

LICENSING COURT OF SOUTH AUSTRALIA

WOOLWORTHS LTD (BWS - WOODCROFT)

v

CARLETON INVESTMENTS PTY LTD, INDEPENDENT PUB GROUP PTY LTD, IPG MANAGEMENT (SF) PTY LTD AND AUSTRALASIAN OLIVE COMPANY PTY LTD AND JOHANI NOMINEES PTY LTD

JURISDICTION: Application for a Retail Liquor Merchant's Licence

FILE NO: 1910 of 2016

HEARING DATE: 1, 2, 3, 4 and 19 August 2016

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 23 September 2016

*Application for a Retail Liquor Merchant's Licence - Whether the licensed premises that already exist in the vicinity of the proposed facility are adequately catering for the public demand for takeaway liquor - Whether in the exercise of the Court's discretion the application should be refused - **Held:** that the applicant has not satisfied the prerequisites for the grant of a Retail Liquor Merchant's Licence for the proposed facility - **Held:** that had the position been otherwise the Court in the exercise of its discretion would not refuse to grant the licence - Ss 53, 57, 58 and 59 Liquor Licensing Act 1997.*

Mac's Liquor Woodcroft [1998] SALC 2

MC & TP Westley Cellarbrations [2008] SALC 16

Woolies Liquor Stores v Carleton Investments Pty Ltd (1998) 73 SASR 6

Woodcroft Plaza Liquor [2008] SALC 30

Carleton Investments Pty Ltd v J & B Development Investments Pty Ltd [2009] SASC 282

Thoday v Thoday [1964] P 181

Attorney-General v Kowalski [2015] SASC 123

Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern [2000] SASC 116; (2000) 76 SASR 290

Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCF 72

Woolworths Ltd v Drase Coosit Pty Ltd [2010] SASC 13; (2010) 106 SASR 146

First Choice Liquor [2015] SALC 1

BWS Seaford v Port Noarlunga Hotel, Cliff Avenue Liquor Store & Cellarbrations [2015] SALC 19

Woolworths Ltd v IPG Management (SA) Pty Ltd & Ors [2015] SASCF 97
BWS – Mt Barker [2016] SALC 33

REPRESENTATION:

Counsel:

Applicant: Mr S Walsh QC with Mr R D'Aloia

Respondent: Mr M Roder SC with Mr B Allen

Solicitors:

Applicant: Clelands Lawyers

Respondent: Wallmans Lawyers

- 1 This is an application for the grant of a Retail Liquor Merchant's Licence by Woolworths Ltd for a BWS store at a shopping centre known as Woodcroft Market Plaza.
- 2 Although the external features of the proposed premises are in place, some modifications will have to be made to accommodate the proposed bottle shop. Accordingly, Woolworths seeks a certificate under s 59 of the *Liquor Licensing Act 1997*.¹
- 3 This is the third occasion that there has been an application for a retail liquor merchant's licence at this shopping centre.
- 4 In *Mac's Liquor Woodcroft*² an application was made by Woolworths to establish a Mac's Liquor bottle shop in the shopping centre. The application was refused and that refusal was upheld on appeal.³
- 5 A decade later, the owner of the shopping centre made an application and it succeeded in this Court.⁴ That decision was reversed on appeal.⁵
- 6 Now, nearly another decade on, is the within application.
- 7 In *MC & TP Westley Cellarbrations* this Court examined in some detail the relevant authorities in connection with successive applications for a retail liquor merchant's licence at the same premises.⁶
- 8 In accordance with those authorities, notwithstanding the fate of the earlier applications, this case must be decided on its own merits by reference to the evidence presented. Whilst the outcome of the earlier applications is not irrelevant, principles such as *res judicata*⁷ and issue estoppel⁸ do not apply.

¹ Pursuant to s 59(1) of the Act the Court may having regard to the extent to which the proposed premises are uncompleted but may, instead, grant a certificate of approval approving the plans submitted by the applicant in respect of the proposed premises if satisfied that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the sale of liquor have been obtained.

² [1998] SALC 2.

³ *Woolies Liquor Stores v Carleton Investments Pty Ltd* (1998) 73 SASR 6.

⁴ *Woodcroft Plaza Liquor* [2008] SALC 30.

⁵ *Carleton Investments Pty Ltd v J & B Development Investments Pty Ltd* [2009] SASC 282.

⁶ [2008] SALC 16 at paras 8 to 13.

⁷ In *Thoday v Thoday*, Diplock LJ said that the doctrine of *res judicata* "prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, ie, judgment was given upon it, it is said to be merged in the judgment, or, for those who prefer Latin, transit in rem judicatum. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatum." [1964] P 181 at 197-198.

⁸ "The doctrine of issue estoppel is an extension of or analogue to *res judicata*. Its subject matter is not a cause of action decided by or merged in the prior judgment but an issue necessarily decided as

- 9 The application has drawn objections from the licensees of nearby hotels, the Woodcroft Tavern⁹ the Crown Inn,¹⁰ the Emu Hotel¹¹ and the St Francis Winery Resort Hotel¹² and from the owner of the shopping centre known as Woodcroft Town Centre.¹³
- 10 To succeed in this application Woolworths needs to satisfy the Court that the pre-requisites of ss 57 and 58 of the Act have been met and that in the exercise of the Court's discretion the licence should be granted.
- 11 Section 57 concerns matters 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; prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted.
- 12 None of these matters are at issue in this case.
- 13 What is in dispute is whether the pre-requisites provided by s 58(2) have been met and whether in the Court's discretion¹⁴ the licence should be granted.
- 14 Section 58(2) requires an applicant for this type of licence to satisfy the Court that:

“the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.”

Some general observations about the locality

- 15 Before discussing the evidence I make some general observations about Woodcroft and surrounding areas.
- 16 Woodcroft is a suburb of metropolitan Adelaide. It is located about 20 kilometres south of the central business district. By road it is connected to the city by the Southern Expressway and Main South Road through Panalatinga Road. Panalatinga Road commences just near the

fundamental to the decision giving rise to the prior judgment.” *Attorney-General v Kowalski* [2015] SASC 123 at para 97 per Blue J.

⁹ Carleton Investments Pty Ltd.

¹⁰ Independent Pub Group Pty Ltd.

¹¹ Independent Pub Group Pty Ltd.

¹² IPG Management (SF) Pty Ltd.

¹³ Australasian Olive Company Pty Ltd and Johani Nominees Pty Ltd.

¹⁴ Pursuant to s 53 of the Act the Court has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient.

junction of Main South Road and Old South Road and runs in a north south direction. It comes off the Southern Expressway through an exit lane. Relevantly, it is subject to an 80kmh speed limit.

