

BWS - Seaford [2015] SALC 19

LICENSING COURT OF SOUTH AUSTRALIA

BWS - SEAFORD

V

PORT NOARLUNGA HOTEL, CLIFF AVENUE LIQUOR STORE AND
CELLARBRATIONS

JURISDICTION: Application for Retail Liquor Merchant's Licence

FILE NO: 5010 of 2014

HEARING DATE: 18, 19, 20 November 2014 and 26, 27 February 2015

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 7 May 2015

*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 licence for the proposed facility - **Held** that had the position been otherwise the Court in the exercise of its discretion should refuse to grant the licence - Ss 3, 53, 57, 58 and 59 Liquor Licensing Act 1997*

*South Eastern Hotel Pty Ltd and Ors v Woolies Liquor Stores Pty Ltd [1998]
SASC 6819*

Waiata Pty Ltd v Lane (1985) 39 SASR 290

*Liquorland (Australia) Pty Ltd v Lindsey Cove Pty Ltd [2002] SASC 17;
(2002) 81 SASR 337*

REPRESENTATION:

Counsel:

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

Respondent Objectors: Mr M Roder SC with Mr I Rice

Solicitors:

Applicant: Clelands Lawyers

Respondent Objectors: Griffins Lawyers

- 1 This is an application for the grant of a retail liquor merchant's licence.
- 2 The applicant, Woolworths Ltd, is a very large supermarket chain that operates stores across Australia. It seeks the licence in respect of premises in the Seaford Meadows Shopping Centre at the corner of Grand Boulevard and Prow Drive, Seaford Meadows, immediately adjacent to a supermarket that it operates in the centre. The licence if granted will trade as a BWS liquor store.
- 3 The application has drawn objections from the licensees of four licensed premises in the vicinity of the proposed premises, the Beach Hotel¹, Port Noarlunga Hotel², Cliff Avenue Liquor Store³ and Cellarbrations Moana Heights.⁴
- 4 At the moment the proposed premises comprise of an empty retail shop. Some modifications will have to be made to it to accommodate the proposed bottle shop. Accordingly, the applicant seeks a certificate under s 59 of the *Liquor Licensing Act 1997* for the proposed premises.
- 5 To succeed in this application the applicant 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.
- 6 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.
- 7 None of these matters are at issue in this case.
- 8 What is in dispute is whether the pre-requisites provided by s 58(2) have been met and whether in the Court's discretion the licence should be granted.
- 9 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

¹ IPG Management (SO) Pty Ltd

² Franoline Pty Ltd

³ Gerace Pty Ltd

⁴ Just Drinks Pty Ltd

public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.”

- 10 Before discussing the evidence of the experts as to how the locality should be defined in this case it is appropriate to make some general observations about the roads and suburbs that might be relevant.
- 11 The Seaford Meadows Shopping Centre is a recently constructed neighbourhood shopping centre that services the newly developed suburb of Seaford Meadows.
- 12 Seaford Meadows is part of the expanding residential development that is taking place in the southern aspect of metropolitan Adelaide. Its development is ongoing.
- 13 About two or so kilometres to the north of Seaford Meadows is the township of Port Noarlunga. Port Noarlunga is an established older suburb. It is separated from Seaford Meadows by the Onkaparinga Recreation Park. The suburbs are connected by Commercial Road which runs from north to south extending to the south into the suburbs of Seaford, Seaford Rise, Moana, and Maslin’s Beach. Commercial Road is classified as a secondary arterial road.
- 14 Immediately to the west of Seaford Meadows is the suburb of Port Noarlunga South. It is also is an established older suburb. It is separated from Seaford Meadows by Commercial Road.
- 15 Immediately to the south of Seaford Meadows is the suburb of Seaford. It is separated from Seaford Meadows by Seaford Road, which runs from east to west from Main South Road to the sea. Seaford Road is classified as a distributor arterial road.
- 16 About halfway between Commercial Road and Main South Road is the Seaford railway line. There is a railway station at Seaford Meadows in the south eastern corner of the suburb, not far north of Seaford Road.
- 17 About halfway between Commercial Road and the Seaford railway line is Grand Boulevard. It connects the Seaford Meadows Shopping Centre to those living in Seaford, especially those living east of Commercial Road.
- 18 About two kilometres south of the proposed premises is the Seaford Central Shopping Centre. It is about a kilometre south of Seaford Road. It abuts Commercial Road and is conveniently accessed by Commercial Road and Grand Boulevard. It is a much more substantial shopping centre than the Seaford Meadows Shopping Centre. For now the Seaford Meadows Shopping Centre comprises of the Woolworths Supermarket and a relatively range of supporting specialty stores and eating outlets. In

