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

LICENSING COURT OF SOUTH AUSTRALIA

LOCAL CELLARS PARAFIELD GARDENS

JURISDICTION:	Application for Review of a decision of the Commissioner
CASE NO/S:	LC-25-00007
HEARING DATE:	28 and 29 April 2025
JUDGMENT OF:	His Honour Judge BP Gilchrist
DELIVERED ON:	10 July 2025*

CATCHWORDS:

Application for review – A delegate of the Liquor and Gambling Commissioner refused an application for a packaged liquor sales licence to permit the applicant to sell liquor for off premises consumption, out of premises adjacent to a Foodland Supermarket (the Supermarket) in the Martins Plaza Shopping Centre – The applicant is the owner of the Supermarket – The delegate found that the locality extended beyond the suggested two kilometre radius and included the area in the vicinity of the much larger shopping centre, known as Hollywood Plaza, about 2.7 kilometres to the north – The delegate rejected the applicant's submission that the Supermarket was a full-line supermarket and that the addition of the bottle shop would result in Martins Plaza meeting the contemporary expectation of consumers and shoppers to complete a "one stop shop" for their food and alcoholic beverage needs – The delegate also rejected the submission that there would be a contemporary community expectation that within the retail offerings contained within Martins Plaza there would be a take away liquor facility – The delegate relied upon these findings in concluding that the grant of the application was not in the community interest – The delegate went on to find that the grant of the application was not in the public interest – On review the applicant contended that the delegate erred in extending the locality to include Hollywood Plaza and that her rationale for the extension, being the fact that Hollywood Plaza was a large size shopping centre and the fact it clearly "offers one stop shopping and would have significant pulling power" was not evidence capable of supporting that conclusion – The applicant then submitted that the delegate erred in her findings about and characterisation of Martins Plaza and her view that it was a relatively small shopping centre that drew analogies to cases where packaged liquor sales

licences had been refused – The applicant submitted that the Court should find that the proposed premises are to be located in a substantial suburban shopping centre configured around a substantial car park that is considerably larger than the common suburban or local centres, and that the proposal would result in a welcome addition to a shopping centre located in an area with no identifiable risk of alcohol related harm such that it was in the community interest and the public interest for the licence to be granted – ***Held*** *that although the delegate erred in finding that the locality included the area around Hollywood Plaza, the error was of no consequence as the delegate was right to give considerable weight to the facilities on offer at Hollywood Plaza as part of her evaluation as to whether the grant of the application is in the community interest –* ***Held*** *that it is significant that the applicant failed to adduce evidence of the trading data pertaining to the performance of the Supermarket –* ***Held*** *that without that evidence the inference cannot be drawn that the Supermarket is especially busy. Absent that evidence the inference is 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 –* ***Held*** *that the delegate was right to conclude that the grant of the application was not in the community interest or the public interest –* ***Held*** *that the application for review is dismissed – Liquor Licensing Act 1997, Community Titles Act 1996.*

*** As amended – see Local Cellars Parafield Gardens (No. 2)* [2025] SALC 69

Heysen Hotel (SA) Pty Ltd v Fassina Investments Pty Ltd [2025] SALC 3
Wooli Mart Pty Ltd t/as Together Mart v Australian Hotels Association (SA Branch) [2025] SALC 59
Parafield Plaza Supermarket [2023] SALC 73
Martins Plaza Liquor Store [2005] SALC 2
Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston [2024] SALC 108
BWS Mount Barker [2023] SALC 31
Cellarbrations Walkley Heights [2023] SALC 49
Hove Sip n Save [2021] SALC 7
Liquorland (Australia) Pty Ltd (Park Holme) [2020] SALC 37
Woolworths Ltd v Fassina Investments Pty Ltd and Ors [2015] SASCFC 72
Liquorland McLaren Vale (No. 3) [2023] SALC 2

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 This is an application seeking a review of a decision by a delegate of the Liquor and Gambling Commissioner refusing an application for a packaged liquor sales licence to permit the applicant to sell liquor for off premises consumption, out of premises adjacent to a Foodland Supermarket (the Foodland Supermarket) in the Martins Plaza Shopping Centre (Martins Plaza), Parafield Gardens.

2 The applicant, Antonio Romeo Siciliano, has an interest in Martins Plaza Shopping Centre Pty Ltd which is the owner of Martins Plaza.[1]

3 An application for a packaged liquor sales licence is a designated application[2] under the *Liquor Licensing Act 1997* (the Act). Such an application can only be granted if the relevant licensing authority determines that it is in the community interest to do so.

