of the Adelaide Metropolitan Area, the Guidelines suggest the locality of the premises will be the area within a 5km radius of the relevant premises.

The Ethos Urban Report provides some trade area analysis. The trade area analysis defines a 'Primary Trade Area (**PTA**)' and a 'Secondary Trade Area (**STA**)' (Map 3, Ethos Urban Report). With respect to the PTA and STA, Ethos Urban state the following at 3.7 – 3.8 of the Ethos Urban Report:

I have defined a Primary Trade Area (PTA) that includes the urban area of Berri as well as immediately adjacent rural areas to the north and west including the nearby small towns of Glossop and Monash. On the southern side of the Murray River the localities of Lyrup and Gurra Gurra are also included. This also generally represents the 5km 'locality' of particular relevance to the community interest test applied by the Attorney-General's Department. I estimate the proposed Liquorland will draw approximately 60% to 65% of its sales from people living in the PTA.

A Secondary Trade Area (STA) has also been defined representing a wider geographic area that reflects Berri's regional service role. Despite the relatively longer travel distance, residents of the STA regularly visit Berri in order to undertake their grocery and other shopping requirements (as identified in Coles Fly Buys data) and this potentially includes visits and purchases at the proposed Liquorland. Although the STA is outside a 5km radius of

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the Subject Site, it is still useful to understand that the proposed Liquorland is of relevance to these people in terms of access and availability of packaged liquor products.

It is important to note that the proposed Liquorland store will draw a higher-than-average share of sales from outside a 5km radius due to the Berri's regional service role to the STA, which includes the township of Barmera. However, in *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 (**Liquorland Park Holme**), Gilchrist J observed at [20] that:

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

This makes it clear that the focus for the Licensing Authority is on considering the impact on the locality is the Primary Trade Area, despite the 'higher-than-average shares of sales' from outside the PTA.

Ekistics has identified the following licensed premises in the locality (4.3, Ekistics Report):

- Berri Hotel Sip n' Save (General & Hotel Licence), located 900m from the proposed Liquorland location.
- BWS Berri (PLSL), located approximately 850m south-west of the proposed Liquorland location.
- Big River Tavern (General & Hotel Licence), located approximately 1.5km to the north of the proposed Liquorland. The Big River Tavern does not have a bottle shop.

On the basis 2016 Census data, the population of the locality is 6,531. This results in 0.306 outlets per 1,000 residents, and 0.459 outlets per 1,000 residents if this application is granted (Table 4.1, Ekistics Report) – still well below the density of 0.75 per 1,000 residents as identified by NSW Bureau of Crime Statistics and Research (**BOCSAR**) in December 2014, at which level it is said to have a corresponding increase in the rates of alcohol related harm (4.3.5, Ekistics Report).

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 defined locality (as informed by the Ethos Urban Primary Trade Area) could not be used because the ABS only provide SEIFA data based on larger defined geographical areas such as suburbs and Local Government Areas. However, the ABS data which is applicable to the 5/6 State Suburb Codes (Table 6.1 and Table 6.2, Ekistics Report) provides a close match to the defined locality and have therefore been used for the purpose of the analysis (page 36, Ekistics Report). In Table 6.2, which reflected data from 2016, the State Suburbs comprising the approximate 'defined locality' indicated that

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33% of State Suburbs had a lower SEIFA index than the locality (i.e., 33% are more disadvantaged, and 67% are less disadvantaged) (39, Ekistics Report).

The SEIFA index shows that the relative level of disadvantage has stayed consistent between 2011 and 2016 and has not materially increased or decreased (39, Ekistics Report).

Figure 7.1 of the Ekistics Report provides the 2020-2021 reported crime within the defined locality (approx.) compared with South Australia. Within the locality, the rates of 'robbery and related offences', 'serious criminal trespass', and 'theft and related offences' were lower than the rest of South Australia. However, 'acts intended to cause injury', 'fraud deception and related offences', 'homicide and related offences', 'other offences against the person', and 'property damage and environmental' offences were higher in the locality than across South Australia as a whole. It is important to note that SAPOL crime statistics do not identify what proportion of crime, if any, is linked to the consumption of alcohol (40, Ekistics Report).