contrast to this the Seaford Central Shopping Centre contains two large supermarkets, a Foodland and a Woolworths, a Big W store, a Cheap As Chips, a BWS store, Barossa Fine Foods, a butcher, a bakery, a fruit and vegetable shop, numerous cafés, a Hungry Jack's, a Subway, a Wendy's, various gifts, homewares, electronics, health and beauty and fashion and accessories stores, pharmacies, jewellers, mobile phone stores, a post office, a travel agency, a H & R Block office, a newsagency, and various banks and credit unions.

The locality

- 19 The applicant relied upon the expert opinion evidence of Mr Graham Burns, planning consultant. He thought that the locality of the proposed premises was generally defined by an area within a two kilometre radius of the proposed premises, with the western boundary marked by the coast line, the northern boundary marked by the Onkaparinga Recreation Park, the eastern boundary essentially along the course of the Onkaparinga River, that is just east of the Seaford railway line, and Seaford Road to the south.
- 20 The objectors relied upon the expert opinion evidence of Mr Jeffrey Smith, planning consultant. His main area of disagreement with Mr Burns on this issue was that he thought the locality extended further south and included the Seaford Central Shopping Centre.
- 21 Given that in determining whether the test postulated by s 58(2) has been met, licensed premises within and outside the boundaries of the relevant locality have to be considered, this disagreement is of no moment.
- 22 There is a BWS store in the Seaford Central Shopping Centre, a takeaway liquor facility at the Beach Hotel at Seaford and a Cellarbrations store at Moana Heights. Whilst all are south of Seaford Road they are all sufficiently close to the proposed premises as to warrant consideration. Thus whether the notional southern boundary is set at Seaford Road or some point south of that makes no difference.

Licensed premises in and about the locality

- 23 At the commencement of the hearing, the Court, in consultation with the parties, drove around the general locality and inspected various premises and sites. The Court's notes of this were distributed to the parties' advisors and their comments were noted.
- 24 The observations that I am about to make are either uncontroversial or reflect the observations of the Court.
- 25 The licensed premises offering takeaway facilities in and about the locality are as follows:

BWS Seaford Central Shopping Centre - This facility is located in the north western corner of the shopping centre, just south of the Woolworths store. It is an attractive facility. It is a typical BWS store that could be describes as a convenience store offering a range of about 1750 lines.

Beach Hotel Seaford - The hotel has been recently renovated and offers a full range of facilities. It is located on the corner of Commercial Road and Griffiths Drive, a road running east to west just south of the Seaford Central Shopping Centre. It has a moderately sized car park. Its takeaway facility is quite separate from the main hotel. It trades under the Liquor Lads badge. It has a large drive through that connects to a walk-in area. The walk-in bottle shop is of average quality offering a broad range of liquor.

Cellarbrations Moana Heights - This is a stand-alone bottle shop situated within the Moana Heights Shopping Centre at the corner of Commercial Road and Babbacombe Road about five kilometres south of the proposed premises. The shopping centre is quite small. The liquor store is a typical Cellarbrations store that could be described as a convenience store offering a range generally comparable to a BWS store, although probably slighter better in an attractive, well laid out facility.

Cliff Avenue Liquor Store - Cliff Avenue runs perpendicular to Commercial Road. This is a freestanding bottle shop just over a kilometre due west of the proposed premises. It trades under the Sip'n Save badge. It is surrounded by a car park. It is adjacent an accountant's office, health clinic, dental surgery, laundromat and bicycle shop. It would be fair to say that this commercial development looks a bit tired and dated. That said the bottle shop appeared to be of fair quality with an adequate range of liquor.

Port Noarlunga Hotel - This is located in the southern part of the commercial centre of Port Noarlunga. It has a takeaway facility trading under the Sip'n Save badge. The facility comprises of a typical drive through and an adjacent walk-in bottle shop. The walk-in is accessed through the drive through. The walk-in bottle shop is small and carried a limited range of liquor.