- 17 Woodcroft is bordered to the north by Reynell Road, to the south by Bains Road, to the west by Panalatinga Road, and to the east by the Hills Face Zone.
- 18 About half way between Reynell Road and Bains Road is Pimpala Road. All of these roads run in an east west direction and they all bisect Panalatinga Road.
- 19 North of Reynell Road is the suburb of Reynella East. To the northeast is Happy Valley. To the west of Panalatinga Road are the suburbs of Old Reynella and Reynella and to the southwest, Morphett Vale.
- 20 On the western corner of intersection of Panalatinga Road and Bains Road is the Woodcroft Town Centre. It featured prominently in the earlier decisions and it is an important landmark in this case. I will return to it shortly.
- 21 Woodcroft Market Plaza is accessed from Pimpala Road. It is about 300 metres east of intersection of Pimpala Road and Panalatinga Road. It is about a kilometre and a half from the Woodcroft Town Centre. I will return to it shortly.
- 22 About three kilometres or so west of the intersection of Pimpala Road and Panalatinga Road is the Southgate Shopping Centre. It is a reasonably large shopping centre that is anchored by a Coles Supermarket, a Target store and includes a variety of stores. It also contains a retail liquor store trading under the Liquorland badge.
- 23 About two kilometres northeast of the intersection of Reynell Road and Panalatinga Road is the Happy Valley Shopping Centre on Kenihans Road. It is a moderately sized shopping centre anchored by a Foodland Supermarket. It contains about twenty retail facilities. It contains a retail liquor store trading under the BWS badge.
- 24 The Crown Inn is on Old South Road in Old Reynella. The St Francis Winery Resort Hotel is also in Old Reynella. Both are a few hundred metres northwest of the intersection of Reynell Road and Panalatinga Road.
- 25 The Emu Hotel is on Main South Road, Morphett Vale, about four kilometres southwest of the intersection of Panalatinga Road and Bains Road.

The locality

- 26 Without putting lines on a map, the relevant locality plainly includes the entire suburb of Woodcroft and extends further north, south and west into adjoining suburbs. Nothing turns on the precise limits of the locality because in a case such as this the Court must not only consider licensed premises within the locality but also those outside the boundaries of the locality that are serving the demand for takeaway liquor in the locality.¹⁵

The licensed premises in and about the locality

- 27 I now turn to consider the licensed premises in and about the locality. In doing so I rely upon the observations made during a view of the premises, the evidence given in this case and non-controversial findings made in other cases.

BWS Woodcroft Town Centre

- 28 This facility is located in the northern end of the Woodcroft Town Centre, about a kilometre or so southwest of the proposed store. It has dedicated on-site parking for its customers immediately adjacent to the front door. For now, for security reasons, it does not permit free access into and out of the store from the centre. It is a typical BWS store that could be described as a convenience store offering a reasonably good range of liquor.

Woodcroft Tavern - Woodcroft Town Centre

- 29 This facility is about 300 metres south of the BWS store. It trades under the Thirsty Camel badge. It has a large drive through that connects to a walk-in area. The walk-in bottle shop is of fair quality offering a moderate range of liquor. In connection with the application made in 2008 in respect of a retail liquor merchant's licence for a store at Woodcroft Market Plaza, evidence was given about imminent significant renovations and extensions to the Woodcroft Tavern and in particular a proposal to quadruple the size of the bottle shop with proposed improvement to the choice and quality of lines. In the Full Court this evidence was given some weight in determining to overturn the decision of this Court which was to grant the licence. Although there have been major renovations to the Tavern, those renovations did not include the bottle shop.

¹⁵ *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* [2000] SASC 116; (2000) 76 SASR 290 at 299 per Debelle J.

BWS - Happy Valley Shopping Centre

- 30 This facility is located in the shopping centre. It has dedicated on-site parking for its customers immediately adjacent to the front door. Although not inspected it can be assumed to be a typical BWS store of the type described above. It is about three and a half kilometres from the proposed store.

Crown Inn Hotel - Old Reynella

- 31 This trades under the Cellarbrations badge. It has a large drive through that connects to a walk-in area. The walk-in bottle shop is of good quality offering a broad range of liquor. It is about three kilometres from the proposed store.

Emu Hotel - Morphett Vale

- 32 This also trades under the Cellarbrations badge. It has in effect two stores. One is a dedicated bottle shop adjacent to the hotel's car park and at the edge of a small shopping centre. It is an attractive, well laid out facility. The other is a typical large drive through. Both are of good quality offering a broad range of liquor. It is about four and a half kilometres from the proposed store.

Liquorland Southgate Plaza

- 33 This is situated in the Southgate Plaza shopping centre. It is a typical, if not slightly larger than normal, Liquorland store that could be described as a convenience store offering a reasonably good range of liquor. It is about three kilometres from the proposed store.

Woodcroft Market Plaza and the Woodcroft Town Centre

- 34 I now return to the two key shopping centres in this case, Woodcroft Market Plaza and the Woodcroft Town Centre.
- 35 The Woodcroft Market Plaza is anchored by a Woolworths Supermarket. The centre was substantially expanded in 2015, resulting and an increase in the size of the supermarket from a little over 3,000 square metres to over 4,000 square metres and an addition of nearly 900 square metres of additional space for other facilities. It now comprises of the Woolworths, a chicken shop, a bakery, a beauty salon, a chemist, a newsagency, a hair salon, a café, a pizza outlet, an Anytime Fitness Centre and a real estate office. The car park has been renovated and levelled. Shade structures have been installed over a number of the car parks. It is a modern, well presented shopping centre.

36 The Woodcroft Town Centre is anchored by a Cheap as Chips store, an Aldi Supermarket and a Drakes Supermarket. It has about ten cafes, restaurants and takeaway food outlets. It has a chemist, numerous fashion stores, numerous health and beauty shops, a Flight Centre shop, a Health Partners Optical/Dental shop, a People's Choice Credit Union, SA Pathology, a Smokemart, a newsagency and post office, Woodcroft Orthodontics, a Medical Centre, a Caltex 24 hour Service Station, a Little Learners Child Care Centre, a bus terminal, a Community Centre/Library, as well as the Woodcroft Tavern and the Woodcroft BWS store.

The evidence of residents

37 I heard evidence from a number of residents who live in and about the locality. I set out a summary of their evidence.

Mr Craig Lucadei

38 Mr Lucadei is 35 years old. He has lived in the Woodcroft area for thirteen months. He is married with three young children. Only the eldest is at school. His wife works full time in the city. He works part time, mainly on weekends. During the week he is a stay at home parent looking after their children. He and his wife share a car. Sometimes she drives to the city. Sometimes she catches the bus.

