Local Cellars Parafield Gardens (No. 2) **[2025] SALC 69**

LICENSING COURT OF SOUTH AUSTRALIA

LOCAL CELLARS PARAFIELD GARDENS (NO. 2)

JURISDICTION:	Application for Review of a decision of the Commissioner
CASE NO/S:	LC-25-00007
HEARING DATE:	30 July 2025
JUDGMENT OF:	His Honour Judge BP Gilchrist
DELIVERED ON:	14 August 2025

CATCHWORDS:

Application to reopen a judgment upholding the decision of a delegate of the Liquor and Gambling Commissioner to refuse an application for the grant of a packaged liquor sales licence – The judgment of the Court contained a misstatement of fact regarding the applicant's ownership of a supermarket adjacent to the proposed premises – Whether the misstatement materially affected the outcome – ***Held*** *that the misstatement did not affect the outcome – application dismissed – Licensing Court Rules 2012, Uniform Civil Rules 2020.*

Local Cellars Parafield Gardens [2025] SALC 60
G v H [1994] HCA 48; (1994) 181 CLR 387
Henderson v State of Queensland (2014) 255 CLR 1; [2014] HCA 52
Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston [2024] SALC 108

REPRESENTATION:

Counsel:

Applicant:	Mr C Jacobi KC and Mr I Rice
Other Parties:	Mr J Roder and Mr B Allen

Solicitors:

Applicant:	Griffins Lawyers
Other Parties:	Wallmans Lawyers
	Ryan & Co Solicitors

1 On 10 July 2025, this Court published reasons for decision in connection with an application seeking a review of the decision of a delegate of the Liquor and Gambling Commissioner.[1]

2 The application before the delegate was for the grant of a packaged liquor sales licence to permit the applicant to sell liquor for off premises consumption, out of premises adjacent to a Foodland Supermarket in the Martins Plaza Shopping Centre, Parafield Gardens. On review, this Court upheld the delegate's decision to refuse the application.

3 The Court's reasons at para 2, identified the applicant as Antonio Romeo Siciliano. But it erroneously added that he was the proprietor of the Foodland Supermarket. That statement is incorrect. Mr Siciliano is not the proprietor of the Foodland Supermarket in Martins Plaza.

4 The fact that the Court's reasons contain this error is a matter of considerable regret, and I unreservedly apologise to all parties for the error.

5 By letter dated 22 July 2025, the Deputy Clerk of the Licensing Court was advised by the applicant's lawyers of the error. I treat the letter as an application to recall and reopen the decision made by this Court in this case.

6 The *Licensing Court Rules 2012* contain no express provisions that permit this Court to re-open a case. But rule 4(3) provides:

> In any circumstances not provided for or fully provided for by these rules, the general principles of the practice of the Supreme Court and the rules of that Court in its civil jurisdiction may be adopted and applied at the discretion of the Court with such modifications as the circumstances may require.

7 The general practice of the Supreme Court and the rules of that Court are now embodied in the *Uniform Civil Rules 2020* (UCR).

8 Rule 186.1 of the UCR provides:

> **Power to set aside or vary judgment**
>
> (1) The Court may at any time correct an error in a judgment.
>
> (2) The Court may, if satisfied that the interests of justice so require—
>
> (a) vary a judgment;
>
> (b) set aside a judgment and reopen a proceeding; or

[1] *Local Cellars Parafield Gardens* [2025] SALC 60.

(c) set aside a default judgment by consent.

9 I am therefore satisfied that it is within the power of this Court to correct the error, to reconsider my decision having corrected the error, and if the interests of justice so require, to come to a different conclusion to that which I previously reached.