Dan Murphys Colonnades - About three kilometres east of Port Noarlunga is the Colonnades Shopping centre. Within that centre is a Dan Murphys store. Although the store was not visited it can be assumed to be a typical Dan Murphys store, that is, a large format destination store offering a vast array of liquor products at competitive prices.

The evidence

Resident witnesses

- 26 I heard evidence from a number of residents who live in and about the locality.

Sharon Weaver

- 27 Ms Weaver lives in Seaford Meadows. She has done so for about seven months. She lives with her partner and two children. She works full time. As a result of her work and personal commitments she has a very busy life. She used to shop at the Seaford Central Shopping Centre. She now shops at the Seaford Meadows Shopping Centre. It is much more convenient for her. She and her partner drink liquor. She does not like using drive throughs because she often likes to browse when buying takeaway liquor. She would prefer to buy liquor as part of her general shopping. If the proposed premises were licensed to sell liquor it would be very convenient for her. She does not use the Cellarbrations at Moana. She knows of the Beach Hotel but does not use it. She occasionally uses the Port Noarlunga Hotel but only when she knows what she wants. She does not use the Cliff Avenue store because even though it is only a kilometre away from where she lives it involves crossing Commercial Road and she does not wish to do this.

Karen Pitman

- 28 Ms Pitman lives just north of the Seaford Meadows Shopping Centre. She works long hours. She often needs to shop in the evening and wants to be able to shop at a place that is safe and well lit. She lives with her daughter and her daughter's partner. She spends a few hundred dollars a month on liquor. She has used the Beach Hotel takeaway facility but now refuses to use it because she found it too expensive and did not find the range adequate. She said that she does not like the Cliff Avenue bottle shop because it is dark and dingy and does not have the range that she wants. For now she uses the Cellarbrations at Moana Heights. She uses it once a fortnight but would prefer to buy more regularly and not travel so far. She has used the Port Noarlunga Hotel but does not like drive throughs and she said she found the range limited. If the proposed premises were licensed to sell liquor it would be very convenient for her.

John Warner

- 29 Mr Warner lives in a retirement village on Grand Boulevard just south of Seaford Road. He lives with his wife. He is responsible for all of the liquor purchased by the retirement village. He currently uses the Dan Murphys store at the Colonnades, about a 15 minute drive north of the

village. He also uses the BWS at the Seaford Central Shopping Centre. He and his wife now do their entire daily and weekly shopping at the Seaford Meadows Shopping Centre. He said that a lot of the other residents living at the retirement village do likewise. For his personal liquor needs he would like to buy them when he does his grocery shopping. He does not go to the Cellarbrations at Moana Heights. He went to the Cliff Avenue bottle shop once, seven years ago. He found it small with an inadequate display. He has no need to drive in that area. He uses the Beach Hotel takeaway facility about three or four times a year. He does not like drive throughs. The only reason he visits the Seaford Central Shopping Centre is to use the BWS there. If the proposed premises were licensed to sell liquor it would be very convenient for him.

Emma Phillips

- 30 Ms Phillips lives in Seaford. She is a school services officer. She has lived at her present address and another address at Seaford for the last two or so years. She has also lived at Seaford Meadows.
- 31 She works 9am till 2.30pm four days a week. On the other day of the week she studies. She lives with her husband and two young children. She is very busy. She does the shopping for the household. She has shopped at the new Seaford Meadows Woolworths since it opened. She does a big grocery shop once a week and goes there at least another three times in the week.
- 32 She said that she is in fact closer to the Seaford Central Shopping Centre than the centre at Seaford Meadows. However, she prefers Seaford Meadows. She likes the positioning and the layout of the store. She said that at the Seaford Central Shopping Centre it can be pretty hard to find a park. She also complained about the fact that the paths within the centre are sloped. She said that she has a knee injury that makes pushing a trolley difficult. She said that if she did a big shop she might have \$300 worth of shopping in a trolley, which would be difficult enough to manoeuvre and that she would not add to it a carton of beer.
- 33 She said that for now she buys takeaway liquor from the BWS store at Seaford Central. She said that she might purchase a couple of bottles of wine, but generally it is her husband who drinks and she would buy him a carton of something.
- 34 She said that Seaford Meadows Shopping Centre services nearly all of her needs apart from liquor and a chemist.
- 35 She said that she had not been to the Cellarbrations store at Moana Heights. She did not know that it was there.