39 Their eldest child goes to Woodcroft Primary, which is very near to the Woodcroft Market Plaza. He shops at the Woolworths store there often. He frequently does so when taking his child to or from school.

40 For now Mr Lucadei goes to the BWS Woodcroft Town Centre to service his takeaway liquor needs. He supports this application because it would be much more convenient to combine his liquor purchasing with his frequent trips to the Woodcroft Market Plaza.

41 He regards going to the Woodcroft Town Centre as an extra trip. He said between 3.00pm and 5.00pm, Panalatinga Road, which he would need to use to get there, can get quite busy.

42 He said that he does not use any of the other licensed facilities discussed earlier in these reasons.

Ms Norah Beston

43 Ms Beston lives in a retirement village in Woodcroft. She lives with her partner. They have lived in the village for three and a half years. She and her partner are retired. They usually drink wine with their evening meal. For now they purchase that wine from the BWS store at the Woodcroft

Town Centre. She also buys wine on-line through Cellarmasters. She picks up the wine from the BWS store. She and her partner do not use the other liquor facilities identified. They shop at the Woolworths at Woodcroft Market Plaza several times a week. They find shopping at that centre very convenient. It is within walking distance.

- 44 She supports this application because she would like the convenience of being able to combine her liquor shopping with her frequent attendances at the centre.

Ms Tori Pavlovich

- 45 Ms Pavlovich is 21 years old. She lives in the general locality and has done so for two years. She lives with her partner. She works full time as a beautician at A Scent of Beauty, which is the beauty salon in the Woodcroft Market Plaza shopping centre.
- 46 She said that she frequently uses the Woodcroft Market Plaza shopping centre, especially the Woolworths shop there.
- 47 For now she buys takeaway liquor from the Woodcroft Tavern in the Woodcroft Town Centre. She regards it as a special trip. She said it takes her about five minutes to drive there. She said that it would be much more convenient for her to buy liquor at the Woodcroft Market Plaza.
- 48 She said that she did not use the Crown Inn Celebrations, the Liquorland, or the BWS store at Happy Valley.

Mr Douglas Tilley

- 49 Mr Tilley is retired. He lives with his wife in the Living Choice Retirement Village, about half a kilometre west of the Woodcraft Plaza shopping centre. He has done so for seven years. Prior to that he lived for about 25 years on Pimpala Road, about a kilometre further west in Old Reynella. He knows the area well and said that he has noticed a lot of change. He spoke of the development of the retirement villages, the conversion of a former mushroom farm into housing allotments and the redevelopment of the Woodcraft Plaza shopping centre. He said that over the years the population had increased quite significantly as had traffic density.
- 50 He described the Living Choice Retirement Village. He said that it is a village that contains about 150 homes. He said that another 40 units are under construction with plans for another 60 to 70 to be built within the next three years. He said that the population of the village will double in three years' time. He said that for now there are about 220 living there. He is the President of the residents' committee.

51 He said that he and his wife almost exclusively use the Woodcroft Market Plaza. He spoke glowingly of the redevelopment. He said that he and his wife used to drive to the shopping centre but now they prefer to walk and carry a little trolley. He said that he was aware that many of the residents of the Living Choice Retirement Village use the Woodcroft Market Plaza shopping centre.

52 He said that he and his wife like to have alcohol in the home. For now he buys it from a variety of sources, including the BWS store at the Woodcroft Town Centre. He said that it would be much more convenient if he could buy his liquor at the Woodcroft Market Plaza. He said that a number of other people in the village who he knows regularly use BWS store at the Woodcroft Town Centre would be very grateful if this application succeeded so that they could combine their liquor shopping with their food shopping.

Mr Christopher Fielder

53 Mr Fielder is 41 years old. He lives in Woodcroft with his wife and two children, both of whom go to Emmaus Catholic Primary. That school is very close to the Woodcroft Market Plaza.

54 He has lived at his current address for six years.

55 He is self-employed. His wife works three days a week. On the days when she works, he leaves work early to pick up the children from school.

56 He goes to the Woodcroft Market Plaza shopping centre about five times a week. He said that he drives past the centre at least once a day and his children go to school basically across the road.

57 For now he buys liquor on-line through Cellarmasters and picks it up from the BWS store at the Woodcroft Town Centre. He does not like the car parking there. He also buys it from various other facilities, including a number discussed earlier, as well as from others outside of the locality.

58 He supports this application because in his opinion the shopping centre should have a bottle shop. He said that it would be convenient for him to combine his takeaway liquor purchases with his frequent use of the Woodcroft Market Plaza.

Ms Sharon Clarke

59 Ms Clarke is in her mid-thirties. She lives in Woodcroft with her husband and two children, both of whom go to Emmaus Catholic School. She has lived in the Woodcroft area for over fourteen years.

- 60 Her husband works full time as a manager in corporate services. She runs an admin team for an electrical and security company. She has held that position for almost ten years. She works in Torrensville. She drives to work. She and her husband work long hours.
- 61 She said that she does her food shopping at the Woodcroft Market Plaza shopping centre regularly every week. She said that sometimes the family go there a couple of times extra a week to do bits and pieces. She is a member of the Anytime Fitness Gym.
- 62 For now she does their liquor shopping at a Dan Murphys near her work. She does not use the BWS store at the Woodcroft Town Centre very often because for her it is out of the way. She goes there once or twice a month. She and her husband occasionally use the drive through at the Woodcroft Tavern. She has infrequently used a number of the takeaway liquor facilities discussed earlier.
- 63 She supports this application because she would prefer to combine her liquor shopping with her food shopping at the Woodcroft Market Plaza rather than making a special trip.

Ms Bronty Marsh

- 64 Ms Marsh lives in Old Reynella with her husband and two children. She has lived there for about seven and a half years. They have lived extensively in Reynella and Woodcroft.
- 65 She spoke of the expansion of retirement villages in the area.
- 66 She works in administration in the real estate agency in the Woodcroft Market Plaza. Her husband works as a school teacher at Reynella East College.
- 67 She generally looks after the household needs for her family. She does all of her food and grocery shopping at the Woolworths at the Woodcroft Market Plaza. She said that the parking at the Woodcroft Market Plaza is really good since it has been redeveloped.
- 68 For now she buys her takeaway liquor from the BWS store at the Woodcroft Town Centre and the drive through at the Woodcroft Tavern. She also buys on-line through Cellarmasters.
- 69 She supports this application because it would be a lot more convenient for her to purchase the family's liquor needs at the same place that she shopped rather than having to go somewhere else to do so.