10 To put into context, what I treat to be the applicant's submissions as contained in the letter referred to above, it is necessary to set out relevant passages of the Court's earlier reasons as follows:

> [97] The submission put by the respondents regarding the applicant's failure to adduce evidence of the trading data pertaining to the performance of the Foodland Supermarket particularly resonates in this case, given Mr Tisato's involvement in preparing the Submission.
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> [98] In *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston*,[2] this Court noted that Mr Tisato included in the submission that he prepared in support of applications for packaged liquor sales licences for proposed premises trading under the Local Cellars badge in Tanunda and Angaston, the trading figures for supermarkets adjacent to both proposed premises.
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> [99] In connection with the supermarket adjacent to the proposed premises at Angaston, this Court noted as follows:
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> > His evidence of a $160,000 of average weekly sales, 5,400 average weekly transactions, and a $30 average transaction basket, does not indicate a particularly busy supermarket that conducts frequent large scale purchases. Based on other cases heard in this Court, this average basket size suggests that many who shop there, are using it to "top up" rather than using it for a large weekly shop.
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> [100] The Court then went on to observe:
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> > But it is apparent from the small basket size and overall turnover of the Angaston Foodland Supermarket, that their use of the supermarket appears to be very much in the nature of passing trade. That is hardly surprising, given the much larger supermarkets that are available to them in Nuriootpa and Tanunda. There is no reason to suppose that this cohort would treat the proposed premises any differently, given the ample take away liquor options near supermarkets in their own towns. In other words, contrary to the submission advanced by the

[2] Ibid.

> Plush Group, it is likely that their use of the proposed premises will be in the nature of passing trade.

[101] The significance of this finding becomes apparent later in the judgment where it was said:

> The Tanunda Foodland Supermarket is quite large and its transactional history suggests that it is a busy supermarket. The Barossa Co-op is part of a formidable shopping complex in Nuriootpa. Both are near take away liquor facilities, which in the case of Tanunda is about to be enhanced by the recent grant of a packaged liquor sales licence there. These facts permit the drawing of the inference that all are meeting the aspiration that many contemporary Australians share of wanting to combine their take away liquor purchases as part of a one stop shopping experience. The relatively short driving distances from Angaston to Tanunda, and from Angaston to Nuriootpa, enables the drawing of the inference that many of the residents of Angaston and the surrounding areas will be regularly and contentedly using these shops and take away liquor facilities to fulfil that aspiration.

[102] In this case, the size of Hollywood Plaza permits the drawing of the inference that for many of those living in the vicinity of Martins Plaza, it is meeting the aspiration that many contemporary Australians share of wanting to combine their take away liquor purchases as part of a one stop shopping experience.

[103] If the applicant was to contend that notwithstanding this, the grant of this application would meet that aspiration, it might have been expected that it would have produced the trading data for the Foodland Supermarket to demonstrate that it is a busy supermarket. Afterall, given the findings by this Court in *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston*, Mr Tisato must have been aware of the importance of producing the trading data of a supermarket in connection with an application for a packaged liquor sales licence that in part is based upon the proximity of the proposed premises to a supermarket. I think it is significant that no such evidence was adduced.

[104] I accept that the evidence of car visitations to Martins Plaza of the order of between 13,000 to 14,000 a week indicates that the shopping centre is visited by many. But these numbers include those who visit there to attend the take away food facilities, the doctor, the pharmacy, the financial services adviser, the local MP and the gym. This cohort might not necessarily also attend the Foodland Supermarket, the

> Asian-style supermarket or the Indian grocer, and if the application succeeds, may not necessarily be expected to visit the proposed premises.
>
> [105] On the evidence presented, the inference cannot be drawn that the Foodland Supermarket is especially busy. In my opinion, the evidence does not displace the inference that for many of those living in the vicinity of Martins Plaza, Hollywood Plaza is contentedly providing them with the opportunity to combine their take away liquor purchases as part of a one stop shopping experience and that it will continue to be so if the application is granted.
>
> [106] I therefore respectfully agree with the delegate's findings that Martins Plaza does not provide for "one stop shopping" and that it was "not a thriving centre providing a full range of services required for residents' major weekly or fortnightly shopping needs."[3] (Footnotes omitted)

11 I now set out relevant extracts from the letter to the Deputy Clerk, that I treat as submissions to the effect that the correction of the error should lead to a withdrawal of the decision previously reached. It provides:

> We respectfully make this request as it appears that the Courts findings at [97], [102] and [103] resulting in its finding at [107] were all informed by the finding at [2] (and [103] as it related to the factual circumstances of the applicant in Local Cellars Angaston).
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> The position is different to the matter of *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston* [2024] SALC 108 (**Local Cellars Angaston**) as the Applicant for the Packaged Liquor Sales licence was Scarlett Zetland Pty Ltd whose parent company, Eudunda Farmers Ltd, was the owner/operator of Foodland Angaston (see Applicant's response to Objectors' submissions dated 14 September 2023, Exhibit A1) (as was the case with Local Cellars Tanunda).
>
> As the proceedings have concluded, we do <u>not</u> seek to make any further submissions and simply rely upon the submissions already made and evidence submitted.