- 36 She said that she had been to the Beach Hotel drive through a couple of times. She does not like drive throughs. She found this hotel a bit expensive. She said she last went there about a year ago.
- 37 She is familiar with the Cliff Avenue liquor store. She has visited it once. She spoke of a negative experience. She said that the person serving her was on the phone having a personal conversation. She thought that this reflected poor customer service and as a result she does not wish to go back there. She described the store as small and dimly lit and said that the interior of the store appeared a bit old and dated.
- 38 She agreed that she lives within 300 metres or so of the BWS at Seaford Central and that it is a very convenient store.

Grace Dorovata

- 39 Ms Dorovata lives in Seaford Meadows. She has lived in the area for five years. She lives with her partner and two children. She shops at the Seaford Meadows Shopping Centre two or three times a week. She and her partner drink beer and wine. For now she uses the BWS store at the Seaford Central Shopping Centre. She does not need to visit there except to purchase liquor. She said that it takes too much time to get there and it would be much more convenient for her to use a liquor store at the Seaford Meadows Shopping Centre. She only uses the Beach Hotel when other facilities are shut. She would prefer not using drive throughs. She has not been to the Cellarbrations store at Moana Heights. She said that it is too far away and is not part of her local area. She said that she went to the Cliff Avenue bottle shop two years ago and did not like it. She said that she did not feel comfortable, it was dark and dingy and expensive. She said that she had not been to the Port Noarlunga Hotel because it is out of the way.

Rick Foster

- 40 Mr Foster lives in Seaford Meadows. He lives with his wife and two children. He has done so for the last four years. He shops at the Seaford Meadows Shopping Centre two or three times a week. He used to use the Seaford Central Shopping Centre for his shopping but now uses it infrequently. He finds the parking there to be an issue. He purchases most of his takeaway liquor from the Beach Hotel. He occasionally uses the Cliff Avenue bottle shop. He finds it small and sometimes lacks the range that he is looking for. He has a busy life and would find it very convenient to combine his liquor purchases with his use of the Seaford Meadows Shopping Centre.

Brian Johns

- 41 Mr Johns lives in Port Noarlunga South. He has done so on and off for 13 years. He used to use the Seaford Central Shopping Centre for his shopping but now uses it infrequently. When he went there he did not use the BWS store. He now does his entire daily and weekly shopping at the Seaford Meadows Shopping Centre except for meat which he buys from a local butcher. For now he purchases liquor from the Dan Murphys store at the Colonnades. He shops there once a week on average. It is at least about a 45 minute round trip. He uses the Cliff Avenue bottle shop about once a month to buy beer. He does not buy wine there because it does not have the range that he is seeking. He used the Beach Hotel about 18 months ago. Although he uses the Port Noarlunga Hotel he has not used its takeaway facility. He has not been to the Cellarbrations store at Moana Heights. He has never thought of going there. He would find it very convenient to combine his liquor purchases with his use of the Seaford Meadows Shopping Centre.

Antonio Franca

- 42 Mr Franca lives at Seaford Meadows with his wife and children. He has lived there for 18 months. The Seaford Meadows Shopping Centre was constructed after he moved there. He has a disability. He used to shop at the Seaford Central Shopping Centre. He found the disability parks there inconvenient. He finds the carpark at the Seaford Meadows Shopping Centre much more convenient. For now he uses the BWS store at the Seaford Central Shopping Centre. He does not need to visit there except to purchase liquor. He has not been to the Cellarbrations store at Moana Heights. He said that it is bit far away from where he lives. He has used the takeaway facility at the Beach Hotel once. He does not like using drive throughs. He has only been to the Cliff Avenue store once. He said that he did not receive any service and walked out. He said that it would be very convenient for him to combine his liquor purchases with his use of the Seaford Meadows Shopping Centre.

Jane Bramley

- 43 Ms Bramley has lived in Port Noarlunga South for most of her life. She has frequented the Cliff Avenue store for over 20 years. She visits the store a couple of times a week. She finds the proprietor very obliging and friendly. She sometimes uses the Port Noarlunga drive-through. She sometimes uses the BWS store in the Seaford Central Shopping Centre when she is shopping there. She goes to the Seaford Central Shopping Centre once a week. She uses the Foodland there. She said she had no issue with BWS but opposed this application because she wanted to support a local family business that has a nice, friendly atmosphere. She said that she had never seen any bad customer service at the Cliff

Avenue store and had never thought that there was anything wrong with the shop. She does not see the need for another bottle shop in the area.