The planners

Mr Graham Burns

70 Mr Burns prepared a report and gave evidence in connection with the previous case in 2008. In the report that he then wrote, he described the Woodcroft Town Centre as:

“...a high order neighbourhood centre which is, to some extent, of smaller scale to a district centre given the range and number of retail and related facilities in it, and also functions as the locality’s main shopping precinct due to its central location, the range and number of retail outlets, provision of associated goods and services available, and its public transport focus.”¹⁶

71 In his more recent report Mr Burns stated that both the Woodcroft Market Plaza and the Woodcroft Town Centre had expanded over the last decade. He noted that there were fifteen vacant tenancies at the Woodcroft Town Centre. He thought that the parking at the Woodcroft Town Centre was not ideal, in that in some areas, it slopes. He was critical of the internal layout of the Woodcroft Town Centre.

72 He was much more complimentary of the Woodcroft Market Plaza. In his opinion as a result of the recent improvements and extensions to the Woodcroft Market Plaza, it could no longer be said that the Woodcroft Town Centre functioned as the main shopping precinct in the locality.

73 He said that in his earlier report he had failed to give sufficient prominence to the fact the adjacent to the Woodcroft Market Plaza there are two schools, Woodcroft Primary and Emmaus College. In terms of the relative significance of the Woodcroft Market Plaza he thought that their proximity was important and indicated that it was a prominent centre.

74 He also thought it was significant that there were a number of substantial retirement villages in the vicinity of the Woodcroft Market Plaza. He noted that the two closest villages had been constructed since the last hearing before this Court.

75 He agreed that the roadwork within the general locality provides easy and convenient movement.

Mr Marcus Rolfe

76 Mr Rolfe agreed with the statement contained in Mr Burns’ earlier report that the Woodcroft Town Centre performs like a district centre performs.

¹⁶ Ex R9 at p 17.

He thought it was significant that it has a mix of activities and land use that extends beyond the retail floor space. In doing so he identified the community centre and library, the bus interchange, the hotel, the child care centre and the medical centre. He said that he expected that the centre plays quite a significant role in the lives of residents in that community, by not only meeting their day to day shopping needs, but also by meeting needs in respect of things that people need less frequently, such as visiting a doctor; going to the post office, placing children in child care; and the broader function of using facilities such as the community centre and library. He said that these offerings went beyond what would be expected of normal neighbourhood centre.

77 He thought that there were significant differences between the Woodcroft Market Plaza and the Woodcroft Town Centre. He said that Woodcroft Market Plaza is physically much smaller; it does not have the broad range of land use activities just described; it has less shopping options and has about half the floor area.

78 There was consensus between the planners that in conformity with what is happening in the State generally, those living in the locality are on average, older than they were when the more recent application was heard, but overall, its population is a bit younger than the State average.

79 There was also consensus that the census data supports the view that within the locality a higher proportion of households have two or more motor vehicles, compared to the State average, and a lower proportion have no vehicles or one vehicle only.

Other witnesses

Mr Leigh Kentwell

80 Mr Kentwell lives in St Peters. He is the proprietor of the Anytime Fitness at the Woodcroft Market Plaza. He worked at that facility in 2010 and maintains regular contact with it.

81 He said that he chose the site because he recognised the potential for custom, based on people combining their shopping and visiting the gym in the one visit. He thought that he could tap into an existing market. He said that the gym had met that expectation and was operating profitably. He said that it has 1200 members and has on average 200 visits per day. He said that most who visit the gym live in the Woodcroft area.

Mr Matthew Holland

82 Mr Holland is Woolworths' Senior Regional Property Manager. He is a very experienced operator. He has worked for Woolworths for many

years. His main areas of responsibility are South Australia and the Northern Territory. He looks after Woolworths' existing portfolio of supermarkets, liquor businesses and petrol outlets.

- 83 In his role he needs to be on top of weekly sales figures, business data and market analysis concerning Woolworths' various businesses.
- 84 He said that Woolworths had invested a significant amount of money in the redevelopment of its store at the Woodcroft Market Plaza. He said that since the renovations had been completed there had been an eight per cent increase in trade. He said that the renovated store at Woodcroft Market Plaza was now one of the largest stores in Woolworths' fleet. It has just under 15,000 transactions per week. It plainly is a popular store.
- 85 He confirmed what he has said in other cases of the changing shopping habits of customers, of more frequent and smaller shops, and of a strong community desire to one-stop shop.
- 86 He said that Woolworths had made this application because, having created the appropriate-sized supermarket for the catchment, that is, a full line supermarket, it should be supported by a BWS convenience liquor outlet. He said that in this way customers can get all of their everyday needs, including packaged liquor, when they do their shopping.
- 87 He said that the proposed store would carry the premium BWS range.

Mr Colin Steinert

- 88 Mr Steinert has been involved in property development for about 30 years. He is the director and owner of the company that owns the property at the Woodcroft Market Plaza. He purchased the land on which the Woodcroft Market Plaza stands in 1994. He confirmed that the original construction took place in 1997.
- 89 He spoke of a redevelopment in 2007, resulting in a 320 square metre extension, and a further redevelopment in 2014 to early last year, resulting in an additional 1800 square metres.
- 90 He said that he visits the centre about once a month. His sense of it is that the renovated car park has proved to be very popular and that customers to the centre come from a wide radius.
- 91 He said that it is obvious that people from the retirement villages are visiting the centre.
- 92 He spoke of a well-developed proposal to have a medical centre at the shopping centre.

- 93 He confirmed that his company was an applicant for a liquor licence, the more recent application to the Court. He said that he made the application because he wanted to expand the centre and felt that a liquor store was something that the users of the centre wanted. He acknowledged that previous development proposals for a medical centre that was spoken of in the application made in 2008 had not proceeded.
- 94 He said that he remains of the view that a bottle shop would complement the existing tenancies within the shopping centre.

Mr James Scott-Mackenzie

- 95 Mr Scott-Mackenzie is a Business Development Manager for Woolworths. He has held that position for about four and a half years. He has extensive experience in the liquor industry.
- 96 He is familiar with market analysis of liquor stores. He said that the trading area of the BWS store at the Woodcroft Town Centre is slightly larger than standard. He said that although it is in a good state of repair, it is not what Woolworths would put on the ground if it was to build a store today.
- 97 He said that the drive through and walk-in area at the Woodcroft Tavern is a little bit old and tired. He said that it was quite different to the appealing refurbishment that had taken place elsewhere at the Woodcroft Tavern that included a dining room, gaming room, sports room and function area.
- 98 He also spoke of the contrast with the Cellarbrations facilities at the Crown Inn Hotel and the Emu Hotel which he thought were much more appealing.
- 99 He spoke of the Happy Valley shopping centre and the BWS there. He thought that the shopping centre was fairly old and dated. As for the BWS store, he said that the fixtures and fittings and fit out of the store did not conform to the current style.
- 100 He said that although there was an impression that BWS stores are fairly standard, store managers have a lot of flexibility in tailoring their individual stores to meet the local demand.
- 101 He spoke of Woolworths' commitment to compliance issues. I need not take that evidence any further. There has been consistent evidence placed before this Court to the effect that Woolworths is a very good operator of retail liquor facilities.

