

Cellarbrations Walkley Heights PLSL Application Decision (No.208433)

Drakes Supermarkets' subsidiary Finliq Pty Ltd (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at corner of Wright Road and RM Williams Drive, Walkley Heights SA (**the Site**), to be known as Cellarbrations Walkley Heights (**Cellarbrations Store**) that will be located within the footprint of the existing Drakes Supermarket at that location (**Supermarket**).

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**), and supporting attachments, prepared by lawyers acting on behalf of the Applicant, as well as an expert report by Caro Mader of UPRS titled 'Community Impact Analysis' (**Mader Report**). It is the content of the CIAF and expert evidence, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged on behalf of the Australian Hotels Association (SA) (**the AHA**) opposing the grant, and submissions in reply from 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 Community Impact Assessment Form, dated 6 May 2021 (**CIAF**)
- 'Community Impact Analysis' expert report by Caro Mader of URPS dated 5 May 2021 (**Mader Report**)
- Australian Hotels Association (SA) Submissions received on 2 July 2021, objecting to the application (**AHA1**)
- Letter from the Australian Competition and Consumer Commission (**ACCC**) to the Liquor and Gambling Commissioner dated 23 June 2021 (**ACCC Letter**)
- Submission of Associate Professor Michael Livingston dated 5 July 2021 (**Professor Livingston Submission**)
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)
- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)
- Applicant's Submissions in reply to ACCC, Professor Livingston, RACS, and ANROWS and AHA submissions dated 28 February 2022 (**A2**)

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

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

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

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

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

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

Section 3(1) of the Act provides that:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and

(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and

(d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

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

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

(b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and

(c) the adverse effects on a person's health; and

(d) alcohol abuse or misuse; and

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(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) of the Act requires that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the Objects of the Act.

Drakes currently operates 3 Cellarbrations packaged liquor outlets in South Australia that are adjacent to Drakes Supermarket Stores (2, CIAF), and has some demonstrated experience in operating liquor licences and packaged liquor outlets.

Drakes Supermarkets is the largest independent grocery retailer in Australia, operating over 60 stores across South Australia and Queensland, with over 5,500 staff nationally and turnover in excess of \$1 billion per annum (3.2, CIAF).

Background / Nature of the Proposed Offering

The Drakes Supermarket (**Supermarket**) is situated at the corner of Wright Road and RM Williams Drive, Walkley Heights SA within the Walkley Heights Centre (**Shopping Centre**). The Applicant describes the Shopping Centre as a Neighbourhood Centre which is easily accessible with a dedicated carpark (3.1, CIAF), and which consists of the following offerings:

- a Drakes Mini Supermarket, which is the major tenant at the Shopping Centre, open from 7am – 9pm, 7 days per week;
- 6 takeaway/ fast food/ café outlets;
- A beauty salon; and
- A Salvation Army outlet store.

The Applicant submits that a PLSL outlet adjacent to the Supermarket will greatly enhance the convenience on offer for the community in the locality on the basis that:

It will offer the convenience of being able to purchase liquor to two groups of people – those attending the Centre for their daily and weekly shopping needs, as well as those who want liquor to go with dinner and are purchasing takeaway food.

Of particular note in respect of the convenience issue is the proximity of the Centre to the two aged care / retirement facilities. The residents of these facilities are less likely to drive to, and/or may be reluctant to drive the distance to, other shopping centres and/or other liquor outlets.

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The proposed outlet will be of great benefit and convenience to these members of the community in particular (31, CIAF).

If constructed as proposed the Cellarbrations Store will be approximately 230 square metres in size, with 173 square metres of retail area (8, A2), and will be a separate tenancy to the Supermarket, with proposed trading hours of 8am – 9pm, 7 days per week.

Consequently, no s 38 separation issue arises in respect of this application, as the proposed Cellarbrations Store will be physically separate from other commercial premises in the sense required by the Act.

Mader notes that a packaged liquor sales outlet is defined by Schedule 1 of the *Development Regulations 2008* as a 'shop' (2.3 Mader Report).

The Applicant has advised that there will be somewhere in the vicinity of 1,500 individual lines on offer. The Applicant has not provided an indicative stock list but has submitted that the proposed store will operate with a focus on "*premium products at a higher price and which will comprise of wines, beers, spirits and pre-mixed drinks*" (9, A2).