Other witnesses

Anthony Smith

- 44 Mr Anthony Smith is Woolworths' business manager for liquor licensing. He has been involved in the liquor industry for over 34 years. He said that the Seaford Meadows Shopping Centre is currently trading at 8,000 transactions per week and that the Woolworths Supermarket is trending upwards. He thought that the Seaford Meadows Shopping Centre would attract customers from Seaford Meadows and Port Noarlunga South. He thought that the proposed premises would be substantially different to the Cliff Avenue store. He said that Woolworths has a policy of trying to ensure that its bottle shops are closely associated with its supermarkets for the convenience of its customers

Anthony Dimasi

- 45 Mr Dimasi is an economic consultant. He has performed that role for 32 years. His work involves assessing trading patterns, the performance of retail developments and their anticipated trade areas. He said that the Seaford Meadows Shopping Centre was planned to service the growing need of the people residing in Seaford Meadows. He said that Woolworths saw an obvious additional need having supermarkets in both the Seaford Meadows Shopping Centre and the Seaford Central Shopping Centre. He thought that the impact of the Woolworths store at the Seaford Meadows Shopping Centre on the Woolworths store at the Seaford Central Shopping Centre would be modest. He thought that it would be a logical progression for the Seaford Meadows Shopping Centre to have a liquor store. He said that people moving into Seaford Meadows would not be seeking out a store like the Cliff Avenue store. He said that it was not convenient for them and that they could be expected to want to combine their liquor purchases with their use of the Seaford Meadows Shopping Centre. He accepted that people using the Seaford Meadows Shopping Centre would still have a need to access some of the stores and services available at the Seaford Central Shopping Centre.

Matthew Holland

- 46 Mr Holland is the senior regional property manager for Woolworths Ltd. His role is to look after the existing portfolio of businesses in its supermarket, liquor and petrol businesses and to secure new sites for supermarkets, shopping centre developments, liquor outlets and petrol stations. He said that in appraising the viability of new developments

demographics, the catchment area, road network, the infrastructure and existing businesses, whether they be its own businesses or competitors had to be considered. With these matters in mind he thought that the Woolworths store and the proposed BWS store at the Seaford Meadows Shopping Centre were warranted.

- 47 He said that since the extension of the railway and the development of a two-way Southern Expressway, the area in and about Seaford Meadows had become very attractive.
- 48 He said that the Seaford Meadows Shopping Centre is a convenience based shopping centre. He said that it had a solid catchment in the Seaford Meadows area. He said that the Woolworths store was performing well and its business was growing.
- 49 He gave some history to the BWS licence in the Seaford Central Shopping Centre. He said that Woolworths acquired the licence in 2003 at which time it traded as a Super Cellars in an external tenancy on the southern side of the centre. He said that the Seaford Central Shopping Centre was extended in 2006 which is when the Big W store and the Woolworths store were opened. He described the extended centre as a destination shopping centre. He said that when the centre was extended in 2006 Woolworths moved the liquor store into the centre adjacent to its supermarket. As a result the BWS store licence in the Seaford Central Shopping Centre can only open when the centre is open. Relevantly it is closed at 5pm on Saturdays and Sundays.

Christopher Day

- 50 Mr Day is a property director and is a director of a company that is involved in the development of the land at Seaford Meadows Shopping Centre. He spoke of some of its characteristics. He said that it included an office component and a childcare centre. The office component is intended for a medical centre. Above it will be nine residential apartments. He said that a pharmacy had signed a lease and that it was expected that in the near future the centre would have a pharmacy. He said that the shopping centre has 15 tenancies of which 11 were occupied.

John Simonetti

- 51 Mr Simonetti is a land agent, sales and marketing manager. He works for Realty SA, which is part of the Fairmont Group. He is involved in land developments and sales north/south of the city.
- 52 He was involved in the tender for the land in 2005 at Seaford Meadows. The Fairmont Group successfully tendered for the land and started developing it and selling it in 2006. He has been involved in this project

ever since. He said they had to produce a master plan as part of the tender, which set aside areas for shopping, possible schools and a neighbourhood centre. He said that the plan had to change over the years. He said that in formulating its plans for Seaford Meadows there was a requirement from the local council to have a neighbourhood centre in that area. This culminated in the development of the Seaford Meadows Shopping Centre.

