



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application for an internal review pursuant to section 153 of the *Liquor Control Reform Act 1998* (Vic) of the decision dated 17 April 2015 to grant a packaged liquor licence to Woolworths Limited, trading as Dan Murphy's Cranbourne East, for the premises situated at 1S Linsell Boulevard, Cranbourne East.

Commission: Dr Bruce Cohen, Chair
Mr Ross Kennedy, Deputy Chair
Ms Deirdre O'Donnell, Commissioner

Dates of Hearing: 31 August 2015, 1, 2, 3 September 2015; 8, 9 December 2015

Date of Decision: 11 April 2016

Date of Reasons: 11 April 2016

Parties:

Applicant 1	City of Casey
Applicant 2	Chief Commissioner of Police
Applicant 3	Licensing Inspector Paul Breen, Victoria Police
Licensee	Woolworths Limited

Appearances:

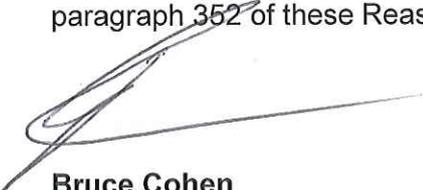
Ms Susan Brennan SC and Ms Elizabeth Porter, Counsel for Applicant 1
(instructed by Gadens Lawyers on 31 August 2015; 1, 2, 3 September 2015; and instructed by Mills Oakley on 8, 9 December 2015)

Mr Haroon Hassan, Counsel for Applicants 2 and 3
(instructed by the Victorian Government Solicitor's Office)

Mr Lloyd Bryant, Counsel for the Licensee
(instructed by King & Wood Mallesons)

Mr Cameron Warfe, Counsel Assisting the Commission

Decision: The Commission has determined to affirm the decision of the Delegate, subject to the conditions outlined in paragraph 352 of these Reasons.

Signed: 
Bruce Cohen
Chair



REASONS FOR DECISION

BACKGROUND

1. On 17 June 2014, Woolworths Limited (**Licensee**)¹ applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for a packaged liquor licence² (**Licence Application**) in respect of premises proposed to be situated at 1S Linsell Boulevard, Cranbourne East (**Premises**) pursuant to Division 4 of Part 2 of the *Liquor Control Reform Act 1998 (Vic)* (**LCR Act**).³
2. The Licensee provided the following materials in support of the Licence Application:
 - a) the application form;
 - b) a copy of the Town Planning Permit PinA00727/13 with endorsed plans issued by the City of Casey (**Council**)⁴ dated 13 May 2013 (**Town Planning Permit**);
 - c) a statement of display for the display period 26 June 2014 to 24 July 2014 dated 28 July 2014;
 - d) a copy of a newspaper advertisement of the Licence Application dated 17 June 2014; and
 - e) proposed plans of the Premises.
3. On 19 June 2014, a copy of the Licence Application was served on:
 - a) the Chief Commissioner of Police (**Chief Commissioner**) pursuant to section 33(1); and
 - b) the Council pursuant to section 33(2).
4. By a Liquor Licensing Application Objection Report dated 15 July 2014 and received by the Commission on that date,⁵ Inspector Paul Breen, the Casey Local Area Commander and Licensing Inspector (**Licensing Inspector**),⁶ objected to the grant of the Licence Application on the grounds that:
 - a) it would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated due to the anticipated increase in

¹ Attached to the application form were the details of the Licensee's directors and secretary.

² As to the meaning of "packaged liquor licence", see generally section 11 of the LCR Act.

³ All references to legislation are references to the LCR Act unless stated otherwise.

⁴ For clarity, the geographical area that comprises the local government area (LGA) of the City of Casey (as compared to the governing body for that area, the Council) is referred to in this decision as "Casey".

⁵ Pursuant to section 41(3)(a)(i), an objection by a licensing inspector must "be made to the Commission in writing within 30 days after ... in the case of an objection to the grant, variation or relocation of a licence—the day on which notice of the application was first displayed under section 34(1)".