Locality

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

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

The Guidelines suggest as a guide that the locality of licensed premises located within the Adelaide Metropolitan Areas will be the area within a 2km radius of the proposed offering:

Adelaide Metropolitan Area: The locality of a premises in the Adelaide Metropolitan Area is the area within a 2km radius of the site of the relevant premises. A list of the suburbs considered to be in the Adelaide Metropolitan Area can be found below. The list is intended to be used as a guide only.

Mader has adopted the 2-kilometre radius recommended by the Guidelines to determine the Locality (2.2, Mader Report). The Locality as identified by the Applicant is not disputed by the AHA.

The population of the Locality is 23,574 persons (5.2.1, Mader Report).

Mader refers to Australian Bureau of Statistics (ABS) 2016 Census data as indicating that 2.48% of the population within the Locality identify as Aboriginal or Torres Strait Islander peoples compared with 1.42% for Greater Adelaide (5.2.3 Mader Report).

ABS data indicates that 34.4% of people in the Locality speak a language other than English which Mader notes "*is a significantly higher proportion of the population than that of Greater Adelaide which is 24.6%*" (5.2.4, Mader Report).

Mader refers to the Salisbury Council Development Plan and notes that the Site is subject to that Plan and is located within the Neighbourhood Centre Zone of the Development Plan (2.3, Mader Report).

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The employment profile of the Locality is not dissimilar to that of Greater Adelaide and this is considered to be a neutral factor in relation to community vulnerability to alcohol-related harm in the Locality when compared to Greater Adelaide as a whole (5.2.5, Mader Report).

The income profile for the Locality is lower when compared to Greater Adelaide for individuals (16.4% less), family's (18.9% less) and households (13% less). Mader observes that there are less people employed as professionals and managers and more people employed as manual labourers, in administration and providing community and personal services (5.2.6, Mader Report).

Mader considers the geospatial features and facilities in the Locality to be typical of many suburban localities in Greater Adelaide and is of the view that "*nothing about the features of this Locality increases the risk of alcohol-related harm*" (5.3.1, Mader Report).

There are slightly fewer young people aged 0-24 years old in the Locality compared to Greater Adelaide, and Mader discusses the various schools and educational institutions in the Locality at some length, noting the Applicant's various policies and procedures, and ultimately concludes that:

Therefore, while there is a tertiary campus and four high schools within this Locality, the risk of harm to young people by this application is considered to be managed in a proactive and diligent way. The likelihood of young people wishing to access alcohol from the applicant's site is low. However, the applicant has policies and procedures in place to ensure the responsible sale of alcohol to minors if a young person did attend their pre-packaged liquor outlet (5.3.2(4), Mader Report).

Presumably what Mader means by this is that the Applicant's policies and procedures would ensure that alcohol is not sold to any minors attending the outlet (as opposed to it being sold "responsibly" to them).

Mader notes that there are a number of medical centres and 7 aged care facilities in the Locality, but is of the view that the proposed PLSL outlet will have no significant impact on these residents (5.3.3, Mader Report).

There are no refuges for young people or people experiencing disadvantage located in the Locality (5.3.4, Mader Report).

There are numerous parks and reserves within the Locality, and Mader considers that there is a risk that the availability of nearby packaged liquor might increase the likelihood of anti-social behaviour due to excessive use of alcohol in these reserves (5.3.5, Mader Report).

There are no permanent dry zones in the Locality and there are no formal alcoholics anonymous meetings within the Locality (5.3.7 and 5.3.9 Mader Report).

The proposed offering is not expected to negatively impact on the 8 places of worship in the Locality (5.3.8, Mader Report).

The stated objective of the Neighbourhood Centre Zone is to provide a range of shopping facilities for the surrounding neighbourhood, which is "*further emphasised within the Zone's Principles of Development Control (PDC) which identify a shop as an envisaged form of development*" (2.3, Mader Report).

Mader notes that the Neighbourhood Centre Zone supports the development of shops and the proposed PLSL outlet is consistent with the Zone's Objectives and PDCs.

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Other Packaged Liquor Outlets in the Locality

There are currently 3 take away liquor outlets in the Locality:

- Bridgeway Hotel (Sip N Save)
- First Choice Liquor
- Settlers Tavern (Thirsty Camel)

This is relevant when calculating the liquor licence density for the Locality in light of any 'proliferation' concerns and is considered in more detail below.

The Applicant asserts that "*the current offer of packaged liquor in the locality is limited*" (3.1, CIAF). The AHA disputes this as "simply wrong", and notes that "*there are 3 large and well-stocked outlets within the locality, each offering in excess of 1400 lines*" (pg2, AHA1).