102 He expressed the opinion that the proposed store fitted in with the one-stop shopping expectations of the modern day shopper.

Ms Jennifer Hinton

103 Ms Hinton is the Centre Manager and Director of leasing at the Woodcroft Town Centre. She is responsible for maintaining the centre, dealing with its tenants and their requirements and with the operations of the centre generally.

104 She said that as a result of the liquidation of a national store brand there was a vacancy in an area of 840 square metres next to the Aldi store at the centre. She said that overall, in the speciality area, the vacancy rate was thirteen per cent.

105 She said that the centre receives on average 40,000 visitations a week and that does not include visits to the facilities outside of the main centre.

106 She said that a survey revealed that the vast majority of the centre's visitors come from Morphett Vale and Woodcroft (collectively between 70 and 75 per cent).

107 She said that in addition to the normal buses, the centre provides a community bus service that comes to the centre every Friday, doing a loop every hour picking up people from places like the various retirement villages in the locality.

108 She spoke of an extension to the shopping centre that was undertaken in 2013 that resulted in an increase of 35 per cent in available space and more extensive parking.

The parties' submissions

The applicant

109 Mr Walsh QC, counsel for Woolworths, pitched its case on a number of alternate, but complimentary bases.

110 First, he submitted that the decision of the Full Court in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*¹⁷ has significantly changed the approach to the proper application of s 58 of the Act. He said that had that provision been applied in the manner in which it has now been interpreted, the results in the earlier cases concerning applications for retail liquor merchant's licences at the Woodcroft Market Plaza would have been different and the applications would have been granted.

¹⁷ [2015] SASFC 72.

111 In *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*, Parker J, with whom the other members of the court agreed, qualified what Doyle CJ had said in *Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd*¹⁸ about the comparison between s 38 of the 1985 Act and s 58(2) of the current Act and said as follows:

“I stress that s 58(2) re-focuses the test from a question as to whether the demand in a locality can be ‘met’ without unreasonable inconvenience by existing local retail facilities to require an assessment by the licensing authority of whether the existing facilities ‘adequately cater’ for that demand. The term ‘adequately cater’ has altered the focus of the public demand test to require consideration of the public’s expectations as to the accessibility of retail liquor services.

The extent to which existing facilities cater for the contemporary shopping habits of the public as a whole, or significant sections of it, is an important element of the ‘adequately cater’ test. The degree of difficulty and inconvenience that the public, or a significant section of it, will suffer, if an application is refused, is an important element of that test. However, it is not the sole criterion. Contemporary patterns of family, work, and social life that rely on the convenience of one-stop shopping are also relevant considerations. In that respect, the current provision has effected a significant relaxation of the former test.”

112 Mr Walsh focussed on the words “significant relaxation of the former test”. He said that in conformity with that significant relaxation and a strong community desire for the convenience of one-stop shopping, as evidenced by the witnesses who gave in this case, the previous applications for a retail liquor merchant’s licences at the Woodcroft Market Plaza should have succeeded and that this application, for that reason alone, should succeed now.

113 Next, he said that in any case community expectations of a one-stop shopping experience had grown since the earlier applications. He made reference to the judgment of Kourakis J (as he then was) in *Woolworths Ltd v Drase Coosit Pty Ltd*. There Kourakis J said:

“There are authoritative statements of this Court that mere convenience, including a preference for ‘one-stop shopping’, is not enough to establish that existing premises do not adequately cater for the public demand for ‘off premises’ alcohol. However, the identification of public demand, which is not adequately catered for, is a question of fact; it must be decided both on the evidence presented in a particular case and by the Licensing Court’s assessment of contemporary community standards. The concept is

¹⁸ (1998) 73 SASR 6 at 11-12.

not a static one. On most applications for a retail liquor licence the existence of some unmet demand is unlikely to be seriously disputed; an applicant is unlikely to risk the investment of a substantial amount of capital if there were not a significant demand. The more difficult question will usually be where the balance should be struck between allowing the public demand to be more adequately catered for and the maintenance of community standards concerning the responsible promotion and sale of liquor.

Recent Australian social history shows that facilities which one day are thought to be no more than matters of convenience quickly become, or at least are soon thought to be, necessities. The routines of contemporary Australian life are such that the facility of one stop shopping is of great importance to working people. The development of district and regional shopping centres reflects that social fact.”¹⁹ (footnotes omitted)

- 114 I understood him to contend that in 2016 that a significant section of the public would expect a shopping centre such as the Woodcroft Market Plaza to have a bottle shop and that it was unreasonable to expect the large number of persons using that shopping centre, who otherwise would be having a one-stop shopping experience, to have to travel elsewhere to meet their takeaway liquor needs.
- 115 He sought to distinguish the decision of this Court in *BWS Seaford v Port Noarlunga Hotel, Cliff Avenue Liquor Store & Cellarbrations*²⁰ wherein this Court rejected an application by Woolworths for a Retail Liquor Merchant's Licence at the Seaford Meadows Shopping Centre. In rejecting that application, this Court was strongly influenced by the fact that the Seaford Meadows Shopping Centre is a relatively small centre comprising a Woolworths supermarket and some speciality shops and food outlets and that it was only about two kilometres north of the Seaford Central Shopping Centre, which was much larger and which contained a takeaway liquor facility that was virtually identical to that which was proposed. That decision was effectively confirmed by the Full Court, which refused leave to appeal.²¹
- 116 He said that the Woodcroft Town Centre was smaller than the Seaford Central Shopping Centre and the Woodcroft Market Plaza was bigger than the Seaford Meadows Shopping Centre.
- 117 He said that in *BWS Seaford* it was also significant that there was another stand-alone bottle shop about a kilometre from the proposed

¹⁹ [2010] SASC 13 at para 55; (2010) 106 SASR 146 at 158.

²⁰ [2015] SALC 19.

²¹ *Woolworths Ltd v IPG Management (SA) Pty Ltd & Ors* [2015] SASCFC 97.

store. By contrast, apart from the BWS store at the Woodcroft Town Centre, the nearest stand-alone bottle shop was much further away.

118 He then contended that in any event, there had been a dramatic change in circumstances since the earlier applications to this Court that warranted the grant of this application.