12 The objectors contend that notwithstanding the error, the orders should be confirmed, as there was other compelling evidence that supported the conclusions set out above. They point out that included in the evidence was a copy of the lease between Martins Plaza Shopping Centre Pty Ltd and Francat Pty Ltd,[4] which it submitted discloses that the applicant was

[3] Ibid.
[4] Exhibit O4.

provided with the trading figures of the Foodland Supermarket, such that my observations about Mr Tisato remain valid.

13 In response, Mr Jacobi KC, senior counsel for the applicant, submitted that the focus of the Court's reasoning was that Mr Tisato did not provide the Foodland Parafield Gardens' trading figures to the delegate. He submitted that notwithstanding the obligations imposed by the lease as between Francat Pty Ltd and Martins Plaza Shopping Centre Pty Ltd, there was no evidence that Mr Tisato knew anything about those trading figures.

Consideration

14 Whilst my erroneous finding that the applicant was the owner of the Foodland Supermarket at Martins Plaza readily enabled the findings that "it might have been expected that it would have produced the trading data for the Foodland Supermarket to demonstrate that it is a busy supermarket" and that "it was significant that the evidence of the trading figures for the Supermarket were not put into evidence", the objectors are correct in pointing out that there was other evidence that collectively also enabled those findings.

15 First, there was the submission that Mr Tisato prepared in support of the application before the delegate in which Mr Tisato described the Foodland Supermarket as follows:

> Co-tenant Foodland Parafield Gardens **is a full-line supermarket** of some 1200 m^2, part of a 93-strong supermarket brand with the highest market of any share of any independent supermarket brand in Australia. …[5] (Emphasis added)

16 Second, there were the submissions made to the delegate by the lawyers acting for the objector, GM Hotels Pty Ltd. They included:

> The Applicant says the application should be granted as it will have a positive impact and allow patrons visiting the shopping centre to complete a "one stop shop"…
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> … The Applicant asserts that the Foodland supermarket is the largest in the locality. However, **we are not provided with any meaningful figures relating to average weekly sales, average weekly transactions and an average transaction basket**. …
>
> …
>
> The Objector submits that the Commissioner should find that the proposed shopping centre is not of a standing where it would be reasonable for there to be an expectation from members of the

[5] Ex A1 at 31.

> community for there to be a liquor store to facilitate one stop shopping.
>
> The Applicant **has not provided any trading figures or other evidence to suggest otherwise**. …[6] (Emphasis added)

17 Third, is the response that the applicant's lawyers made to these submissions. It contained no evidence of the Foodland Parafield Gardens' trading figures. Instead, it stated: "it seems the Objectors have forgotten that this is an application for an independent retail liquor outlet. It is not an application made by the owner/operators of the supermarket like one has with Woollies supermarkets and BWS outlets."[7]

18 Finally, there is the lease between Martins Plaza Shopping Centre Pty Ltd and Francat Pty Ltd that was tendered in evidence in the application for review heard by this Court.[8] It is not disputed that Francat Pty Ltd is the proprietor of the Foodland Parafield Gardens. It is also not disputed that the applicant has an interest in Martins Plaza Shopping Centre Pty Ltd.

19 Clause 3.4.3 of that lease provides that Francat Pty Ltd is obliged to "keep and maintain all the books of account, records and supporting data relating to Gross Sales for at least 9 months after the expiration of the year to which they relate."

20 Clause 3.4.4 of the lease then goes on to provide that it "must make available the information referred to in Clause 3.4.3 for examination by the Lessor at the Lessee's registered office, as and when requested by the Lessor and within a reasonable time after a request is received."