⁶ Pursuant to section 3(1), a licensing inspector "means a person appointed as a licensing inspector under section 172". Pursuant to section 172(1), "the Chief Commissioner may appoint a police officer of or above the rank of inspector to be a licensing inspector".



the incidence of alcohol-related harm that is likely to occur if a large scale liquor outlet providing discounted liquor is introduced into the area; and

- b) it would be conducive to or encourage the misuse or abuse of alcohol due to the increased availability of discounted liquor that is likely to occur if a large scale packaged liquor outlet is introduced into the area.⁷

5. By a letter dated 16 July 2014 received by the Commission on 18 July 2014,⁸ the Council stated, inter alia, that it objected to the grant of the Licence Application on the grounds that:

- a) the grant of the packaged liquor licence would be detrimental to, and detract from, the amenity of the area in which the subject premises are situated due to the anticipated increase in the incidence of alcohol-related harm that is likely to occur if a large scale packaged liquor outlet providing low priced liquor is introduced into this area; and
- b) the grant of the packaged liquor licence would be conducive to and encourage the misuse and abuse of alcohol due to the increased availability of low priced liquor that is likely to occur if a large scale packaged liquor outlet is introduced into this area.

6. By a letter to the Commission dated 19 September, Senior Sergeant Phil Eager stated:

“On 15 July 2014 the Chief Commissioner of Police objected to the Application on the ground that he requires the premises [sic] projected retail alcohol sales (price and volume) in order to assess the impact of the grant of the packaged liquor licence on the area. To date the Applicant has not provided the projected retail alcohol sales data.

It is requested that the Applicant be advised that an absence of the data is likely to compromise the Chief Commissioner’s ability to properly assess the Application, and if that were to occur, it will be submitted on behalf of the Chief Commissioner that the Commission is not in a position to make an informed decision whether the grant of the licence will detract from or be detrimental to the amenity of the area, or be conducive to or encourage the misuse or abuse of alcohol.”

7. On or around 10 October 2014, the Licensee lodged a Submission in support of the Licence Application dated 10 October 2014 (**Licensee Application Submission**). Attached to the Licensee Application Submission were:

- a) a Fact Sheet – October 2013 with respect to The Hunt Club development, which is in the immediate vicinity of the Premises (**Hunt Club Fact Sheet**);
- b) a Social Impact Assessment titled “*Dan Murphy’s, Narre Warren South – packaged liquor licence application*” prepared by Urbis Pty Ltd (**Urbis**) dated October 2014 (**Urbis SIA**);

⁷ The Liquor Licensing Application Objection Report was accompanied by an Application Lodgement Notification last dated 15 July 2014 which stated, inter alia, that there was an objection from the Licensing Inspector and which crossed out the sentence “2 There is AN OBJECTION/NO OBJECTION from the Chief Commissioner of Police”.

⁸ Pursuant to section 40(3)(a), an objection by Council must “be made to the Commission in writing within 30 days after the day on which notice of the application for the grant, variation or relocation was first displayed under section 34(1)”.



- c) a Statement of Policy issued pursuant to the LCR Act titled “*Assessment of the cumulative impact of licensed premises*” dated 5 October 2010;
 - d) a copy of the then Department of Planning and Community Development Practice Note 61 titled “*Licensed Premises: Assessing Cumulative Impact*” dated March 2011 (**Planning Practice Note 61**);⁹
 - e) maps with radius plans for 100 metres, 500 metres and 2 and 5 kilometres in relation to the Premises;¹⁰ and
 - f) a copy of the Code of Conduct for Packaged Liquor Licensees determined pursuant to section 11(5).
8. By a letter dated 23 October 2014, Senior Constable Dominique Courtney, Delegate of the Chief Commissioner, wrote to the Commission stating, inter alia, that the Chief Commissioner objected to the Licence Application on the grounds that:
- a) it would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated due to the anticipated increase in the incidence of alcohol-related harm that is likely to occur if a large scale liquor outlet providing discounted liquor is introduced into the area; and
 - b) it would be conducive to or encourage the misuse or abuse of alcohol due to the increased availability of discounted liquor that is likely to occur if a large scale packaged liquor outlet is introduced into the area.
9. A delegate of the Commission tasked with determining the Licence Application (**Delegate**) accepted the Chief Commissioner’s objection out of time pursuant to section 174.¹¹

⁹ The Licensee later provided an updated version of the Planning Practice Note 61 issued by the Department of Environment, Land, Water and Planning dated June 2015. The Commission notes that there are no substantive differences between the two versions, and has taken into account the more recent version of the Planning Practice Note 61 in its consideration of this Review Application.

¹⁰ The Hunters Green retirement village was not marked on these versions of maps provided.