Potential Harm

The Applicant wrote to a number of stakeholders and organisations inviting comment on the application, and ultimately submitting that:

"...the Community overwhelmingly supports the establishment of the proposed store, and the lack of expressed concern from any of the community stakeholders contacted is a significant factor towards their support." (52, CIAF)

Ekistics identifies a number of 'at-risk' groups or sub communities and details the harm minimisation procedures that will be put in place to mitigate the risk of harm to the community, submitting that:

"in general, the locality does not exhibit any demographic characteristics which would suggest there is any particular element of the community that may be adversely affected by the introduction of an additional liquor store in association with the Coles Supermarket...it is unlikely that at risk groups or sub-communities within the locality would be adversely impact if the licence is granted" (56, CIAF).

The Applicant is a large and experienced liquor sales business, with significant resources and well-developed policies and procedures, and a strong history of compliance in South Australia. The Applicant references a number of policies (at attachments G – J, CIAF), including:

- Coles Policies for Responsible Service of Liquor and Tobacco;
- Coles Licensing and Compliance Booklet;

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- Coles Responsible Promotion and Advertising of Alcohol Policy;
- Coles School Uniform Policy;

The Applicant further details a range of security measures, including 'Crime Prevention Through Environmental Design (CPTED), which translates into various planning and design strategies such as: provision of adequate lighting; allowing for clear sightlines; clear ownership of space; avoidance of entrapment spots; provision of safe routes (minimising concealed and isolated routes); reducing isolation; promotion of a land use mix and activity generation; creating a sense of ownership through maintenance and management; providing signs and information; and the overall physical design of the built environment including landscaping (9.2, Ekistics Report).

The Applicant states at paragraph 3.2.10 of the CIAF that it is committed to implementing a number of site-specific security measures to ensure that any impact to the community is minimised, including:

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

Additionally, staff will be provided with a "Security Pendant" which is a mobile device allowing staff members to alert Police to a threatening situation (page 30, CIAF).

I note that South Australia Police (**SAPOL**) have not objected to the application. I also note that the Berri Barmera Council have not objected to the application.

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

Submission of Associate Professor Michael Livingston

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

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

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

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

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

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

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

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

Professor Livingston then refers to Melbourne studies and submits that:

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

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

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

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

Professor Livingston discusses 4 Australian studies that consider the influence of outlet characteristics, and summarises the evidence as follows:

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

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

In conclusion, Professor Livingston submits that:

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

.....

Where other neighbourhood characteristics have been examined, researchers generally find that outlets have larger impacts in areas of socio-economic disadvantage than in more advantaged neighbourhoods. There is suggestive evidence that big-box liquor stores may contribute more to alcohol problems than smaller stores, on the basis that they will sell more alcohol.”

Submission of the Royal Australasian College of Surgeons

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

Referring to statistics provided by the Australasian College for Emergency Medicine, they submit that:

“Overall, the estimated one in eight hospitalisations relating to alcohol misuse continue to represent a significant and concerning proportion of health system workload.”

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

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

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

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

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

.....

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

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

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

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

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

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

- about half the reported cases of interpersonal violence, domestic violence and sexual assault are related to excessive alcohol consumption;
- alcohol use is often associated with more severe acts of violence reported to the police; and

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- the severity of violence has been shown to increase with the amount of alcohol consumed.

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

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

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

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

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

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

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

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

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

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

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small and declining proportion of Australians believe in these notions of alcohol use to excuse or blame women.”

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

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

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

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

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

Looking at the correlation between major sporting events and alcohol, a recent UK study found that *“alcohol consumption following football matches coincided with increased DVF in the hours after a game.”* It also found that DFV increased in areas where a match was scheduled for midday or the afternoon as it gave perpetrators an opportunity to drink for a longer period after the game.

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 store will provide employment for roughly 6-8 employees, consisting of 2 full-time staff; 2 part-time team members; and 2-4 casual employees, and additional casual staff for busy trading periods such as Christmas (6.1.1, CIAF).

I am satisfied that if the application were to be granted it would result in an increase in employment in the locality and that most of the benefits of that employment would go to those residing in the locality.

Ethos Urban note that: *“the proposed Liquorland is in the regional town of Berri, which is an important commercial and service centre for the wider Riverland region, including for tourists and other visitors.”* (1.13 (b) Ethos Urban Report).

Further, *“the town of Berri is part of the popular Riverland tourist region and services visitors including those using recreational and camping spots along the Murray River”* (2.1, Ethos Urban Report).