4 This Court has set out the requirements of that test in the recent decisions of *Heysen Hotel (SA) Pty Ltd v Fassina Investments Pty Ltd*[3] and *Wooli Mart Pty Ltd t/as Together Mart v Australian Hotels Association (SA Branch)*[4] and I will not repeat them here. It is sufficient to refer to those decisions and to note that the applicant must comply with the Community Impact Assessment Guidelines (the Guidelines) in establishing that the grant of the application is in the community interest and that in evaluating the application the licensing authority must:

- have regard to that nature of the business conducted or to be conducted under the licence;
- identify the relevant locality, as this informs what is the relevant community;
- consider the harm that the grant of the application might cause to the community as a whole or a group within the community due to excessive or inappropriate consumption of liquor;
- have regard to the cultural, recreational, employment or tourist impacts that the grant of the application might have;
- reflect upon the social impact that the grant of the application might have in the locality and the impact that it might have on the amenity of the locality; and
- have regard to the objects of the Act.

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[1] Corrected for the reasons explained in *Local Cellars Parafield Gardens (No. 2)* [2025] SALC 69.
[2] An application for a packaged liquor sales licence is deemed to be a "designated application" by s 4 of the Act.
[3] [2025] SALC 3.
[4] [2025] SALC 59.

5 The Guidelines provide that the following must be considered in identifying the relevant locality:

- the area around the applicant's premises/proposed premises which is most likely to be affected by the grant of the application, and

- the area from where the applicant draws or expects to draw their customers, having regard to the nature of the premises/proposed premises.

6 The Guidelines then go on to provide that when considering the area from where the premises/proposed premises draws or expects to draw their customers, applicants should consider:

- any target customer groups or identifiable customer base and the areas they reside in; and

- anything that may attract customers to the premises/proposed premises and the areas from which these customers may be based, for example – where a premises/proposed premises is located/to be located on a main road, applicants may need to consider any areas which are serviced by that main road and include those areas in their locality, or – where a premises/proposed premises is located/to be located in or near to a shopping complex, applicants may need to consider the customer base of the shopping complex and where those customers reside and include those areas in the locality of their premises/proposed premises.

7 The Guidelines then state that as a guide that the locality of a premises in the Adelaide Metropolitan Area would generally be considered to be the area within a two kilometre radius of the site of the relevant premises.

8 The licensing authority must also be satisfied that the pre-requisites of s 57 of the Act have been met. 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. It was not contended in this case that these were issues that the Court needed to be concerned with.

9 Finally, the applicant needs to satisfy the licensing authority that the grant of the application is in the public interest.

10 The applicant's proposed business is a convenience style stand-alone bottle shop trading under the Local Cellars badge, with a trading area of about 178 square metres in a store of about 218 square metres. It is proposed that an area in the Foodland Supermarket will be hived off to create the space to be occupied by the proposed premises. It will stock a broad range of beer, cider, wine, pre-mix, spirits, liqueurs and non-alcoholic beverages and be open from 9:00 am to 8:00 pm, seven days a week. It is asserted that premises trading under the Local Cellars badge offer a significant point of difference to other national managed branded liquor stores because of a local and South Australian focus.

11 Martins Plaza abuts Martins Road, Parafield Gardens and can be accessed from Martins Road and to the south-west, from Shepherdson Road. It is a moderately sized shopping centre, about 20 kilometres north of the Adelaide CBD. It has just under 20 tenancies and about 220 carparks. It is anchored by a Foodland Supermarket which the applicant described as a full-line supermarket. The other tenancies include an Asian-style supermarket, a bakery, an Indian grocer, a takeaway food shop, a pizza bar, and restaurant, as well as professional and other services, such as doctor, a dentist, a barber, a pharmacy, financial services, a tattooist, a local MP and a gym. Adjacent to it is an OTR petrol station.

12 Immediately to the rear of Martins Plaza on Shepherdson Road is the Holy Family Catholic School, Parafield Gardens Primary School, Good Start Early Learning, and Eden Academy.

13 Martins Road is a moderately sized road with single lanes in both directions. It commences at the junction of Port Wakefield Road, just south of Globe Derby Park. Whereas Port Wakefield Road runs essentially from south to north, Martins Road travels in a north-easterly direction, to the north of, and parallel to Salisbury Highway. As it continues in a north-easterly direction it bisects Kings Road before passing in the vicinity of the Hollywood Plaza Shopping Centre, about 2.7 kilometres away from Martins Plaza.

14 Hollywood Plaza Shopping Centre is a large shopping centre that has amongst its tenancies a large Coles supermarket, a large Woolworths supermarket and a Target store. It also contains a bottle shop trading under the BWS badge.

15 Immediately to the south-east of the intersection of Martins Road and Kings Road, on the opposite side of the road from Martins Plaza, about 1.1 kilometres away, is the Slug 'N' Lettuce Tavern. Amongst its offerings is a stand-alone bottle shop trading under the BWS badge.

16 About 1.9 kilometres to the south east of Martins Plaza on Salisbury Highway, is the Parafield Plaza Centre, which was the subject of a decision

of this Court in *Parafield Plaza Supermarket*[5] and which contains a bottle shop trading under the Liquorland badge.