119 He noted that proposed imminent renovations and extensions to the Woodcroft Tavern's bottle shop that influenced the Full Court's decision to disallow the previous application had not proceeded and that nearly a decade on, that takeaway facility was even more tired and unappealing than it had been.

120 He spoke of the substantial expansion and refurbishment of the Woodcroft Market Plaza and its significantly improved car park. He asked me to accept Mr Burns' evidence that those changes meant that it had become a much more significant centre and that there had been a corresponding diminution of the significance of the Woodcroft Town Centre. He noted the expectation that a medical centre would be built at the centre in the near future.

121 He spoke of the aging population and the imminent increase in the number of retirees moving into the area adjacent to the shopping centre. He said that their number was significant enough for the Court to be concerned about the difficulties they would experience in having to travel further than the Woodcroft Market Plaza to buy takeaway liquor.

122 He submitted that there was no basis to exercise the discretion unfavourably. He said that the last retail liquor merchant's licence granted in respect of this locality was in 1992 and that the time had come to grant another.

The objectors

123 Mr Roder SC, for the objectors, challenged the notion of a contemporary expectation of a one-stop shop experience. He said that it was based on the premise that people wanted to go to a shopping centre once a week to purchase all of their groceries, fresh food and liquor at the same time. He said that the reality is that many people in the community instead choose to make multiple smaller shopping purchases. He said that they make a significant number of trips to buy bread and milk and the like. He said that evidence in this case and in other cases before this Court does not support the idea of one-stop shop. He said that in fact it speaks against it. As I understand him, he rhetorically asks: What is the difference between one more trip to buy some bread, milk or takeaway and a short trip to go to a bottle shop?

- 124 He said that for those for whom it was imperative to have a one-stop shop experience, they could do so at the Woodcroft Town Centre, Southgate or the Happy Valley Shopping Centre and combine their liquor shopping with their other shopping.
- 125 He said that witnesses' desire to combine shopping came down to no more than brand loyalty. He said that a number of the witnesses in this case identified themselves as Woolworths' people.
- 126 He submitted that in light of the consistent way in which s 58(2) of the Act has been applied since the introduction of the 1997 Act, this case would not even get close meeting the necessary pre-requisites.
- 127 As to the judgment in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*, he submitted that in the end, all the case really stands for is that in a regional centre the size of Arndale, there was a community expectation that it would contain a retail liquor store and that a retail liquor licence needed to be granted to meet that expectation.
- 128 He said that the Woodcroft Market Plaza shopping centre is no more than a small neighbourhood shopping centre, comprising of a full line supermarket and about ten other retail facilities. He said that was of a similar scale to the Seaford Meadows shopping centre.
- 129 He said that all that the evidence established was that some members of the community would like to have a bottle shop where they do their supermarket shopping. He said that that falls well short of establishing a community expectation that every shopping centre should have a bottle shop.
- 130 As for the suggested change in circumstances since the last unsuccessful application, he submitted that the general mix and range of tenancies at the Woodcroft Market Plaza shopping centre is pretty much the same as it was and that it barely reaches neighbourhood status. In contrast, he said that the Woodcroft Town Centre continues to operate at a level which is nearly equivalent to a district centre level.
- 131 He submitted that I must give appropriate weight to the previous decisions of the Full Court, in which the previous applications were comprehensively rejected.
- 132 He submitted that the locality is characterised by a high level of mobility and car ownership. He said that there was no statistical evidence indicating a relatively high number of elderly people living in the area.
- 133 He said that the locality is characterised by ease of movement, especially for those travelling in a north-south direction. He said that Panalatinga

Road is less heavily trafficked than it was in 2008 because of the advent of the Southern Expressway. He said that Panalatinga Road is not a road which is a significant barrier to traffic, such as roads like South Road and Marion Road that carry significantly greater volumes of traffic.

134 He said that it is unrealistic to think that the Woodcroft Town Centre does not play an important role in the lives of a representative cross-section of people within the locality.

135 Finally, I understood him to contend that if I was satisfied that the s 58(2) test had been met, in terms of discretion, I should be concerned at the prospect of three BWS stores in a straight line between the Happy Valley Shopping Centre, the Woodcroft Town Centre and the Woodcroft Market Plaza.

Analysis

136 I commence with the witnesses.

137 I thought that all of the resident witnesses gave credible evidence. I accept their evidence. The common thread is that they are loyal Woolworths' customers who find the Woodcroft Market Plaza and the Woolworths supermarket there to be very convenient and they would find it even more convenient if they could combine their takeaway liquor purchasing with their visits to that centre.

138 As I have said elsewhere, Mr Holland is an impressive witness. I accept his evidence. The same can be said of Mr Kentwell, Mr Steinert, Mr Scott-Mackenzie and Ms Hinton.

139 I did not get the sense that there was much disagreement between the planners, although I was puzzled by some of the evidence of Mr Burns in respect of the differences between the opinions he expressed in connection with the earlier application as opposed to those he expressed in connection with this application.

140 The evidence establishes that the Woolworths store at Woodcroft Market Plaza is very popular, as is the centre generally.

141 But whilst the supermarket and the centre are bigger than they were, in the end, the centre comprises of no more than a large supermarket and a handful of retail outlets. It is notable that in Mr Burns' earlier report he recorded that the Woodcroft Market Plaza comprised of a Woolworths Supermarket, a chemist, a florist, a newsagency, a bakery, a takeaway chicken shop, a pizza outlet and a Eva Com Computers. Thus since then, the supermarket is bigger. The florist and Eva Com Computers have

gone. And, they have been replaced by a café, a hair salon, a beauty salon, an Anytime Fitness Centre and a real estate office.

142 By comparison although it is bigger, in terms of the range of facilities on offer there, not much has changed. It is a significantly smaller shopping centre than the Woodcroft Town Centre.

143 I place little weight on the proposed medical centre. As with previous proposed developments at this site, it may not proceed.

144 I think Mr Burns' earlier description of the Woodcroft Town Centre remains accurate today. I find that it is a high order neighbourhood centre that borders on being a district centre. I find that it offers a broad range of retail and related facilities. In light of the community centre and library, the bus interchange, the Woodcroft Tavern, the BWS store, the child care centre and the medical centre, I find that it plays a significant role in the lives of residents in the locality.

145 As was the case in the Seaford Meadows Shopping Centre case, I find that any of the residents of the locality who use the Woodcroft Market Plaza would on occasions, notwithstanding the attractiveness and convenience of that centre, find it necessary to go to places like the Woodcroft Town Centre to satisfy some of their retail and other needs. As with that case, I cannot approach my consideration of this application from the premise that if I granted the application, for most, the Woodcroft Market Plaza would be a one-stop shop.