And finally, *“Some visitation and sales to the proposed Liquorland Berri, in the order of 10% to 15% of total sales, will also be generated by people living outside the MTA including people living in the wider Riverland region as well as tourists and other visitors”*.

In 2019, the region had 430,000 overnight domestic and international visitors, and further 430,000 domestic day visitors. I note that this figure is significant, and that it is important to note Berri’s economic role and function as both a commercial and regional service centre for a significant tourist and visitor market (3.41 – 3.42, Ethos Urban Report).

Social impact and impact on the amenity of the locality

The locality plan (figure 4.2 and figure 4.3, Ekistics Report) identifies the community buildings, facilities and other areas of interest within the defined locality. Ekistics notes, in addition to a range of commercial and retail services, the following community buildings and facilities are located within an 800m walkable catchment of the proposed Liquorland:

- Riverland Regional Innovation and Sports Precinct;
- Alan Glassey Park;
- Berri Tennis Club;
- Berri Riverside Holiday Park;
- Berri Memorial Oval;
- Relationships Australia – South Australia;

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- Berri Family Day Care;
- Berri Community Preschool;
- Riverland Special School;
- Glossop High School – Berri Campus Years 8-9;
- Berri Library; and
- TAFE SA.

Further, Ekistics notes that there is an Alcoholics Anonymous meeting place located 1.1km south-west of the proposed Liquorland store. In addition to this, the following community facilities also provide drug and alcohol treatment and abuse services within the Berri township (at pg 45-46, Ekistics Report):

- Aboriginal Family Support Services Inc (950m south-west of the proposed store);
- Uniting Communities 'New ROADS' & 'Aboriginal Community Connect' (approx. 1km south-west of the proposed store);
- Aboriginal Sobriety Group Indigenous Corporation (approx. 1km south-west of the proposed store); and
- SMART Recovery Australia (approx. 1.1km south-west of the proposed store)

The Applicant submits that for any persons who may use any of the aforementioned facilities referred to above, the risk of harm is mitigated by Coles extensive liquor harm minimisation policies (4.4, CIAF), security features of the store (3.2.10, CIAF), and Crime Prevention Through Environmental Design (CPTED) (3.2.11, CIAF), and the Applicant therefore submits that the proposed liquor store will not adversely impact the activities conducted on any Community Buildings and facilities which are situated within the locality.

According to the CBS website, two dry areas exist within the locality. One of which is situated on public land adjacent the Murray River and the applies along Vaughan Terrace from Riverview Drive to Worman Street (including the Berri lookout tower).

The Applicant submits that the proposed liquor store will provide an added convenience for the customers of Coles, as well as the standalone ALDI supermarket nearby, and surrounding shops within the Riverland Central Plaza shopping centre, by allowing customers to purchase liquor while also shopping for their weekly groceries and household needs (pg 80, CIAF). It is further submitted that neither BWS Berri nor Berri Hotel Sip n' Save are particularly convenient for Coles and ALDI customers and that it is entirely reasonable to expect that a regional facility of this scale would incorporate a liquor store (pg 54, Ekistics Report). This is particularly so given the status of Coles Berri as the largest

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supermarket in the Riverland region, with a floor area of approximately 3,870m² (3.18, Ethos Urban Report).

Ethos Urban notes that, at present, there is only one Liquorland store located within a 150km radius of the proposed site, with that store being located some 142km away at Liquorland Mildura. In contrast, there are a total of seven BWS stores within the same radius (3.19 – 3.20, Ethos Urban Report).

Community support for the proposed business

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

The Applicant engaged Data Analysis Australia Pty Ltd (“DAA”) to undertake a survey to address the community interest elements of the proposed liquor store. 262 respondents took part in the telephone survey. The DAA findings are contained in an Executive Summary at the commencement of the Report and conclude that:

“The survey revealed that whilst a strong majority of those surveyed shop at the Riverland Central Plaza shopping centre, largely for the Coles supermarket but also the Aldi supermarket, most purchase takeaway liquor at the BWS store some distance away. Hence the overwhelming support for the proposed Liquorland store is hardly surprising, with supporters outnumbering those opposing the store more than three to one (64% support, 20% oppose, 16% no opinion). Support was even stronger amongst those who purchase takeaway liquor.