17 About two kilometres to the north-west of Martins Plaza, on Port Wakefield Road, Bolivar, is the Whitehorse Inn Hotel. Amongst its offerings is a two-lane drive through bottle shop trading under the Cellarbrations badge, that has an express lane and a browse lane. Because of the configuration of roads it is about 4.7 kilometres by car from Martins Plaza.

18 About 4.5 kilometres to the south-east of Martins Plaza, on Kings Road is the Parafield Airport Liquor Store (PALS). In this Court, in earlier proceedings concerning Martins Plaza, it was described as one of the biggest liquor outlets in this State that has a very large range catering for patrons who are prepared to travel considerable distance to use it.[6] There is no reason to doubt that this remains so.

19 A couple of kilometres further to the south-east of Martins Plaza on Bridge Road is a bottle shop trading under the Fassina badge.

20 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 granting of the application." They provide that as part of the accompanying submission an applicant is "required to identify the geographic area from which they expect to draw customers." The guidelines suggest as a guide that the locality of licensed premises in the Adelaide Metropolitan Area is the area within a two kilometre radius of the site of the relevant premises.

21 The applicant filed in support of its application a comprehensive submission that was prepared by Mr Paul Tisato (the Submission). As was observed 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 is a self-employed management consultant with extensive experience as a retailer and supplier of goods and services to retailers. He did not purport to be an expert planner. He has been involved in the liquor industry for 20 years and helped to develop the Local Cellars brand."[7]

22 The Submission contended that in this case the locality was the area within a two kilometre radius of the site of the relevant premises. It submitted that its primary target customer group were the adult patrons of Martins Plaza. It submitted that its secondary target customer group were those customers living within the locality and its surrounds who do not currently using the

[5] [2023] SALC 73.
[6] *Martins Plaza Liquor Store* [2005] SALC 2.
[7] [2024] SALC 108 at [16].

facilities at Martins Plaza because of their inability to complete a "one stop shop" due to the absence of a take away liquor facility there.

23 The Submission contended that the characteristics of the Parafield Gardens suburb comprised the most relevant portion of the locality, however defined, and that it is likely to be "the area most likely to be affected by the grant of the application", as described in the guidelines.

24 The Submission identified the Slug 'N' Lettuce Tavern, the Whitehorse Inn Hotel and the Liquorland Parafield Plaza as being the only relevant licensed premises in the locality.

25 The Submission included the results of a customer petition in support of the application which has been signed by over 100 people and a letter of support signed by 12 traders who operate businesses in Martins Plaza Shopping Centre.

26 The Submission submitted by reference to the SA Health website (Drug & Alcohol Services), SA Community website (community service organisations and support groups) and Health Info Net website (Aboriginal and Torres Strait Islander community health support services) that the demographic profile of the locality did not indicate any at-risk groups or subcommunities existed within the locality, with the exception of the age demographic of persons under 18 years of age. In relation to this cohort it submitted that its management plan contained policies and procedures to ensure that the risk to minors is eliminated.

27 The Submission contained an analysis and commentary as regards the various community buildings, facilities, and areas of interest in the locality, and contended that these did not indicate any particular matters of concern.

28 The Submission contended that the applicant's security measures and commitment to implement robust harm minimisation strategies and responsible service of take away packaged liquor sales would negate any perceived harm to the community. It noted that the applicant is an experienced business owner and a highly respected member of the community with a vested interest in ensuring that the proposed premises is a responsibly run liquor store.

29 The Submission acknowledged that the demographic and community profile of the locality Socio-Economic Indexes for Areas (SEIFA) was lower than the State averages, but submitted that in fact the locality was not disadvantaged, but rather, it was ethnically diverse and working class. The Submission added that the usefulness of SEIFA data was questionable.

30 The Submission then pointed to what it contended were positive features of the locality profile and contended that the community was young, healthy and working class, with lower tertiary education attainment level, expectedly where English is a second language of a higher number of its residents. It submitted that the lower weekly household income was balanced by lower monthly mortgage repayments, such that disposable household income was relatively in line with all of South Australia.

31 The Submission acknowledged that this Court had refused an application for a retail liquor merchant's licence in 2005.[8] This refusal was under the now redundant "needs test". The Submission contended that in any event, there had been significant population growth in the locality over the last 20 years.

32 The applicant provided a summary as to why the grant of the application was in the community interest that included the following:

- There are no "at risk groups" or sub-communities have been identified within the locality.
- The locality is not "awash" with packaged liquor outlets and the density of licences to population does not go close to the densities that currently exist elsewhere in South Australia.
- The site for the proposed premises is not visible from any recreational areas, places of worship or community facilities.
- There is no identifiable detrimental effect that the grant of the application would have on the community.
- The proposed premises would meet the contemporary expectation of consumers and shoppers to complete a "one stop shop" for their food and alcoholic beverage needs as it is directly next to the Foodland Supermarket, which it described as a full-line supermarket.
- The relevant community would benefit economically, socially and culturally with the addition of a contemporary, well ranged and well stocked liquor store with a hyperlocal focus in Martins Plaza. It would lead to increased competition to the locality and add diversity for the community because the range on offer would be considerably different to the existing packaged liquor outlets and would focus on supporting small, craft, boutique producers based locally in South Australia.