The Bridgeway Hotel (Sip N Save) packaged liquor outlet is located at 18 Bridge Road, Pooraka, which is around 1.6 kms from the proposed offering (Part 5, CIAF).

First Choice Liquor is located at the Ingle Farm Shopping Centre (Shop FS002), at the corner of Walkleys Road and Montague Road, Ingle Farm, around 1.7 kms from the proposed offering (Part 5, CIAF).

The Settlers Tavern (Thirsty Camel) is located at 249 Montague Road, Ingle Farm, around 1.8kms by car from the proposed offering (Part 5, CIAF).

Consequently, it can be seen that the existing 3 packaged liquor outlets in the locality are all located within a short drive of the proposed offering.

Liquor Licence Density in the Locality

Mader observes that the 3 take away liquor outlets in the Locality currently represent one outlet for every 7,858 residents in the Locality and that in the event the application is granted the licence density will still be well below the .75 PLSL outlet density per 1,000 residents that has been asserted as problematic by BOCSAR (5.3.10, Mader Report).

Mader has provided some analysis of the licence density for the Locality, and submits:

Of particular note is the density ratio of licensed premises in this locality which would be 0.17 outlets per 1,000 people as a result of the proposed application compared to the BOCSAR maximum density guideline of 0.75 per 1,000 people. (5.3.10 – 6.0, Mader Report).

The Applicant submits that significant weight should be placed upon the existing density of outlets in the Locality, and that:

The proposed outlet would result in a density of one outlet for every 5,882 residents in the locality (against a current density of one outlet for every 7,858 residents). This is a very low density of outlets and significantly below the State average outlined in Liquorland Mount Barker (one outlet for every 2,000 residents) and the BOSCAR (Sic) density of one outlet for every 454 people. (14, A2).

It is clear from a statistical perspective that the Locality cannot be said to be 'awash' with liquor, and that the application should not be refused on the basis of licence density concerns alone.

One Stop shopping/ convenience

The Applicant submits that the location of the proposed liquor outlet is built on convenience:

The existing Drakes Mini Supermarket is a well-established business where the customer can easily access the Centre and the supermarket. The proposed outlet will round out the offer in this location and be consistent with the growing modern shopper trend of one stop shopping (5.1, CIAF).

The Applicant goes on to contend that:

.....as this outlet would further enhance the convenience offer of the Centre as a whole, we anticipate it will increase foot traffic overall, which in turn should lead to improved employment and economic opportunities generally due to the greater use of the Centre and resultant increasing demand for all the services on offer at the Centre (6.1, CIAF).

The AHA argues that there is a “*significant tension*” with the Applicant’s proposals, where on one hand the Applicant says that it will offer an experience for customers to enquire and learn, and on the other hand it promotes one-stop-shopping convenience. The AHA submits that “*It is unlikely in the extreme that busy and harried shoppers, with a trolley or bags full of perishables, will be interested in discussing the relative merits of wine types or vintages*” (9, AHA1).

ACCC response to invitation to provide a submission in relation to earlier PLSL applications

On 9 June 2021 I wrote to the ACCC referring to an earlier letter dated 21 December 2020 that I had received from the ACCC and inviting the ACCC to make a submission outlining any competition concerns in relation to the interests of consumers that may be relevant when determining whether various other PLSL applications before the Authority (i.e. various BWS and Liquorland PLSL applications) were in the community interest or had any public interest implications.

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

Mr Leuner goes on to say:

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

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

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

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

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

I consider as general propositions that it is desirable to have a competitive market for consumers and undesirable to have market saturation or market dominance by any one licensee.

To whatever extent that matters of competition may be relevant to determining if the grant of a PLSL application is in the community interest or in balancing public interest considerations, I note that the Applicant does not operate any other take away liquor outlets in the Locality. Consequently, I do not hold concerns that the grant of this application will result in diminished competition, market saturation or market dominance by the Applicant in the Locality, and therefore place no weight on the ACCC material for the purpose of deciding whether the grant of this application is in the community or public interest.

Potential Harm

The Applicant has submitted that Drakes is an experienced liquor retailer which has sound policies in place in respect of the responsible service of alcohol (4.3, CIAF).

Mader notes that there is 1 tertiary institution, 4 secondary schools, 3 primary schools, 3 pre-schools, and 3 childcare centres within the Locality (5.3.2, Mader Report). It is submitted that children aged 0-12 years are generally not at risk from direct alcohol-related harm, whilst young people at high school and in tertiary education are at a greater risk of suffering alcohol related harm because they do consume alcohol (5.3.2, Mader Report).