¹¹ Pursuant to section 39(3), an objection by the Chief Commissioner must:

- (a) be made to the Commission in writing within 21 days after the day on which a copy of the application for the grant, variation, transfer or relocation was given to the Chief Commissioner under section 33(1); and
- (b) state the grounds of, and the reasons for, the objection.”

Pursuant to section 174, at the request of any person, the Commission may:

- (a) extend the time for making an objection under this Act in respect of any particular application; or
- (b) accept an objection made after the time under this Act for making that objection has expired.”



10. By a letter dated 27 February 2015 and received by the Commission on 2 March 2015, the Council provided to the Commission:
 - a) a Submission dated 27 February 2015 in support of its objection (**Council Application Submission**); and
 - b) an Expert Advice, Social Impact Assessment dated February 2015 prepared by Beverley Kliger & Associates (**BKA Report**).
11. By a letter dated 4 March 2015 and received by the Commission on 5 March 2015, the Chief Commissioner lodged with the Commission amended objections to the Licence Application, and requested the Commission exercise its powers under section 10 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic) (**VCGLR Act**) to accept the Chief Commissioner's amendments. The amended objections were that:

"The Chief Commissioner of Police objects to the application on the ground that:

The Applicant has failed to disclose relevant and available information, being the projected retail alcohol sales (price and volume) for the proposed premises. The Chief Commissioner objects on this ground because, without this information, the Commission is prevented from having all the relevant and available data with respect to harm minimisation and the risks associated with the misuse and abuse of alcohol such as:

- *whether the granting of the application would detract from or be detrimental to the amenity of the area in the site to which the application relates; and*
- *whether the granting of the application would be conducive to or encourage the misuse and abuse of alcohol.*

The Chief Commissioner also adopts the objections made by the Licensing Inspector and lodged in response to the application. Further and alternatively, the Chief Commissioner objects on the grounds that:

The proposed licensed premises would detract from or be detrimental to the amenity of the area in and around which the proposed licensed premises is situated, due to:

- *the anticipated increase in the incidence of alcohol-related harm that is likely to occur if a large scale packaged liquor outlet is introduced in the area given the socio-economic, demographic and Victoria Police data analysed in the BKA Report; and*

The proposed licensed premises would be conducive to or encourage the misuse or abuse of alcohol, due to:

- *the increased availability of alcohol that is likely to occur if a large scale packaged liquor outlet is approved given the socio-economic, demographic and Victoria Police data analysed in the BKA Report."*

12. It was not open to the Delegate to exercise the Commission's powers under section 10 of the VCGLR Act as these powers have not been delegated. However, the Commission's power under section 174 of the LCR Act (that is, to accept objections after the time under the LCR Act for making that objection has expired) has been delegated. The objection as set out in the letter dated 4 March 2015 was accepted and considered by the Delegate. Issues with respect to the



scope of the objections made by the Chief Commissioner are considered further in paragraphs 268 to 273.¹²

13. By the letter dated 4 March 2015 and received by the Commission on 5 March 2015, the Chief Commissioner and the Licensing Inspector also provided a Submission in support of their respective objections (**Victoria Police Application Submission**).
14. On or around 20 March 2015, the Licensee lodged a further Submission dated 20 March 2015 in reply to the Council Application Submission and the Victoria Police Application Submission (**Licensee Further Application Submission**). Attached to the Licensee Further Application Submission were:
 - a) a Report and Recommendation(s) to the then Director Liquor Licensing from the then Liquor Licensing Panel with respect to an application for a packaged liquor licence at Dan Murphy's Preston dated 7 August 2007;
 - b) a review of the impact of new retail liquor store openings on existing Woolworths operated liquor stores in NSW prepared by the Woolworths Liquor Group titled "Impact of Opening Additional Licences" dated August 2013;¹³ and
 - c) a document titled 'Summary of Woolworth's Training and Responsible Service of Alcohol Initiatives'.
15. On 17 April 2015, the Delegate determined to grant the Licence Application (**Delegate's Decision**) and gave reasons for that decision (**Delegate's Reasons for Decision**). An approved red line plan was also issued (**Delegate Approved Red Line Plan**).
16. Pursuant to section 153, the Commission received:
 - a) an Application for Internal Review lodged by the Council on 15 May 2015 with respect to the Delegate's Decision (**Council Internal Review Application**); and
 - b) Applications for Internal Review lodged jointly by the Chief Commissioner and the Licensing Inspector on 18 May 2015 with respect to the Delegate's Decision (**Victoria Police Internal Review Applications**),

(together, **the Review Application**).