[8] Ibid [2005] SALC 2.

33 The application drew objections from GM Hotels Whitehorse Pty Ltd, the licensee of the Whitehorse Inn Hotel; Fassina Investments Pty Ltd, the licensee of Fassina Liquor Merchants, Para Hills; and Fun Trading Pty Ltd trading as Parafield Airport Liquor Store. I shall refer to these collectively as "the objectors".

34 It also drew an objection from a local resident, Ms Rita Reichbart. She and her husband reside within a very short walking distance to Martins Plaza which she visits nearly every day of the week for grocery shopping, exercising at the gym, filling petrol, or attending appointments at the medical centre. She expressed concern that opening a liquor store at Martins Plaza would draw persons exhibiting negative behaviours to what she described as a very friendly shopping plaza. She also expressed concern for the safety of children attending Holy Family Catholic School, Parafield Gardens Primary School, Good Start Early Learning and Eden Academy, as many families stop by Martins Plaza after picking up their children from school and daycare. She added that when she is inclined to purchase alcohol, she has never found it difficult to travel three minutes more to the BWS at the Slug 'N' Lettuce Tavern on Martins Road.

35 The delegate rejected submissions put by the objectors that the relevant locality was much larger and that considerations needed to be given to the take away liquor available at stores such as PALS and Fassina, Para Hills. She did, however, find that the BWS facility at Hollywood Plaza needed to be considered. She did so, having found that it is a major shopping centre that has significant pulling power and offers a "one stop shopping" experience and that it is only around 2.7 kilometres and a six minute drive on a straight and easy road from the proposed premises. She found that the locality included Hollywood Plaza.

36 The delegate found that there was no reason why the application should be refused on the basis of the matters outlined in s 57 of the Act. She expressed no concerns about approving the applicant as the licensee in the event the application was to be granted.

37 The delegate accepted that the application enjoys some community support. She noted that the only objections to the application were commercial competitors and a local resident.

38 The delegate expressed doubt about the applicant's contention that the Foodland Supermarket at Martins Plaza was a full-line supermarket. She noted that it had no separate butcher or baker on offer, and that it was noticeably smaller relative to the Woolworths and Coles supermarkets located at Hollywood Plaza.

39 The delegate accepted the objectors' submission that Martins Plaza was not a thriving centre providing a full range of services required for

residents' major weekly or fortnightly shopping needs. She found that the grant of the application would not provide true one-stop shopping at Martins Plaza, or that if it does, it would only be for a very limited number of people. She found that most people in the locality are still likely to need (or choose) to attend Hollywood Plaza on a fairly regular basis. She did not consider that there would be a contemporary community expectation that within the limited retail offerings contained within Martins Plaza there would be a take away liquor facility.

40 The delegate accepted that the grant of the application would result in some enhanced employment that included some short-term employment opportunities during the construction and fit out of the proposed premises.

41 The delegate rejected the objectors' submission that this was a disadvantaged community at risk of alcohol related harms. Having acknowledged that based on the SEIFA index, those residing in the locality were somewhat disadvantaged, and that there was higher than average unemployment and lower median household income, she expressed no concerns about disproportionate or concerning levels of alcohol related harm.

42 The delegate accepted that the grant of the licence would not result in an undesirable level of licence density or a locality "awash" with takeaway outlets. She found that licence density in the locality was significantly lower than the State average and that this would remain so in the event the application was granted. She noted that no take away liquor outlets had been approved in the locality for around two decades. She accepted the applicant's submission that the population in the locality has increased during that time.

43 The delegate found that the proposed premises would comprise of a modern, safe and clean store with a comprehensive range of quality liquor and associated products and services for those consumers. She found that the proposed premises would create additional employment, some of which was likely to go to those residing in the locality and that it may also provide an additional point of distribution for some South Australian owned liquor producers.

44 The delegate accepted that those who shop at Martins Plaza who wish to purchase alcohol would find it very convenient to do so from the proposed premises. But she accepted Ms Reichbart's observation that she has never found it difficult to travel three minutes along Martins Road to purchase liquor from the BWS store at the Slug 'N' Lettuce Tavern. She stated that in terms of inconvenience this "barely touches the scale". She stated that as such, the added convenience did not weigh that heavily in favour of granting the application, noting that convenience does not equate to the elimination of all inconvenience.

45 The delegate noted the observation made by this Court observed in *BWS Mount Barker*,[9] that "it is in the community interest for there to be some brake on the number of premises at which the public may purchase liquor for consumption off the premises".