Despite the presence of the tertiary institution and 4 secondary schools, the Applicant submits that the likelihood that young people wishing to access alcohol from the proposed site is low, but that in the event that young people do seek to access alcohol, the risk of harm to young people is managed in a proactive and diligent way, with the Applicant outlining its policies and procedures in relation to the supply of alcohol to young people (5.3.2, Mader Report).

There are 7 aged care facilities in the Locality, and a forensic mental health facility (James Nash House). The Applicant submits that the number of aged care facilities highlights the number of local residents presently in full-time aged care and that the proposed packaged liquor outlet has no significant impact on these residents (5.3.3, Mader Report).

There are no refuges for those experiencing disadvantage in the Locality (5.3.4, Mader Report)

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

The Applicant sought to engage with a number of stakeholders to ascertain their position in relation to the packaged liquor application. Responses were received from the following;

- The Department for Health and Wellbeing;
- The City of Salisbury; and
- The Department of Premier and Cabinet (Aboriginal Affairs & Reconciliation)

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It is noted that none of these stakeholders objected to the application (3.6, CIAF).

The Applicant has identified various measures to be implemented if the licence were to be granted, including a comprehensive CCTV system covering all major areas of the store, a monitored alarm system, reed switches on all external doors, movement detectors throughout the store, a hold up button, high security locks, security guards as required, and an external bollard to prevent ram-raiding (4.3, CIAF).

The Applicant submits that a review of the crime statistics reveals “*nothing remarkable*” in comparison with Greater Adelaide. It is identified that there were 9 offences in the Walkley Heights locality in January 2021, all of which were offences against property. In the same period in Ingle Farm there were 71 offences, 14 of which against the person and 57 against property (5.1, CIAF).

Mader states that there is no evidence for the Locality that identifies what proportion of crime is related to the consumption of alcohol, and references the NSW Bureau of Crime Statistics and Research (BOCSAR) which asserts that a density of 0.75 per 1,000 residents is the threshold at which there is a corresponding increase in rates of domestic violence (5.3.10, Mader Report). If this application were to be granted, the density for the Locality would be 0.17 outlets per 1,000 residents, which the Applicant submits is well below the density identified as problematic by BOCSAR (5.1, CIAF).

The Applicant has identified a range of policies and procedures in the CIAF, including: Liquor Licence Risk Assessment and Management Plan, Drakes Liquor Licensing and Compliance Guide, Drakes Responsible Service of Alcohol Policy, Induction Checklist, Annual Re-Induction Checklist, Drakes Social Media Policy, and Drakes Handling an Aggressive Person Policy (4.3, CIAF and Attachment F).

Given the high number of packaged liquor sales licence 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**) in respect of those applications. The submissions received in reply are quite general and I consider that I should also have regard to them in this matter. The Applicant was provided with a copy of these submissions and an opportunity to file submissions in reply.

Submission of Associate Professor Michael Livingston

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

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

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

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

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

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

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

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

Professor Livingston then refers to Melbourne studies and submits that:

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

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

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

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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:

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.

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

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

The Applicant has addressed the submissions of Professor Livingston, RACS and ANROWS, in its Submissions dated 28 February 2022 (A2) and submits variously that the Harm Submissions offer important summaries of potential alcohol-related harm more generally, but that they do not offer commentary on the South Australian market or, more specifically, evidence of any unacceptable increase in the risk of harm if this application were to be approved (19, A2).

Further, the Applicant submits that there is no consideration of the particular circumstances that exist in relation to this particular application and therefore the Harm Submissions have limited general or specific relevance. On the contrary, the Applicant submits that the information provided specific to this application shows that there will be little to no detrimental impact on the community, and that the proposed outlet will have a net positive effect in terms of convenience, choice and economic impacts (20-22, A2).

Cultural, recreational, employment or tourism impacts

The Applicant submits that the Cellarbrations store is anticipated to equate to 1 full-time role, 1 permanent part-time role, and 4 casual roles, with the casual roles anticipated to be anywhere from 10 to 20 hours per week (6.1, CIAF). It is not anticipated that the reduction in size of the Supermarket will result in a reduction in supermarket staff (6.1, CIAF).

The AHA alternatively submits that the employment opportunity presented by this application is “*very modest*” (10, AHA1). Further, the AHA notes the findings of the Mader Report stating that at its highest, this application can only be said to have a neutral impact on the community – that is, no negative impact but no obvious positive impacts either (14, AHA1).