- 53 He said that an important development was the Southern Expressway duplication. It meant that now a large number of people commute from Seaford Meadows to inner suburbs and the city. He said that their biggest problem in the last six years had been trying to keep up with demand. He said that the land attracted first, second and third home buyers. He said that a number were purchased by investors. He said that the rentals are very healthy.
- 54 He agreed that part of the sales pitch to would be purchasers at Seaford Meadows was an advice as to the proximity to the Seaford Central Shopping Centre and that its sales brochures described it as being only three minutes away.

Rocco Sinopoli

- 55 Mr Sinopoli is the manager of Cliff Avenue Liquor Store. He is Italian by birth. His wife's mother had previously owned the store. At one point she sold the store but re-purchased it in about 1997 with the intention that she and Mr Sinopoli would run it. Recently her health has deteriorated and for now she is not involved with the store. He said that when he started working in the store traded under the Liquor Mates badge. It then traded under the Cellarbrations badge. It now trades as a Sip'n Save facility
- 56 He and his family live next door to the store. Mr Sinopoli's wife works fulltime. She helps him with the store at night and on weekends. In more recent times their son, who is 22, also helps out.
- 57 Mr Sinopoli said that the store is about 200 metres square. He said that when he started in the store 1997 it was very run down. He said that he has put in a lot of work to turn it around. He said that he takes a lot of pride in the shop. He said that last year he put in new display fridges at a cost of \$65,000.
- 58 He was asked to comment upon the evidence of complaints about his store. He said that no one had ever complained to him that the store was dark and that he does not find it so. He said that in any event he recently engaged an electrician to install new lights.

- 59 He was asked about the Sip'n Save Group. He said that it runs an annual customer service award which he won for three years in a row from 2012. In terms of stock he said that 90% of items come from the Sip'n Save portfolio and the balance he buys from local, small wineries. He said that his pricing is largely dependent upon that set by Sip'n Save. In terms of price he was mindful of his competitors in the area. He said that he tries to be competitive and to get the best price and pass it onto the customer.
- 60 He said that he carried of the order of a thousand lines. He said that if a customer wants a product that he does not stock he would order it in straightaway. He said that the shop is open from 9.30am Monday to Wednesday to 7pm, Thursday and Friday from 9.30am to 8pm and Sunday 11am to 6pm.
- 61 He said that his business was doing well and he believed that his store was providing a range of liquor that was satisfying the needs of the people living in the locality. He said that a number of his customers come from Seaford Meadows.

David Kranenburg

- 62 Mr Kranenburg is the business development manager for Sip'n Save. He has held that position for about six and a half years. His duties involve promotions, customer service, store set-ups, signage and general day to day running of the Sip'n Save brand. He predominantly works in the southern areas of the state ranging from the Eyre Peninsula through to York Peninsula, Kangaroo Island, down to Victor Harbor and the southern metropolitan area.
- 63 He is responsible for a large number of stores including free standing bottle shops and bottle shops attached to hotels that of themselves might range from a small bottle shop from the bar through to a three lane drive-through.
- 64 Prior to working for Sip'n Save he worked for around 21 years as a sales representative for Australian Liquor Marketers. In both capacities he dealt with Mr Sinopoli and the Cliff Avenue Liquor Store. He has known Mr Sinopoli for the entire time that Mr Sinopoli has worked at the Cliff Avenue Liquor Store. He has visited the store continuously every four or so weeks for up to two hours at a time. He would check compliance with the core range product listing. He said that Sip'n Save compile a list that members are expected to carry. It sets a maximum price point but the member is allowed to sell under that, if they wish.

- 65 He said that Mr Sinopoli and his store were a 100% compliant. He said that he does not limit himself to the core range. He confirmed that Mr Sinopoli supported small wineries.
- 66 He said that he found Mr Sinopoli to be very friendly. He said that he enjoyed visiting him and described him as a “nice bloke”.
- 67 Based on his observations he thought that Mr Sinopoli enjoyed a good relationship with his customers.
- 68 He spoke of a recent Sip’n Save initiative called FIT, which was short for: friendly, interested and tidy. A mystery customer would attend a Sip’n Save outlet and rate the store for customer service. He said that every outlet was evaluated by reference to a number of criteria, all of which were ultimately based on all-round customer service.
- 69 An outlet would be given a score out of 100. He said that he checked the results and Mr Sinopoli’s store had never rated below 90% and on two or three occasions it rated at 100%.
- 70 He said that Sip’n Save had never received a complaint about Mr Sinopoli’s store. He thought it was a good, well run store with a good range of stock.