46 The delegate then noted that this application had some similarities to the application that this Court refused in *Cellarbrations Walkley Heights.*[10] She noted that in that case the Court drew the inference that in contrast to the Walkley Heights Shopping Centre, the nearby and much larger Ingle Farm Shopping Centre was very popular and that for the majority of people living in the locality this is where they would undertake their shopping for fresh food and groceries. The delegate thought that in connection with the residents of this locality the same inference could be drawn in respect of Hollywood Plaza.

47 The delegate then referred to the observation made by this Court in *Cellarbrations Walkley Heights* where it said:

> It cannot be doubted that the addition of a take away liquor facility in any locality has the potential to cause harm. Sometimes, because of the limited number or nature of the take away liquor facilities already existing within the locality, or the extra convenience and choice that the addition of a further take away liquor facility would achieve, the evaluative judgment that the community interest test entails might lead to the conclusion that this is a price worth paying. But in my opinion, this is not that case. Having regard to the number and nature of the take away liquor facilities already existing within the locality and the range and choice that they provide, and the relatively small number of people who would benefit from the extra convenience and choice that the grant of this application would achieve, in my opinion the addition of another take away liquor facility in this locality is not in the community interest.[11]

48 The delegate then concluded:

> Weighing up the positives and negatives that will flow from the grant of the application, the size of Martins Plaza Shopping Centre, and the range of existing liquor options in relatively close proximity and easy driving distance to the proposed Store, I am not satisfied that granting the application is in the community interest.

49 Finally the delegate turned to consider whether the grant of the application was in the public interest.

50 She noted that this Court had expressed the view that: notwithstanding the changes to the Act abolishing the "needs test", it is not in the public interest

[9] [2023] SALC 31.
[10] [2023] SALC 49.
[11] Ibid at [61].

for there to be a proliferation of bottle shops selling essentially the same range of liquor within short compass of another; Parliament has not gone down the path of legislating to allow a packaged liquor store to be co-located with every (modest size) supermarket in South Australia; and consideration needs to be given as to whether in the event that an application is granted, it could create a precedent that might result in something along the lines of the "wholesale alignment" of liquor stores with supermarkets throughout the State, contrary to the will of Parliament.

51 With these matters in mind, the delegate found that if this application succeeded, it would create an undesirable precedent that could lead to an oversupply of take-away liquor facilities and that it would not be in the public interest to allow that to occur.

Submissions on Review

52 The applicant contended that the delegate erred in extending the locality to include Hollywood Plaza. It submitted that the relevant locality is defined by reference to members of the community that might be expected to purchase liquor from the proposed premises, and the persons their consumption of alcohol might in turn impact. It submitted that if an extension or reduction of the two kilometre radius suggested in the Guidelines was considered necessary, there needed to evidence that there is in fact a different primary catchment for the proposed premises. It submitted that the delegate's rationale for the extension, being the fact that Hollywood Plaza was a large shopping centre and the fact it clearly "offers one stop shopping and would have significant pulling power" was not evidence capable of supporting that conclusion.

53 It submitted that this error was significant in two ways.

54 First, because the locality was incorrectly determined to a significant degree, it meant that the delegate's evaluation as to whether the grant of the application was in the community interest was conducted on a false premise.

55 Second, the inclusion of Hollywood Plaza suggests that the delegate thought it necessary to consider another licensed outlet as part of the locality in order to apply the Act, which was an error given the abolition of the "needs test".

56 Next, it was contended that the delegate erred in her findings about, and characterisation of Martins Plaza and her view that it was a relatively small shopping centre that drew analogies to cases where packaged liquor sales licences had been refused in respect of proposed premises such as *Cellarbrations Walkley Heights*.

57 It noted that the delegate made no positive finding as to the total size of Martins Plaza. It submitted that there was evidence before the delegate that established that Martins Plaza has a total lettable space of 6,100 square metres and that the largest tenancy was 1,200 square metres.

58 It submitted by reference to a comparative table of Neighbourhood Centres involved in recent licence applications that Martins Plaza was not a small shopping centre. It added that if the delegate was doing no more than observing that Martins Plaza was not as large as Hollywood Plaza Shopping Centre, she was correct, but this did not resolve the issue. It submitted that convenience or community expectation is not met by the co-location to a very large shopping centre of the size of Hollywood Plaza. It submitted that other factors, such as distance to such a centre; accessibility and parking; the type of offering at the centre, and the products and brands available; and the existence of a sufficient range of goods and services at other centres were relevant.

59 It submitted that there could be a community expectation of a liquor store being amongst the offerings at a shopping centre despite there being a much larger shopping complex some further 2.7 kilometres away. It submitted that there were many examples of this, such as Brighton to Marion Shopping Centre; St Peters to Norwood, and Christies Beach to Colonnades.