In reply the Applicant submits that:

the report focuses on potential harm in determining that the application is neutral from a harm perspective. The URPS report does not detail the positive impacts associated with employment, community convenience and choice, economic benefits to other businesses in the centre through increased foot traffic and other economic benefits such as the promotion of South Australian products. If, on balance, there is not an unacceptable increase in the level of risk of harm from the application, then it naturally follows that the remaining positive aspects of the proposal in terms of convenience, choice and economic impacts mean that the application is in the community interest and should be approved. (26, A2).

In addition, the Applicant submits that the proposed outlet will provide additional marketing and selling opportunities for local breweries, wineries, and distilleries at a broader level, resulting from the South Australian focus of the products.

Social impact and impact on the amenity of the Locality

The Applicant refers briefly to the crime statistics in the Locality, and submits that there is “*nothing remarkable or out of sync with Greater Adelaide*”. The Applicant references that there were 9 offences in Walkley Heights, and 71 offences in Ingle Farm in January 2021, the majority of which were offences against the person. This figure is compared against the whole of South Australia in January 2021 which recorded 8,636 offences, of which 6,683 were against property and 1,953 were against the person (5.1, CIAF). The Applicant does not reference the crime rate for the Locality in comparison to the State average, nor the occurrence of each type of offence (besides identifying the number of offences against property versus offences against the person).

The Applicant submits that the crime statistics do not identify how many offences involved the consumption of alcohol, and that it is therefore difficult to make any direct correlation between crime statistics and the proposed liquor store (5.1, CIAF).

In relation to employment, Mader states that there are approximately an equal number of full-time employees in the Locality and the Greater Adelaide statistical area, and considers employment to be a neutral factor in relation to community vulnerability in relation to this particular Locality (5.2.5, Mader Report).

Mader notes that 2.48% of the Locality identify as Aboriginal or Torres Strait Islander compared with 1.42% of Greater Adelaide (5.2.3, Mader Report), and refers to the Australian Department of Health observation that Aboriginal and Torres Strait Islander peoples are less likely to drink, but those that do, are more likely than other Australians to:

- drink at dangerous levels – both over a lifetime and on a single occasion; and

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- go to the hospital for alcohol-related conditions such as liver disease. (5.2.3, Mader 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.

Mader notes that the Locality (which has a SEIFA score of 945) ranks 51st out of 71 Local Government Areas in Greater Adelaide; i.e. the Locality is less advantaged than 51 Local Government Areas in South Australia, but submits that it ranks higher than the City of Port Adelaide Enfield, City of Salisbury, and the City of Playford, which together house over 366,000 people (pg12, Mader Report).

Mader refers to several ABS publications in support of the following observations:

SEIFA is similar to a sporting premiership table. A team that finished the season with 40 points cannot claim to be twice as good as a team that finishes the season with 20 points. Similarly, an area that has a SEIFA score of 1,200 cannot claim to be twice as advantaged as an area that scored 600.

A SEIFA score is standardised against a mean of 1,000 and a standard deviation of 100. This means that the average SEIFA score nationwide will be 1000 and the middle two-thirds of SEIFA scores will fall between 900 and 1,100 (approximately).

According to the 2016 ABS Census, the Burnside Local Government Area has the highest score on the SEIFA Index of any local government area in SA at 1,081. Anangu Pitjanjatjara Local Government Area has the lowest score at 589. The score range is 492 points from highest to lowest. The median/ average score in South Australia is 977. (5.2.2, Mader Report).

In Mader's opinion the SEIFA ranking of the Locality indicates that the community may be more vulnerable to alcohol-related harm than many South Australian communities, but less so than most of northern metropolitan Adelaide (5.2.2, Mader Report).

Mader provides some commentary and analysis of the existing licensed premises in the Locality, noting that the Locality has 2 existing General and Hotel Licences and 1 Packaged Liquor Sales Licence. The General and Hotel Licences relate to the Thirsty Camel at Settlers Tavern and the Sip n' Save at the Bridgeway Hotel. The PLSL outlet is a First Choice Liquor located at the corner Montague and Walkleys Road, Ingle Farm.

After discussing the various take away liquor options available in the Locality (as noted above), Mader states that the volume of General and Hotel and Packaged Liquor outlets will represent 0.17 outlets per 1,000 people in the Locality, in the event the application is granted. Mader submits that this is well below the NSW Bureau of Crime Statistics and Research (BOCSAR) maximum density guideline (of 0.75 outlets per 1,000 people), which is the density at which there is a corresponding increase in rates of domestic violence, and is of the view that:

Consequently, there is an extremely low risk of negative community impact due to the density of General and Hotel and Packaged Liquor Licences in this Locality, even with the addition of the proposed facility. (5.3.10, Mader Report).