21 These facts invite consideration as to whether further facts arrived at by drawing inferences should be made. This process was described by Brennan and McHugh JJ in *G v H*[9] as follows:

> An inference is a tentative or final assent to the existence of a fact which the drawer of the inference bases on the existence of some other fact or facts. The drawing of an inference is **an exercise of the ordinary powers of human reason in the light of human experience**; it is not affected directly by any rule of law.[10] (Emphasis added)

22 To this I add the observations of Gageler J in *Henderson v State of Queensland*,[11] where he said:

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[6] Ex A1 at 297, 298 and 299.
[7] Ex A1 at 319.
[8] Ex O4.
[9] [1994] HCA 48; (1994) 181 CLR 387.
[10] Ibid at [4]; 390.
[11] (2014) 255 CLR 1; [2014] HCA 52.

> The process of inferential reasoning involved in drawing inferences from facts proved by evidence adduced in a civil proceeding cannot be reduced to a formula. The process when undertaken judicially is nevertheless informed by principles of long standing which reflect systemic values and experience. One such principle, forming "a fundamental precept of the adversarial system of justice", is that "**all evidence is to be weighed according to the proof which it was in the power of one side to have produced**, and in the power of the other to have contradicted".[12] (Emphasis added) (Footnotes omitted).

23 Mr Tisato's statement in the submission that the Foodland Parafield Gardens is a full-line supermarket must be taken as reflecting his belief that it was important to identify the status of the supermarket. In making this statement, it is reasonable to infer that Mr Tisato was not only acting on instructions from the applicant, but he also had some information about the performance of the Foodland Parafield Gardens.

24 Given the judgment published in *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston*,[13] Mr Tisato must have been aware of the potential importance of the Foodland Parafield Gardens' trading figures. It is reasonable to infer that Mr Tisato discussed this with the applicant. The objector's submission to the delegate that the applicant had not provided meaningful figures relating to Foodland Parafield Gardens' average weekly sales, average weekly transactions, and an average transaction basket, and what flowed from that, must be taken as putting the applicant's lawyers on notice that this was an important issue. It is reasonable to infer that the applicant was made aware of these submissions. It is inherently unlikely that he did not appreciate what was at stake here. Objective evidence in the form of the Foodland Parafield Gardens' trading figures that established that it was a busy supermarket would have not only neutralised the objector's submission, but it would also have significantly enhanced the applicant's case. Such evidence would have gone a fair way in supporting the inference that the grant of the packaged liquor sales licence in connection with licensed premises within the Martins Plaza Shopping Centre would meet the aspiration that many contemporary Australians share of wanting to combine their take away liquor purchases as part of a one stop shopping experience.

25 Finally, there are the terms of the lease as between Martins Plaza Shopping Centre Pty Ltd and Francat Pty Ltd. From this it can be inferred that if the applicant wished to obtain the trading figures of the Foodland Parafield Gardens, he could have, and probably did do so.

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[12] Ibid at [91]; 21.
[13] [2024] SALC 108.

26 With these matters in mind, it is reasonable to draw the inference that in connection with the proceedings before the delegate, there was a general discussion involving the applicant about the performance of the Foodland Parafield Gardens and its trading figures, and a decision was made not to rely upon them, because they would not have advanced the applicant's case.

27 All of these are findings that this Court would make.

28 Thus, even without the erroneous finding that the applicant owned the Foodland Parafield Gardens, the other evidence and the inferences that the evidence invited to be drawn, would have resulted in this Court finding that the applicant "might have been expected … [to] have produced the trading data for the Foodland Supermarket to demonstrate that it is a busy supermarket", and that "it is significant that no such evidence was adduced".

29 It follows that the erroneous finding about the ownership of the Foodland Parafield Gardens did not affect the ultimate outcome.

30 I therefore do not think there is any basis for reopening the decision previously published. The application to reopen is therefore dismissed.

31 I conclude by once again expressing my regret that the earlier published decision contained the error stating that the applicant was the owner of the Foodland Parafield Gardens. I now rely upon rule 186.1(1) of the UCR to correct the error in the previously published decision, such that an amended decision will be published.