60 It submitted that the delegate erred in finding that the Foodland Supermarket was not a "full line" supermarket and that in making this finding she appears to have adopted the untenable submission made by the objectors that the Foodland Supermarket was akin to a "convenience store". It submitted that the delegate's basis for the finding appears to be a conclusion that a "full line supermarket" must have an in-store baker and butcher. It submitted that this involves a misunderstanding of what is a full line supermarket. It submitted that "full line" means no more than the store containing the range of products (and choices within product lines) that are customarily available to allow a customer to complete a more comprehensive or weekly shop and that the absence of in-store bakeries and butchers was not determinative. It submitted that in any event, Martins Plaza otherwise meets those needs as meat, poultry and fish are available in the nearby Asian-style store which is equivalent at least to a conventional butcher and bakery products are available in the bakery immediately adjacent to the supermarket.

61 It submitted that the delegate erred in failing to address the significance of the combined grocery offerings at the centre, and in particular the large Asian-style grocery store. It submitted that she ignored the other significant features of Martins Plaza being the variety of takeaway food, pizza and the OTR petrol station. It submitted that this led the delegate to err in finding 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." It added that there is a contradiction for the delegate to proceed on the basis that within Martins Plaza there is "no separate butcher and baker on offer in the Foodland supermarket" but not to observe that there is a bakery next door, and butcher's counters within the Asian grocer.

62 It submitted that the delegate erred in drawing comparisons with shopping centres at Walkley Heights and Hove. It noted that in *Cellarbrations Walkley Heights*, the premises were to be located in a centre constituted of a Drakes mini supermarket of 400 square metres and six other tenancies. It added that it was also significant in that case that the much larger Ingle Farm Shopping Centre was only 1.5 kilometres away and it contained a "big box" First Choice Liquor retailer. It noted that in *Hove Sip n Save*,[12] the premises were to be located in a centre constituted of a Foodland of 800 square metres and other tenancies comprised of a Vietnamese takeaway, coffee shop, post office, pharmacy, tax agent and hairdresser. It added that it was also significant that the very large Marion Shopping Centre was only 2.9 kilometres away and that the substantial Brighton Central Shopping Centre was only 1.9 kilometres away and it contained a much larger Foodland and a Cellarbrations branded liquor outlet as one of the 19 speciality shops in that centre.

63 It submitted that if analogies are to be drawn, the facts here are much closer to those that this Court dealt with in *Liquorland (Australia) Pty Ltd (Park Holme)*[13] which concerned a smaller shopping centre with fewer speciality stores but with a slightly larger car park and a larger supermarket.

64 It submitted that the delegate's erroneous findings also infected her consideration of public interest grounds.

65 The applicant submitted that in light of the delegate's errors it was incumbent upon this Court to consider the application. It submitted that the grant of the application is in the community interest and it is not contrary to the public interest.

66 It submitted that the Court should find that the proposed premises are to be located in a substantial suburban shopping centre configured around a substantial car park that is considerably larger than the common suburban or local centres, but ranking in size beneath the major suburban shopping centres.

67 It submitted that the Court should find that the locality was the area within a radius of two kilometres from the proposed premises.

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[12] [2021] SALC 7
[13] [2020] SALC 37.

68 It noted that within that locality, there has been a long standing population growth, associated with the change of land use from horticultural to residential development over the last two decades that that this growth will continue in the future.

69 It noted that despite that history of growth, no unrestricted packaged liquor licences have been granted in the locality which has resulted in a licence density which is very significantly lower than the State average, and would remain so even if the licence was granted.

70 It submitted that Martins Plaza is well patronised and used widely by those in the locality to undertake shopping and meets their ordinary daily needs at a chemist, doctor or gym. It pointed to evidence adduced in the hearing before me that demonstrated a consistent pattern of total vehicle numbers of between 13,000 to 14,000 a week which in turn reflects that the car park turns over between seven and nine times a day with substantial patronage even on days when the supermarket is closed. It added that these figures do not take account of patronage of those that would walk or use public transport to visit Martins Plaza, noting that nearby is a retirement village. It pointed out that the sole individual objector explained that she walked to Martins Plaza and it met all her shopping needs.

71 It submitted that the grant of the application will enhance convenience to a significant portion of the community living in the southern and western portions of Parafield Gardens who are presently required to drive north-east and past Martins Plaza in order to purchase liquor.

72 It submitted that it would enhance choice by offering an alternative to the BWS stores at Hollywood Plaza and the Slug 'N' Lettuce Tavern and the Liquorland at Parafield Plaza. It submitted that the proposed premises can be expected to offer a range of products that are differentiated from the products available in those stores because Local Cellars purchases its products from wholesalers of liquor, beer or wine, or purchases directly from producers.

73 The respondents to this application for review, submitted that the applicant has erroneously elevated the suggested two kilometre radius in the Guidelines as akin to a default rule of law. They make the point that it is no more than a guide and it is for the licensing authority to decide for itself what the relevant locality is. They submitted that the delegate was entitled to rely upon her accumulated experience and she plainly formed the view that those residing in the vicinity of Hollywood Plaza would find it an easy drive to Martins Plaza.