This is consistent with the Applicant's submission that significant weight should be placed on the low density of take away liquor outlets in the Locality (14, A2).

The Applicant submits that the proposed offering will provide convenience, choice and positive economic impacts.

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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 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 and community consultation

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey. The survey results are contained at Attachment B of the Mader Report.

The Applicant has provided a breakdown of the survey results at 3.6 of the CIAF and submits that 351 people who live, work or study in the Locality completed the survey, and that of those:

- 344 people (98%) were in support of the proposed liquor store or had a neutral opinion comprising 328 people (93.5%) in support and 16 people (4.5%) neutral;
- 7 people (2%) were against the liquor store.

The AHA takes issue with the survey methodology, noting that the CellarSelect status of the proposed store was not explained to survey respondents, and submits that:

..it is entirely possible that the respondents to that survey considered that the application was for a “normal” Cellarbrations store (of which there are ten in the metropolitan area). Indeed it is more likely than not that the respondents so thought: only 30% (that is, three) of those stores are CellarSelect outlets, and the overwhelming statistical likelihood (70%) is that the respondents had encountered, used or were familiar with the non-CellarSelect stores. Furthermore, it is noted that the survey opens with an explicit statement of intention to operate a “Cellarbrations bottle shop”. Hence, the respondents to the survey will, if this application succeeds, probably **not** get what they expected, and **not** what they expressed a view in favour of.

The AHA further submits that respondents to a survey are more likely to agree with a proposition than reject it, “*often from politeness alone*”; that a large number of respondents live outside the 2km radius (about 30%); that there is no record as to how many people were from the same household or how many were minors; and that 23 respondents did not favour the application, which the AHA asserts is “*significant in relation to a survey that is engineered to produce a positive result*”, and that given these various flaws in the survey methodology, the survey results should not be relied upon (7, AHA1).

Submission by the AHA opposing the grant of the application (AHA1)

A submission opposing the grant of the application was received from the AHA, which is summarised below:

- The AHA object to the assertion at 3.1, CIAF that “*the current offering of packaged liquor in the locality is limited*”. The AHA submit that “*this is simply wrong*” as there are 3 large packaged liquor outlets in the locality, each stocking more than 1400 lines (5, AHA1).
- The Applicant refers to the CellarSelect store status at 4.2, CIAF. The AHA submits that this status is not explained in the survey document, and therefore respondents may not get what they expressed a view in favour of (7, AHA1).

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- The AHA submits that Part 5 of the CIAF contains statements that are “*simple nonsense*” such as “*the shopper risks injury to walk amongst moving vehicles*”. The AHA asserts that there is no evidence of such incidents occurring, that SafeworkSA would intervene if such a risk was realistic, and labels the suggestion of shoppers having to dodge moving cars as “*bordering on desperate*” (8, AHA1).
- The AHA suggests that there is significant tension between the Applicant’s proposals, whereby on one hand they suggest “*one stop shopping convenience*” and on the other hand they suggest an experience where customers are “*keen to enquire and learn*”. The AHA submits that it is extremely unlikely that busy and harried shoppers carrying a trolley full of perishables will be interested in discussing the merits of wine types or vintages (9, AHA1).
- The AHA are of the view that Part 6 of the CIAF proposes a very modest employment opportunity (10, AHA1).
- The AHA submit that Part 7 of the CIAF is merely speculative regarding the “*enhanced choice and range of liquor*” given that no stock list or number of lines has been provided (11, AHA1).
- The AHA submits that the letter that was sent to relevant stakeholders which states “*the current offering of packaged liquor in Walkley Heights is limited*” is not a relevant consideration as it is an incorrect statement of the old needs test, “*and it creates its own vacuum which the application then seeks to fill*”. Further, the letter sought comment from stakeholders, and the responses of which were “*no opposition*” or “*nil response at all*” is “*hardly a ringing endorsement*” (12, AHA1).
- The AHA submits that Section 6 of the Mader Report contains expert analysis which is squarely against the application being granted, given that the Report concludes that “*the proposed packaged liquor sales outlet is likely to have a neutral impact on the community within its locality*”. The AHA submits that in other words the community will be no better off if the application were granted than if it were not granted, and that this is the Applicant’s case at its highest. The AHA notes the requirements of section 53A of the Act that the Authority may only grant a designated application if it is satisfied that it is in the community interest, and contends that:

This is clearly a *designated application*, and hence must be in the *community interest*. Yet the expert retained by the applicant can put the application no higher than it is not going to be bad for the community. Mader does not say it will be positive. She does not say it will be *good*, or *beneficial*, or any other synonym for *in the community interest*. Her conclusion is simply that is (sic) neutral. Based on that alone, and even disregarding the earlier submissions here contained, the application *must* be-not *should* be-refused. (14, AHA1).