In addition, survey respondents strongly agreed with the statements that the new store would provide choice and competition for the existing liquor stores, suggesting that many feel that they are currently not well catered for in Berri at present.

Three quarters of those surveyed thought it would be convenient to shop there whilst using other stores in the Riverland Central Plaza, and a similar number thought the plan for it to stock local wines and beers was important to them.

Overall almost three in four (73%) thought they would use the proposed Liquorland store. If considering only those who have purchased takeaway liquor in the past twelve months, a higher percentage, 86%, would use the store. Two thirds of these future purchasers are likely to be regular users of the store, thinking that they would use it at least monthly.

The DAA Report made an analysis of the survey with reference to the following:

1. Use of supermarkets and shopping centres (page 7, DAA Report);

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2. Current take-away liquor purchasing behaviour (page 8, DAA Report);
3. Support for the proposed Liquorland Application (page 10, DAA Report);
4. Perceptions of the proposed store (page 12, DAA Report);
5. Likely use of the proposed Liquorland (page 14, DAA Report); and
6. Relative convenience of the proposed store (page 17, DAA Report).

In summary, the DAA Report describes the overall position as:

“In conclusion, it is clear that the proposed Liquorland store has a high level of support by residents, and if it is approved, it will be used by residents for a significant part of their takeaway liquor purchases in preference to where they currently shop for such liquor. From my experience in conducting many surveys investigating usage of and issues associated with takeaway liquor stores, I am confident that if the proposed Liquorland store is approved then it would rapidly become the preferred store for a large proportion of the residents of the locality.” (4, DAA Report).

Coles also conducted an Australia wide survey of Flybuys members who shop at their supermarket and liquor stores in 2020. Customers were required to nominate their three main ‘pain points’ from a range of options. 265 shoppers responded and completed the survey, with 34.0% of respondents nominating not having a Bottleshop/liquor store adjacent to the existing Coles supermarket as the most significant “pain point”. This particular “pain point” was nominated by the highest percentage of Berri shoppers when compared to the other options available (the second highest “pain point” was nominated for 26.8% of shoppers).

The Applicant submits that *“the fact that 34% of the survey Respondents indicated they would like to be able to shop at a liquor store adjacent to the supermarket indicates that a significant proportion of shoppers have a demand to purchase liquor when they do their supermarket shopping compared with shoppers at other locations where it can be implied that the demand to purchase liquor is satisfied by outlets already existing in those localities.”* (49 – 50, CIAF).

The Applicant also wrote to various key stakeholders and interest groups relevant to the locality notifying them of the intention to loge an application for a PLSL outlet at the Site, including:

- Drug & Alcohol Services SA
- Department of Health and Wellbeing
- Department of Aboriginal Affairs
- Berri Barmera Council

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- Berri Police Station
- Department of Education

Drug & Alcohol Services SA (**DASSA**) responded by letter dated 12 November 2021. Other than DASSA – who merely requested a copy of the application upon lodgement – no other community stakeholder responded to the letter expressing concerns in relation to the proposed Liquorland at Berri (51, CIAF).

The Applicant has further provided letters of support from the following traders within the centre;

- Berri Plaza Newsagents
- Hello World Travel Berri
- Subway Berri
- The Berri Bakehouse
- Cheap as Chips
- Plaza Quality Meats

Submission from the Australian Hotels Association opposing the Application (AHA1) and the Applicant's submissions in reply

The AHA submit that the *“this is a typical Liquorland application which would place a carbon copy of all other Liquorland stores into a modest country shopping centre.”* (Paragraph 2, AHA1). The AHA further submit that the shopping centre in question is ‘modest’ and has several empty tenancies, along with a COVID-19 vaccination clinic.

The AHA also submit that there is already “one-stop shop” convenience available in Berri, with the BWS Berri store located adjacent to the Woolworths supermarket.

The AHA place reliance on the BWS Woodcroft decision, submitting that the remarks from the BWS Woodcroft decision are ‘exactly applicable’ to the current application. Further reliance is placed on the general submissions lodged by Professor Michael Livingston, as well as the RACS and ANROWS submissions to support to assertion that the application should be refused.