The applicant’s case

- 71 The nub of the applicant’s case is based on the following propositions.
- 72 Seaford Meadows is a new suburb that is considerable further developed than it was upon the establishment and later redevelopment of the Seaford Central Shopping Centre. The population of Seaford Meadows is substantial and can be expected to continue to grow in the foreseeable future. Many who live there wish to purchase takeaway liquor. A number do not wish to purchase takeaway liquor from a take way facility attached to a hotel and therefore avoid the Beach Hotel and the Port Noarlunga Hotel. A number do not wish to purchase takeaway liquor from the Cliff Avenue Liquor Store because they either do not like the store or do not find it convenient to use. A number do not find the Cellarbrations at Moana Heights a convenient place to buy takeaway liquor because it is out of the way and too far for them to travel to. Many of the residents of Seaford Meadows and nearby suburbs are using the new Seaford Meadows Shopping Centre and find it extremely convenient to do so. In conformity with what was expected, for many the centre has become a focal point for them. Many used to use the Seaford Central Shopping Centre. Many of those that continue to use that shopping centre to service their takeaway liquor needs find it very inconvenient to do so, especially when it is busy and parks are hard to find. It can be safely assumed that a large number of those who visit the Seaford

Meadows Shopping Centre regard it as unreasonable that they are, for now, unable to combine their liquor purchases with their other uses of that centre.

- 73 As a result of all of these matters it can be said that the existing facilities in and about the relevant locality are not adequately catering for the public.

Analysis

- 74 I have dealt with the issue of the relevant locality earlier in these reasons.

- 75 I now move to the other evidence.

- 76 I thought that all of the witnesses who gave evidence were doing their best to help me. I did not get the sense that there were any credit issues of any moment. Their evidence and the observations of the Court enable the findings made herein about the various retail liquor facilities discussed earlier in these reasons.

- 77 I did not get the sense that any of the resident witnesses who gave evidence in support of this application were particularly unhappy about the way they presently access takeaway liquor. The effect of their evidence is that they do much of their daily and weekly shopping at the Seaford Meadows Shopping Centre and would find it very convenient to be able combine their takeaway liquor shopping with that shopping.

- 78 The range of shops at the Seaford Meadows Shopping Centre is relatively limited. It is plainly much more limited than the range at the Seaford Central Shopping Centre.

- 79 It would follow that many of the residents of the locality who use the Seaford Meadows Shopping Centre would on occasions, notwithstanding the attractiveness and convenience of that centre, find it necessary to go to places like the Seaford Central Shopping Centre to satisfy some of their retail and other needs. I therefore cannot approach my consideration of this application from the premise that if I granted the application, for most, the Seaford Meadows Shopping Centre would be a one stop shop.

- 80 I find that the roads within the locality are not especially busy. My impression is that travelling within the locality by car is relatively easy.

- 81 I find that for those living in the locality the times and distances involved in accessing the takeaway facilities at the BWS at the Seaford Central Shopping Centre, the Beach Hotel at Seaford, the Cellarbrations store at Moana Heights and the Cliff Avenue Liquor Store are, by contemporary standards, not great.

82 I accept that using car parks at regional shopping centres can be trying. When they are busy it can be annoying driving around looking for a park. It can be irritating when the only park available is on the outside of the car park, especially if that is at the opposite end of the centre at which one might wish to shop. But as Doyle CJ observed in *South Eastern Hotel Pty Ltd and Ors v Woolies Liquor Stores Pty Ltd* :

“All of us put up with parking difficulties at times when shopping. Such difficulties are a feature of our society.”⁵

83 Looked at by contemporary standards there is nothing unusual about the parking difficulties associated with the Seaford Central Shopping Centre.

84 For those living in Seaford Meadows that seek access to a BWS store it might at times take them more than the three minutes by car to travel to the BWS store in the Seaford Central Shopping Centre, as advertised in the Fairmont Group’s brochure. But not much more. For them, although the extra trip to that centre might be inconvenient it cannot be said that the BWS store at the Seaford Central Shopping Centre does not adequately cater for their demand for liquor for consumption off licensed premises.