74 The respondents then submitted that even if the delegate erred, in considering that the fact of the BWS store in Hollywood Plaza was a factor to be taken into account in determining the locality, it made no difference

to the outcome, because in undertaking the evaluative exercise that the community interest entails, it was appropriate for the delegate to consider licensed facilities on the outskirts of the locality.

75 The respondents took issue with the submission that the delegate erred in drawing comparisons with shopping centres at Walkley Heights and Hove. They submitted that the only relevant facilities in Martins Plaza are the Foodland Supermarket, the Asian-style grocery store and the small Indian-style grocery store and that the delegate rightly concluded that the retail offerings at Martins Plaza were relatively sparse. They submitted that Martins Plaza was not the type of shopping centre where persons living in the locality would be expected to undertake their weekly or fortnightly shop and that the comparison with Walkley Heights was appropriate as was the comparison between Hollywood Plaza and the Ingle Farm Shopping Centre. It contended that the relative size of Martins Plaza by comparison to Hollywood Plaza not only informed the likely movement of persons in the locality, but it enabled the finding that Martins Plaza was not a shopping centre that would evoke a community expectation of having amongst its offerings a bottle shop.

76 The respondents invited the Court to note that none of the trading data pertaining to the performance of the Foodland Supermarket, such as gross sales, turnover, or basket size , was placed before the delegate or the Court. It submitted that an adverse inference could be drawn from this and that the Court could be fortified in forming the view that the supermarket was not that successful, given its preparedness to cede 200 square metres of trading area to accommodate the proposed premises.

77 The respondents submitted that the evidence of car visitations to Martins Plaza was of marginal assistance, because it did not isolate those under the age of 18 and it did not identify what facilities at Martins Plaza the drivers and passengers of those cars were using.

78 The respondents took issue with the complaint about the delegate's finding that the Foodland Supermarket was not a full-line supermarket. They contended that the expression "a full-line supermarket" is not a term of art and that the delegate's use of the expression reflected her view that the status of the Foodland Supermarket was somewhere between the positions adopted by the parties: the applicant contending that it was comparable to a larger Coles or Woolworths and the objectors contending that it was no more than a small convenience mart.

79 The respondents submitted that the applicant's contention that the proposed premises enhance choice by offering an alternative to the BWS stores at Hollywood Plaza and the Slug 'N' Lettuce Tavern and the Liquorland at Parafield Plaza was overstated. They submitted that the indicative stock list was in large measure the list that reflects the reality

that most customers purchase take away liquor from a core range. They added that if members of the relevant community might be looking to buy more unique products, they already have ample opportunity to do so at the large PALS nearby.

80 The respondents also raised some technical matters. They noted that under the lease arrangement that Mr Siciliano has with Martins Plaza Pty Ltd, that company is entitled to a share of the gross sales. They made the point that if the same arrangement applies to liquor sales, this would be a breach of s 99 of the Act which makes it an offence "if a licensee enters into any agreement or arrangement under which an unlicensed person may participate in the proceeds of the business carried on under the licence".[14]

81 The applicant submitted that that there would be a separate lease for the proposed premises that would not involve any agreement or arrangement under which an unlicensed person may participate in the proceeds of the proposed premises.

82 The respondents then noted that pursuant to s 57(2)(9b) of the Act, an application for proposed premises "must not be granted unless the licensing authority is satisfied that any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained".

83 As I understand the argument, it is contended that the *Community Titles Act 1996* applies to the proposed premises and that absent proof of an agreement to permit the construction of the proposed premises, the requisite approvals, consents or exemptions that are required by law for the carrying out of building work have not been obtained.

84 The applicant submitted that the *Community Titles Act* is not properly interpreted as being a planning law as set out under s 57(2)(a) of the Act such that its relevance only potentially relates to s 57(2)(b) or s 57(2)(c). It then submitted that the *Community Titles Act* consent is something akin to a landlord consent for the undertaking of building work and it is not a matter that s 57(2) is concerned with. It added that in any event, if this was a matter of concern for the Court it could be dealt with by granting the application subject to the requisite consent being obtained.

Consideration

85 I commence with the technical arguments put forward by the respondents.

86 The submission put by the applicant's counsel that that there would be a separate lease for the proposed premises was doubtless made on instructions. There is no evidence to the contrary and noting that under

[14] Section 99(1)(c) of the Act.

s 23(b) of the Act that I am not bound by the rules of evidence and may inform myself as I see fit, I am prepared to act upon that submission in finding that issues around s 99 of the Act do not arise.

87 As to the *Community Titles Act* point, I do not find it necessary to resolve the relevant status of a consent under that Act because if the application otherwise succeeds, this can be dealt with by making the grant of the application subject to obtaining the necessary consent. If it comes to it, I propose imposing such a condition.