In response, the Applicant submits that the AHA submission should be disregarded in its entirety, on the following grounds:

- a. Refers to decisions that are clearly distinguishable without making any attempt to distinguish them;*
- b. Proceeds on a fundamental misunderstanding of what was decided in those matters;*

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- c. *Proceeds on an entirely incorrect and objectively misleading characterisation of the role and scale of the relevant shopping centre;*
- d. *Fails to address the application in any meaningful way;*
- e. *Appears to proceed on the basis of an entirely unwarranted assumption that because the Commissioner has made an evaluative decision in two decisions refusing licence applications that it follows that the evaluative function would be exercised in the same way in a different set of circumstances;*
- f. *Fails to take into consideration expert evidence provided by the Applicant that would contradict their submissions;*
- g. *Incorrectly presumes that because the Commissioner made a determination to refuse BWS – Woodcroft, that the reasons for refusal would automatically apply to this Application when the facts are very different;*
- h. *In particular fails to recognise that the decisive matter in BWS Woodcroft and the dicta of the Licensing Court in Hove was a concern that the grant of a licence in a relatively unimportant and small centre (especially when compared to nearby centres) would set a precedent for the wholesale grant of licences within every shopping centre;*
- i. *Fails to recognise that having regard to the role and size of the Riverland Central Plaza Shopping Centre, that such an argument is untenable. To the contrary, this Centre is significantly larger than Parkholme and in addition plays an important regional role. It is significantly larger than the centre the subject of the Woodcroft decision. It is more comparable in size, importance and function to the main (larger) nearby centre in Woodcroft which already housed a BWS and a hotel which sold packaged liquor;*
- j. *Further, as opposed to the situation in Woodcroft where there was an identical BWS in the main shopping centre a short distance away, in this case there are no Packaged Liquor Sales Licences in the centre and indeed no other Packaged Liquor Sales Licences other than BWS licences within a radius of 150 kilometres (emphasis added). The absence of competition is plainly not in the public interest and the public of the Riverland are entitled to a competing facility in the main Riverland shopping centre.*

The Applicant notes that the AHA seek to tender and rely on the harm submissions of Livingston, RACS, and ANROWS as part of their submission. The Applicant submits that they are not submissions within the meaning of s 78 of the Act, nor do they seek to address any particular benefits or negative aspects of this particular application, and therefore do not

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address the question to be determined by the Commissioner. However, the Applicant further submits that, without prejudice to that position, that:

- Each application must be judged on its own circumstances. The material at best must carry extremely limited weight.
- The material should be viewed in light of the criticisms previously provided by Dr. Henstridge.
- To the extent that any submission advocates for a blanket prohibition on new bottle shops, such an approach is contrary to the Act.

With respect to the AHA submission that this application is “*a typical Liquorland application which would place a carbon copy of all other Liquorland stores into a modest country shopping centre*” the Applicant submits that Liquorland, by way of its uniformity of design, security measures and policies and procedures ensures Liquorland’s ability to guarantee the standard and quality of their stores and the mitigation of harm, and that the Licensing Authority can rely on the mitigation of harm measures when assessing applications.

The Applicant further submits that every PLSL within a 150km radius is held by BWS, which is self-evidently not in the public interest for the reasons expressed by Gilchrist J in *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 (**Park Holme**).

The AHA submission that Berri is a “*modest country shopping centre*” is submitted as untenable. The Applicant places reliance on the Ethos Urban Report in this respect, which relevantly provides that the Coles Supermarket located at the Riverland Central Plaza is the largest in the Riverland Region (page 20, Ethos Urban Report). Further, 75% of respondents to the DAA Survey stated using the Coles Supermarket as their main supermarket (page 7, DAA Report). The Shopping Centre complex also has 730 carparks inclusive of the shared Aldi spaces, and 26 tenancies, which contain 5 major tenancies including Coles, K-Mart, Aldi, Cheap as Chips, and Pets Domain (page 7, A2). Table 1, A2 displays that the Riverland Central Plaza is significantly larger than the Park Holme shopping centre, the Woodcroft Plaza, and the Hove shopping centre.

The Applicant submits that the AHA submissions fail to address any such concern of harm or proliferation in a locality whereby the average licence density is significantly lower than the state average and, in the event this application is granted, will be in line with the State average (pg 9, A2).

I accept the view of the Applicant that the shopping centre in question is not a modest one, and that the Coles Supermarket is a significant one, being the largest in the Riverland

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region. This is supported by the size of the shopping centre exceeding 11,000 square metres and 730 carparking spaces.