85 As for the Cliff Avenue Liquor Store, I accept that some of the residents did not find it to their liking. But that does not mean that it is not also contributing to the adequacy of supply of takeaway liquor to those living in the locality. I accept Ms Bramley’s evidence that for her the store adequately services her needs. There no doubt are many like her. The BWS store at the Seaford Central Shopping Centre, the takeaway facility at the Beach Hotel at Seaford and the Cellarbrations store at Moana Heights would be providing it with stiff competition. Despite this it has held its own. It would not have done so unless it was satisfying a demand. I expect that for many the fact that it lacks the polish of some other takeaway facilities is an attribute not a negative. I expect that there would be some who would find the Cliff Avenue Liquor Store quaint or quirky and attractive for those reasons.

86 When that store is considered in combination with the BWS store at the Seaford Central Shopping Centre, the takeaway facility at the Beach Hotel at Seaford and the Cellarbrations store at Moana Heights and the Dan Murphys at Colonades, it is my view that the existing premises in and about the locality are adequately catering for the public demand for liquor.

87 I find that the test postulated by s 58(2) has not been met.

⁵[1998] SASC 6819

- 88 Even if the test had been met, I would exercise the Court's very wide discretion under s 53 of the Act to refuse the application.
- 89 I accept Mr Roder's submissions about it being contrary to the balance of the industry to be setting up two BWS stores at such short distances from each other.
- 90 In exercising the discretion that s 53 confers upon the Court, I am obliged by s 3(2) of the Act to have regard to the objects of the Act. Those objects include: "to encourage a competitive market for the supply of liquor".⁶
- 91 In *Waiata Pty Ltd v Lane* King CJ spoke of some of the considerations that the Court might consider in exercising that discretion. He said:

"The language of the section enables the Court to exercise the discretion on grounds or for reasons which commend themselves to the Court and irrespective of the grounds which may be relied upon by the parties to the proceedings. These grounds or reasons include any proper principles or policies which the Court has developed for the attainment of the purposes of the Act. **Such principles or policies may relate to the undue proliferation of licences or of certain types of licences.** They may relate to **the promotion and maintenance of a suitable balance between the various types of liquor facility available in a locality.** The Court is authorized by s. 6b to inform itself in any manner in which it sees fit and that includes informing itself by reference to its own records and its own knowledge of liquor facilities which have been granted or promised by the Court and to the previous history of proceedings relating to particular premises. The Licensing Court must act judicially, but there is an unmistakably administrative element in its task of promoting, encouraging and maintaining a system of liquor facilities to meet the public need for liquor facilities and the wider community interests."⁷ (emphasis mine)

- 92 I appreciate that in reviewing the discretion for provided by s 53 the Full Court in *Liquorland (Australia) Pty Ltd v Lindsey Cove Pty Ltd*,⁸ made it clear that the Court must be careful not to use the discretion as a basis for imposing its views about what is desirable. It made the point that the Act does not regulate the sale and supply of liquor as closely as it once did and certainly less so than it did under the legislation under consideration in *Waiata*. There is now less emphasis about the undesirability of the proliferation of licences. Matters such as undue competition and economic waste are less important. The Court cannot use the discretion simply to provide protection to existing licensees. That said, the matters

⁶ Section 3(1)(e)

⁷ (1985) 39 SASR 290 at 293-294.

⁸ [2002] SASC 17; (2002) 81 SASR 337

that I have emphasised in the passage of King CJ's judgment just cited, are still of some relevance.

- 93 Even without direct evidence I am entitled to know that the creation of another takeaway liquor facility in this locality would put a strain on the viability of the takeaway facility at the Beach Hotel at Seaford and the Cliff Avenue Liquor Store. For the sake of a virtually identical store to one no more than five minutes' drive down the road this is a potential price that is too heavy to pay.
- 94 To put it another way, the grant of this licence will not add to the range of facilities in the locality. It has the potential to result in the public ultimately having less choice not more. Thus the grant of the licence carries with it the risk that within this locality the competitive market for the supply of liquor might be compromised. In light of the fact that for those who wish to access the type of facility proposed they are able to access such a facility within a short distance, I would exercise the Court's discretion and refuse the application.

Conclusion

- 95 The applicant has failed to satisfy the requirements of s 58(2) of the Act. Even if it had satisfied those requirements I would, in the exercise of the Court's discretion, have refused the application.
- 96 The application is dismissed.