- Additionally, the AHA submits that if the best the Applicant can do is demonstrate a neutral impact, then the licence should be refused on a discretionary basis even if contrary to the above, there are some minor community benefits identified (15, AHA1).

The Applicant filed further submissions on 28 February 2022 which included a response to the AHA submissions detailed above, which can be summarised as follows:

- The submissions lodged on behalf of the AHA are “*no more than meritless attempts to poke holes in an application that warrants approval*” (24, A2).
- In relation to the criticisms of the Mader Report, the report focuses on potential harm in determining that the application is neutral from a harm perspective. It does not detail positive impacts associated with employment, community convenience, and choice. *If*,

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on balance, there is not an unacceptable increase in the level of risk of harm from the application, then it naturally follows that the remaining positive aspects of the proposal in terms of convenience, choice and economic impacts mean that the application is in the community interest and should be approved. This aligns with the comments of the Commissioner in Liquorland Mount Barker (26, A2).

- In relation to the survey, the Applicant submits that *“there can be no misunderstanding as to what was being proposed, namely a Cellarbrations packaged liquor outlet. This is an outlet which is not uncommon and with which most people will be familiar. It is of little to no relevance that people may not have been aware of the specific range that this Cellarbrations store will carry (27, A2).* Further, *“there is no set format for a survey- the survey as undertaken was appropriate and sufficient. As noted by the Commissioner in Liquorland Mount Barker, the survey’s relevance is that it reflects substantial engagement with the relevant community and it is not about everyone agreeing to support it- the question is about whether it will benefit a substantial proportion of the community.” (28, A2).* It is clear from the survey that a substantial proportion of the community as surveyed is in favour of a bottle shop of some kind, and that accordingly it is in the community interest (29, A2).
- In relation to the submissions made regarding the absence of support from South Australian producers, the Applicant submits that it would be highly unusual to provide a list of all of the range to be stocked and sold to evidence a focus on South Australian products, and that in any event, the Applicant has a long history through its supermarkets of having a focus on local products (30, A2).

Decision

The expert engaged by the Applicant has adopted a 2 kilometre radius in determining the Locality, as the area most likely to be affected by the grant of the application. I am satisfied that the Applicant has correctly identified the Locality, and in any case, this is not in dispute.

Undertaking 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.

It is clear from the Mader Report and the CIAF filed by the Applicant that many of the people who shop at the Shopping Centre live in and around the Locality.

The range of products the Applicant is proposing to provide is significant (approximately 1,500 lines of stock) and granting the application would be likely to result in an increase in convenience for some people residing in the Locality who wish to purchase packaged liquor products when shopping at the Shopping Centre, although convenience alone is not determinative of the application and is only one factor to be considered.

The number of people who will benefit from the additional convenience that would be provided by the proposed offering is limited (given the Supermarket in question is a Drakes Mini Supermarket) and is analogous to the situation in the *Hove* matter, as opposed to *Liquorland Park Holme* where the supermarket under consideration was considerably larger and busier.

The Applicant, through its lawyers, wrote to various stakeholders to ascertain their position in relation to the packaged liquor sales licence application. Responses were received from the Department for Health & Wellbeing; The City of Salisbury; and The Department of Premier and Cabinet (Aboriginal Affairs and Reconciliation). None of these stakeholders objected to

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the application (3.6, CIAF), and I further note that SAPOL have not objected to the application either.

The Applicant has provided evidence of engagement with the community and community support for the application, consisting of the results from a survey of 351 people, where over 98 percent of the people surveyed were either in support or neutral in relation to the application, with only 2% of people opposing it. Notwithstanding the AHA's submissions to the contrary, I consider that the survey is indicative that some members of the community support the application. I place some weight on this, but do not accept the assertion by the Applicant that "*it is clear from the survey that a substantial proportion of the community as surveyed is in favour of a bottle shop of some kind and, accordingly, it is in the community interest for the proposed outlet*" (29, A2). Community support alone does not satisfy the community interest test and is not determinative of the application.

I am satisfied that the proposed liquor store, if approved, will not negatively impact the activities conducted on any community buildings and facilities that are situated within the Locality.

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.