I am of the view that the BWS Woodcroft decision is not 'exactly applicable' to this case, and I must assess each application on its own merits having regard to the specific locality and individual aspects of each application.

With respect to the Livingston, RACS, and ANROWS submissions, I consider that I can place some weight on these submissions at a general level.

Decision

The relevant locality

The Applicant adopted a five-kilometre radius in determining the locality, as the area most likely to be affected by the granting of the application. I am satisfied that the Applicant has correctly identified the locality, noting this captures the entire township of Berri and despite the status of Berri as a regional service centre attracting many people from outside the locality, Liquorland Park Holme makes it clear that the focus is on the 'primary trade area'.

The community interest test

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

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

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

I note that South Australia Police and the Berri Barmera Council have not objected to the application.

I accept 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.

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

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

I note that the Berri township already contains a 'one-stop shop' with a BWS Berri co-located with Woolworths Berri, in a separate shopping centre approximately 800m away. However, I note that the Woolworths is significantly smaller than the Coles located at the Riverland Central Plaza, which is the largest supermarket in the Riverland region, as stated by the Ethos Urban Report.

I accept that the status of Berri as a major regional centre, and that the Riverland Central Plaza Coles is the largest supermarket in the Riverland region are significant factors. Further to this point, 75% of the respondents to the DAA Survey indicated that the Coles was their main supermarket. There is currently no other PLSL or General and Hotel Licences on the same allotment as the proposed premises, which exceeds 11,000 square metres in gross lettable area, with 3870 square metres taken up by the Coles Supermarket alone. The Shopping Centre complex houses in excess of 700 car park spaces. These factors clearly demonstrate the significance and size of the shopping centre in a locality that operates as a regional service centre.

While the Applicant accepts that the locality already contains a co-located packaged liquor store with a supermarket, it submits that the Coles Supermarket is significantly larger and services a significantly larger number of customers.

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

Inconvenience in gaining access to the required liquor is undoubtedly relevant to the determination of the question whether the public demand for liquor in the locality cannot be met by the existing facilities but it is not of itself decisive. If, for example, there existed an accessible first grade bottle shop at a distance of, say, 200 or 300 metres from the shopping centre, it would be absurd to suggest that the demand for liquor by customers of the shopping

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centre could not be met simply because they would have to drive their cars a short distance from the general shopping centre in order to obtain their liquor. To attempt to provide access to a full range of liquor for everybody who is without the use of a motor car would result in a wholly undesirable proliferation of liquor outlets with consequent deterioration of the standards in the service of liquor which are necessary in the public interest. It is, however, a matter of degree.

I take into account the community support for the application, consisting of the results contained in the DAA Survey Report, with 64% of the 251 responses supporting the application.

Before reaching a conclusion on whether the application is in the community interest, I will first turn to the public interest discretion.

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

The 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 of a person’s health and alcohol abuse or misuse.

I consider minimisation of harm and the potential of harm is a relevant consideration to weigh against co-location of takeaway liquor and supermarkets. The proposed premises are positioned adjacent to one of the two mall entrances, immediately to the left as you enter the mall with the Coles supermarket to the right. With direct convenience (walking past on the way to and from Coles if using that particular entrance) comes easy access, exposure to discounts and sales, convenient incidental purchases and thereby personal consumption of alcohol which may otherwise have been avoided.

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I have carefully considered the submission by RACS, ANROWS and Professor Livingston, and consider that I can place some weight on these submissions, at least at a general level, despite the submissions to the contrary by the Applicant. Alcohol causes significant harm in the community, and it is for this very reason that alcohol is a highly regulated product. I consider it is relevant nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets and this proportion has been steadily increasing.¹

I am satisfied that the Applicant has the appropriate policies and procedures in place to mitigate the risk of harm. It can be seen that by applying similar arithmetic and logic to that adopted by Judge Gilchrist in the Liquorland Park Holme matter that the locality is clearly not 'awash' with liquor.

Given the status of the Berri as a regional service centre, the size of the Riverland Central Plaza, and having regard to the liquor licence density in the region and the responsible development of the liquor licence industry as one of the objects of the Act, I am satisfied on balance that the grant of this application is in the community interest.

I am satisfied that the application is not inconsistent with the objects of the Act and is not contrary to the public interest.

Accordingly, Liquorland's application for a PLSL at Berri is granted.

Dini Soulio
Liquor and Gambling Commissioner

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