146 I find that the roads within the general locality enable easy and convenient movement. My impression is that travelling within the locality by car is relatively easy. The evidence establishes that this is a mobile community.

147 I accept that some of the older residents who do not drive and who live near to the Woodcroft Market Plaza would very much like to buy takeaway liquor there. But I expect many of them would take advantage of the community bus that frequents the Woodcroft Town Centre and would use the array of shops and services there, including the BWS store and the Woodcroft Tavern.

148 None of the residents complained about the range of liquor available in the locality. Their complaint was about convenience.

149 I now turn to consider the various submissions advanced by the applicant support of the application by reference to these findings.

150 I commence by repeating what I said about *Woolworths Ltd v Fassina Investments Pty Ltd & Ors* in *BWS-Mt Barker*:

“Whilst the decision in that case requires a re-evaluation of the approach taken in cases under the former legislative regime, it does not stand for the proposition that the absence of a takeaway liquor facility in a shopping centre means that other proximate takeaway liquor facilities are not adequately catering for the public’s demand for liquor for consumption off licensed premises.”²²

151 I reject the submission that the test formulated in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors* would have led to a different outcome in the earlier applications. Parker J expressly acknowledged with apparent approval the observation made by Doyle CJ in *Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd* that the change in the language of the current provision will generally not produce a different result than what would have occurred under the 1985 provision. The added emphasis that Parker J gave to the consideration of the public’s expectations as to the accessibility of retail liquor services does not suggest to me that the earlier decisions would have been decided differently.

152 In *Woolies Liquor Stores v Carleton Investments Pty Ltd* Doyle CJ dismissed the appeal for the following reasons:

“The judge found, and to my mind this was crucial, that the distance involved in travelling to Woodcroft Town Centre was ‘far from great’. It was about 1.8 kilometres each way from the applicant's site. He found that having to travel to the Woodcroft Town Centre to get liquor did not involve ‘significant difficulty’. I should mention that the Booze Brothers outlet provided a range of liquor, surroundings and service that, in themselves, adequately met the demand of the population in the locality, subject to the issue of accessibility.

On the judge’s findings, the case really came down to a case in which the residents in the vicinity of the appellant’s proposed site had a strong desire to carry out as much of their local shopping as possible at Woodcroft Shopping Centre. Travelling to Woodcroft Town Centre involved making a journey that they did not want to make. But Woodcroft Shopping Centre was not capable of meeting all of their regular shopping needs, and there would be other reasons for them to make a journey further afield. The distance to the Woodcroft Town Centre was not great, and the difficulty in getting to that centre or to other centres was not significant.

In my opinion, on those factual findings the decision of the Licensing Court was correct. Under those circumstances it could not be said that the existing premises did not adequately cater for the public demand for liquor for consumption off licences

²² [2016] SALC 33 at para 143.

premises. My own impression, based on what I have heard and read, is that the existing premises did adequately cater for the public demand for liquor.”²³

153 These reasons are consistent with a finding that in 1998 there was not a community expectation that the Woodcroft Market Plaza shopping centre would contain a bottle shop.

154 In allowing the appeal in *Carleton Investments Pty Ltd v J&B Development Investments Pty Ltd* Kelly J said:

“In summary, the evidence did not disclose that there had been any substantial changes to the shopping centre which might justify the conclusion that residents other than those in the near vicinity of the shopping centre utilised that centre for all of their regular shopping needs. In concluding that for those residents the necessity of travelling further afield for their liquor was inequitable and a hardship the Judge did not give sufficient weight to the evidence that the Woodcroft Town Centre was 1.8 kilometres away and less than three minutes, by road, from the respondent's shopping centre. In that respect nothing had changed since the date of the last application in terms of distance.

When properly analysed the evidence before the Judge really established that nothing of any material relevance had changed since the date of the last application. The evidence of population growth for the reasons referred to already could not have assisted the respondent. The case for the respondent distilled down to the desire of some of the residents living in the northern half of the locality defined by the trial Judge for the convenience of one stop shopping and the desire to avoid perceived parking difficulties at the Woodcroft Town Centre. As Doyle CJ said in *South Eastern Hotel Pty Ltd v Woolies Liquor Stores* all of us put up with parking difficulties at times when shopping. Such difficulties are a feature of our society.”²⁴ (footnotes omitted)

155 Again these reasons are consistent with a finding that in 2008 there was not a community expectation that the Woodcroft Market Plaza shopping centre would contain a bottle shop.

156 I now turn to consider the submission that community expectations of a one-stop shopping experience has grown since the earlier applications.

157 This submission assumes a growing groundswell of public expectation of a one-stop shopping experience. That notion is not reflected by the evidence given in some recent applications made before this Court.

²³ (1998) 73 SASR 6.

²⁴ [2009] SASC 282.

158 That evidence reveals a recent surge in the number of large format destination stores offering a vast array of liquor products at very competitive possible prices that I spoke of in *First Choice Liquor*. There I wrote:

“In metropolitan Adelaide there has always been a range of retail takeaway liquor facilities. Within that range have been large facilities offering a large range of products. But, until relatively recent times, probably coinciding with the grant of the retail liquor merchants licence that led to the establishment of a Quaffers store at Unley Road, Malvern, which has since become a First Choice store, the concept of a series of brand name large format destination stores offering a vast array of liquor products at very competitive possible prices did not exist.

Over the last ten years or so that has changed. There are now in metropolitan Adelaide four First Choice Stores, situated at Malvern, Collinswood, Hindmarsh and Golden Grove and ten Dan Murphys Stores, situated at St Peters, Norwood, Glenunga, Marden, Welland, Pasadena, Highbury, Marion, Noarlunga and Golden Grove.

Although based on a slightly different model the Fassina Group also offer some large retail facilities. For some time it has had a large store at Somerton Park, offering a large range of liquor. It now has large stores in Walkerville and Camden Park.”²⁵

159 Whilst some of these large format destination stores are located near shopping centres, many are not. The consistent evidence before this Court is that many of these stores are very popular and have substantial turnovers. This indicates that many people in the community are willing to make a special trip to travel to a bottle shop to purchase takeaway liquor in circumstances that do not form part of a one-stop shopping experience.

160 Moreover, I think there is something in what Mr Roder said about the inconsistency between the so called one-stop shop notion and the recurring evidence of shoppers in this and other cases of making multiple trips to shops to make small purchases.

161 Plainly some in the community have a strong expectation of a one-stop shopping experience. I accept that some would regard it as essential to be able to combine their takeaway liquor purchases with their grocery and food shopping. But I do not get the sense that the number or people feeling this way or that the depth of the feeling about this, has increased.

²⁵ [2015] SALC 1 at para 206-208.