88 I now turn to the merits.

89 With respect, in my opinion the delegate erred in finding that the locality included the area around Hollywood Plaza.

90 It can be seen that in respect of proposed premises the Guidelines invite focus upon the area from where the applicant expects to draw their customers, having regard to the nature of the proposed premises. With this in mind, it is not likely that many of those who reside in the vicinity of Hollywood Plaza, being persons who are already well catered for in terms of retail offerings including a bottle shop would travel over two kilometres to purchase liquor from the proposed premises. In my opinion the delegate should have found that the northern limit of the relevant locality ended in the vicinity of Kings Road.

91 That said, I agree with the submission put by the respondents that nothing turns on the error. As this Court observed in *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston*:

> If members of the relevant community are contentedly purchasing take away liquor from premises outside of the locality and can reasonably be expected to do so in the future, this must be taken into account in assessing whether the grant of the application for a new packaged liquor sales licence is in the community interest.[15]

92 The delegate was therefore right to give considerable weight to the facilities on offer at Hollywood Plaza as part of her evaluation as to whether the grant of the application is in the community interest.

93 I reject the submission that something can be drawn from the fact that there are bottle shops in shopping centres in Brighton, St Peters and Christies Beach that are near much larger shopping complexes.

94 In the first place, the notion a significant factor in support of an application for a bottle shop licence was a contemporary community expectation that the shopping centre in which it was to be situated was one that might be

[15] [2024] SALC 108 at [112].

expected to have amongst its offerings a bottle shop was first propounded by the Full Court of the Supreme Court in 2015 in *Woolworths Ltd v Fassina Investments Pty Ltd and Ors*.[16] It therefore did not feature in the grants that resulted in bottle shops in Brighton, St Peters and Christies Beach.

95 Moreover, it should not be overlooked that that actual finding that the Full Court made in that case was that there was "the contemporary community expectation was **that a very large regional centre** such as Arndale would include a retail liquor store."[17] (Emphasis mine)

96 That is not to say that community expectations are irrelevant. As noted earlier, a licensing authority must have regard to the objects in determining an application. Those objects include: "to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public". I simply make the point that what happened in those other grants has no bearing on this case.

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.

98 In *Hotel Angaston Pty Ltd t/as Angaston Hotel & Ors v Scarlett Zetland Pty Ltd t/as Local Cellars Angaston*,[18] 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.

99 In connection with the supermarket adjacent to the proposed premises at Angaston, this Court noted as follows:

> 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.[19]

100 The Court then went on to observe:

> But it is apparent from the small basket size and overall turnover of the Angaston Foodland Supermarket, that their use of the

[16] [2015] SASCFC 72.
[17] Ibid at [56].
[18] Ibid.
[19] Ibid at [100].

> 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 Plush Group, it is likely that their use of the proposed premises will be in the nature of passing trade.[20]

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.[21] (Footnote omitted)

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

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[20] Ibid at [103].
[21] Ibid at [110].

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."

107 In this case, it must be acknowledged that the evidence does not indicate that there are a disproportionate number of problem drinkers in and about the locality or that, despite the low SEIFA ranking, that the grant of this application will have an adverse impact upon the community.

108 I accept that there are not any other features of the locality that are especially concerning in the context of this application. It must also be accepted that the grant of this application will create some small employment opportunities.

109 But for the reasons outlined above, this is not a case where the grant of this application will for many living in the locality enable them to combine their take away liquor purchases as part of a one stop shopping experience.

110 The relevant community currently has easy access to the BWS store attached to the nearby Slug 'N' Lettuce Tavern and, like Ms Reichbart, many are contentedly using it. It can be expected that many of this community are contentedly using Hollywood Plaza to combine their take away liquor purchases as part of a one stop shopping experience. For those wanting a range of products beyond what might be expected of a BWS or Liquorland store, PALS, albeit some distance away, already provides them with that opportunity.

111 These are matters of some significance. I repeat the observation made by this Court in *Liquorland McLaren Vale (No. 3)*:[22]

[22] [2023] SALC 2.

> Parliament has elected not to go down the path taken in other jurisdictions of permitting the wholesale alignment of bottle shops with supermarkets and this can be taken to reflect the public's expectations in this State. The public clearly supports the alignment of bottle shops with some shopping centres that contain supermarkets. If it were otherwise, there would not be so many bottle shops aligned with supermarkets in shopping centres. But through the Parliament, the public can be taken to not aspire to an alignment of a bottle shop with every shopping centre that contains a supermarket. The public can be taken to consider that sometimes, because of the proximity of other take away liquor facilities, it would be better for a shopping centre not to have a bottle shop.[23]

112 In my opinion, this is such a case. I therefore respectfully agree with the delegate that the grant of this application is not in the community interest. And, for essentially the same reason, I find that it is not in the public interest to grant this application.

113 The application for review is therefore dismissed.

[23] Ibid at [80].