I have considered the potential for harm of granting the application in light of the risk mitigation policies, procedures and staff training the Applicant has identified that it will put in place to mitigate the risk of harm to the community.

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.*"

The observations of Gilchrist J 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

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matters might tip the balance in determining that it is not in the community's interest to grant the application.

It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the Locality is significantly lower than the State average and that the Locality is clearly not 'awash' with take away liquor facilities.

The Locality has a SEIFA ranking of 51st out of 71 Local Government Areas across South Australia and has significantly higher unemployment than the Greater Adelaide average. Further, the Locality has a higher proportion of Aboriginal and Torres Strait Islander people than Greater Adelaide, as well as lower average income levels. These are all factors which militate against the grant of the application and indicate the potential for increased risk of harm in the event the application were to be granted.

I have carefully considered the submissions by RACS, ANROWS and Professor Livingston, and consider that I can place some weight on these submissions, at least at a general level, despite the submissions to the contrary by the Applicant (16-22, A2). Alcohol causes significant harm in the community and it is for this very reason that alcohol is a highly regulated product.

I consider it is relevant that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets and this proportion has been steadily increasing.¹ I also consider that the following submission from ANROWS has general application and relevance:

Other recent research into the impact of alcohol related harm in families and alcohol consumption during the COVID-19 pandemic highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families (Farrugia & Hinkley, 2021). For example, women with carer responsibilities were found to be at greater risk of increasing alcohol consumption and alcohol-related harm. The findings indicate that there is a need for greater community awareness of the connection between alcohol consumption due to COVID-19 and the risk of alcohol-related harm.²

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

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

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

The proposed premises may provide some employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the relevant community. However, I place limited weight on this given that the grant of this application may result in reduced hours of employment for staff at other packaged liquor outlets in and around the Locality.

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

² ANROWS Submission at pp. 2-3.

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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.

I accept that general convenience and the desire for one-stop-shopping is a factor to weigh in the balance of whether an application might be in the community interest, however in my view, convenience does not equate to elimination of all inconvenience. The remarks of King CJ in *Lovell v New World Supermarket Pty Ltd* applied by Gilchrist J in *Hove Stp 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 centre could not be met simply because they would have to drive their cars a short distance from the general shopping centre in order to obtain their liquor. To attempt to provide access to a full range of liquor for everybody who is without the use of a motor car would result in a wholly undesirable proliferation of liquor outlets with consequent deterioration of the standards in the service of liquor which are necessary in the public interest. It is, however, a matter of degree.

In my view *Hove* is relevant and analogous to the present application in relation to the public interest considerations and the risk of setting an undesirable precedent. I consider that the grant of this application would be contrary to the community interest and the public interest and would set an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores and shopping centres. As noted above and in *Hove*, Parliament has chosen not to go down this path. There are already 3 PLSL outlets in the Locality which is ample to provide convenience to those residing in and around the Locality, and I particularly note that there is already a First Choice PLSL outlet located within the the Ingle Farm Shopping Centre site (i.e. it is within the site footprint and shares the same car park). This is a large packaged liquor outlet co-located with a large shopping centre with a significant number of tenancies, which is anchored by ALDI, Kmart, Coles, The Reject Shop and Best and less. Residents in the locality clearly already have the opportunity for ‘one-stop-shopping’.

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 Gilchrist J’s decisions in *Liquorland Park Holme* and *Hove*.

In my view granting this application is not in the community interest, as the main benefit that the grant of the present application would appear to confer (other than some employment, which may be offset by reduced employment hours elsewhere in the Locality), is some additional convenience to some members of the Locality who shop at the Shopping Centre and may desire to purchase packaged liquor from the proposed offering whilst doing their grocery shopping, as opposed to purchasing it from one of the other take away liquor options

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in and around the Locality. Additionally, given the fact the Supermarket is only small, the grant of the application would not provide a 'one stop shopping' experience in any case.

I am also mindful of the Objects of the Act, including the object to "*facilitate the responsible development of the licensed liquor industry...*". In my view, granting this application would not be consistent with the responsible development of the licensed liquor industry. Rather, granting this application would be a further step towards proliferation and would provide a precedent that would support the wholesale alignment of packaged liquor and shopping centres, which is not desirable in circumstances where the approval of this application will provide little more benefit to the community than providing even more convenience in a locality where consumers already have convenience and one-stop-shopping available, and there are 3 existing PLSL outlets.

Accordingly, the application for a Packaged Liquor Sales Licence at Walkley Heights is refused.

Dini Soulio
Liquor and Gambling Commissioner