If anything, the success and continued growth of brand name large format destination stores would suggest that it may have diminished.

- 162 Accordingly, I do not think it can be said that community expectation of a one-stop shopping experience has changed in the way that Kourakis J spoke of in *Woolworths Ltd v Drase Coosit Pty Ltd*.
- 163 I therefore reject the submission that there has been an increase in community expectations of a one-stop shopping experience that would justify the grant of a retail liquor merchant's licence in this case.
- 164 I now turn to the submission that there has been a dramatic change in circumstances since the earlier applications to this Court.
- 165 Compared to 2008, the Woodcroft Market Plaza shopping centre is bigger, it is more attractive and it has a better car park. The Woolworths' supermarket in that centre is bigger and it is a bit busier. That said overall there is not much change to the number and range of facilities on offer.
- 166 Since that time the Woodcroft Town Centre has also grown and it has a more car parks.
- 167 Very little, if anything has been done to the Woodcroft Tavern drive through and walk-in. I expect that they are much the same as they were eight years ago, only a bit more tired.
- 168 I expect that the BWS store at Woodcroft Town Centre is much the same as it was. The same is likely to be true of the BWS store at Happy Valley and the Liquorland at Southgate. The takeaway facilities at the Crown Inn and the Emu Hotel have since changed to the Cellarbrations badge. If anything, those facilities will have improved.
- 169 The population in the locality has increased. But not by much. The population within the locality is older. But not by much.
- 170 The traffic conditions are basically the same. If anything, the advent of the Southern Expressway has reduced the load on Panalatinga Road.
- 171 Whilst the Woodcroft Market Plaza shopping centre is a modern attractive facility and the Woolworths supermarket is a large, modern and comprehensive store, the centre remains as it was, and that is, no more than a neighbourhood shopping centre.
- 172 As was the case eight years ago, the Woodcroft Town Centre is a much bigger complex. It is a high order neighbourhood centre bordering on being a district centre. It offers a broad range of retail and related facilities. It plays a significant role in the lives of residents in the locality.

- 173 For the reasons explained above, the community expectation of a one-stop shopping experience has not increased. If anything, the preparedness of the community to make special trips to buy takeaway liquor has over the last ten years increased.
- 174 Whilst I made the point at the outset that this case must be decided on its own merits by reference to the evidence presented, it must be said that there is a striking similarity between this case and the one conducted by J&B Development Investments Pty Ltd in *Woodcroft Plaza Liquor*.²⁶ Kelly J described the applicant's case in *Woodcroft Plaza Liquor* as distilling "down to the desire of some of the residents living in the northern half of the locality defined by the trial Judge for the convenience of one-stop shopping and the desire to avoid perceived parking difficulties at the Woodcroft Town Centre."²⁷
- 175 This case could be similarly described. In essence, it is based on the strong desire by those living in close proximity to the proposed premises to be able to combine their takeaway liquor purchases with their use of the Woodcroft Market Plaza, and in particular, its Woolworths' store.
- 176 In *Woodcroft Plaza Liquor* Kelly J said that very little in a relevant sense had changed since the date of the previous unsuccessful application. In my view, that remains so in connection with this application. The Woodcroft Town Centre is still less than two kilometres away and less than five minutes, by road, from the proposed premises. That centre contains two perfectly adequate takeaway liquor facilities that are different to each other and there is no evidence that suggests that the range of liquor that they are offering is not adequately meeting the public's needs.
- 177 Although it would plainly be very convenient for many of the shoppers using the Woodcroft Market Plaza to have the option of buying takeaway liquor from that centre, by reference to contemporary stands, it continues to be within reasonable to expect them to take a five minute drive to purchase takeaway liquor elsewhere. The level of inconvenience associated with that journey is minimal. It is not a difficult trip.
- 178 Whilst I accept that a number of the retirees living in the retirement villages near the Woodcroft Market Plaza may not drive, this cohort are unlikely to be "time poor". As I noted above, many of them could be expected to take advantage of the community bus that frequents the Woodcroft Town Centre.

²⁶ [2008] SALC 30.

²⁷ *Carleton Investments Pty Ltd v J & B Development Investments Pty Ltd* [2009] SASC 282 at para 48.

- 179 For those who think it is essential to combine their takeaway liquor purchases with their grocery and food shopping, the Woodcroft Town Centre enables that experience. Indeed, it has two different supermarkets and two different takeaway liquor facilities to meet that expectation.
- 180 In my view, the existing facilities in and about the locality are adequately catering for the public demand for take away liquor.
- 181 I find that the test postulated by s 58(2) has not been met.
- 182 Had the test been met, I would not exercise the Court's very wide discretion under s 53 of the Act to refuse the application. Even with a third BWS store in the locality, there is a sufficient range of takeaway liquor facilities in and about the location to allay any concern of the type that I had in *BWS-Seaford*.²⁸
- 183 The Woodcroft Tavern has been able to hold its own against the BWS store in the Woodcroft Town Centre. If it came to it, it would be expected to continue to hold its own even if there was another BWS store at the Woodcroft Market Plaza.
- 184 The facilities at Southgate, the Crown Inn and the Emu Hotel are all a reasonable distance away. The Cellarbrations and Liquorland badges have an entrenched place in the takeaway liquor market such that I would not anticipate that if the licence had been granted they would face demise.
- 185 Thus, I would not anticipate that the grant of the licence would cause an imbalance between the various types of liquor facility available in and about the locality.

Conclusions

- 186 On two earlier occasions the Full Court rejected applications for a retail liquor merchant's licence at the shopping centre that is the subject of the within application. Whilst this case must be decided on its own merits the outcomes of the earlier applications are not irrelevant.
- 187 Notwithstanding the reformulation in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors* of the test postulated by s 58(2) of the Act, the outcomes in the earlier applications would have been the same.
- 188 Since the more recent case was decided, there has not been a material change in the community expectation of a one-stop shopping experience.

²⁸ [2015] SALC 19.

- 189 Although many of those using the Woodcroft Market Plaza would find it very convenient to combine their takeaway liquor purchases with their use of that centre, the five minute drive that it would take to purchase takeaway liquor elsewhere, when measured by reference to contemporary standards, is not unreasonable.
- 190 Although there have been improvements to the Woodcroft Market Plaza since the last application, overall the material circumstances have not changed.
- 191 In the words of the Act, the existing facilities in and about the locality continue to adequately cater for the public demand for liquor for consumption off licensed premises. Accordingly, a new licence at the proposed premises is not necessary to satisfy that demand.
- 192 If it had been, I would not have exercised the Court's very wide discretion under s 53 of the Act to refuse the application.
- 193 The application is refused.