¹² Throughout the remainder of these reasons, the phrases "the Chief Commissioner and the Licensing Inspector" and "Victoria Police" are used interchangeably.

¹³ This document was originally prepared by the Licensee for confidential consideration by the NSW Independent Liquor and Gaming Authority in an unrelated matter, and was provided in this Review Application on a confidential basis.



MATERIALS BEFORE THE COMMISSION & PUBLIC HEARING

17. The Commission on review had before it, and considered, all of the material received by the Delegate (as described at paragraphs 2 to 14 above), as well as the Delegate's Reasons for Decision and the Delegate Approved Red Line Plan.
18. Prior to the hearing held with respect to the Review Application, the Commission received the following documents:
 - a) **Council**
 - i. Submission on behalf of the Council dated 3 August 2015 (**First Council Review Submission**), attaching a copy of a trade area map for the Premises and a packaged liquor outlet and floor space analysis for the south-east Melbourne area;¹⁴
 - ii. Submission in reply on behalf of Council dated 27 August 2015 (**Second Council Review Submission**), attaching a map of predicted population growth surrounding the Premises, an email chain between Council staff and Coles' Manager of Licences dated 26 August 2015, and other maps originally produced in the Harvest Report (see below);
 - iii. Report prepared by Harvest Digital Planning on behalf of the Southeast Melbourne Consortium of Councils titled "*Exploratory Spatial Analysis of Packaged Liquor and Harm in Melbourne's Southeast*" dated June 2015 (**Harvest Report**);
 - iv. Peer reviewed article by Mr Christopher Morrison et al titled "*Relating Off-Premises Alcohol Outlet Density to Intentional and Unintentional Injuries*", provided to the Commission on 26 August 2015;¹⁵
 - b) **Chief Commissioner and Licensing Inspector**
 - i. Submissions on behalf of the Chief Commissioner and the Licensing Inspector dated 31 July 2015 (**First Victoria Police Review Submission**);
 - ii. Submission in Reply on behalf of the Chief Commissioner and the Licensing Inspector dated 26 August 2015 (**Second Victoria Police Review Submission**);

¹⁴ Attachments 1 and 2 of the Submission were inadvertently not originally attached and were provided to the Commission on 25 August 2015.

¹⁵ As to details of this publication, see further at paragraph 174(j).



c) **Licensee**

- i. Submissions from the Licensee dated 21 August 2015 (**First Licensee Review Submission**), attaching a number of supporting documents (in addition to copies of documents previously provided) including:
 - A. A copy of the Late night (general) licence held by Kordister Pty Ltd for the Premises located at 199 Russell Street;
 - B. A copy of the decision *Hunt Club Commercial Pty Ltd v Casey CC* [2013] VCAT 726;
 - C. A document prepared by Woolworths Liquor Group titled “Responsible Buying Charter” dated June 2015;
 - D. Projected sales figures for the first 12 months of the Premises;¹⁶
 - E. Various tables reviewing the AOD statistics produced by Turning Point;
 - ii. A supplementary report to the Urbis SIA prepared by Urbis dated August 2015 (**Urbis Supplementary Report**); and
 - iii. Draft report by Dr John Henstridge dated September 2010 titled “*Objective Measures of the Impact of Dan Murphy’s Stores*” (**Henstridge WA Report**).¹⁷
19. By a Summons dated 3 July 2015 issued to Associate Professor Karen Smith on the request of the Licensee pursuant to section 17 of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) as in force immediately prior to the repeal of Division 5 of Part 1 of that Act,¹⁸ the Commission was provided with the background data and other materials in relation to a publication by Mr Christopher Morrison and Associate Professor Karen Smith titled “*Disaggregating relationships between off-premise alcohol outlets and trauma*” (**Morrison and Smith, 2015**). This information was sought by the Licensee in order to undertake a statistical review of the publication.
20. The Commission conducted a hearing in relation to the Review Application at which the Council, Victoria Police and the Licensee appeared, led evidence and made submissions. The hearing was held over six days – 31 August 2015, 1, 2 & 3 September 2015 and 8 & 9 December 2015.

¹⁶ Prepared pursuant to the directions of the Commission dated 1 June 2015 and provided on a confidential basis.

¹⁷ Further versions of this draft report were later provided by the Licensee. Issues relating to this report are considered further at paragraphs 194 to 200.

¹⁸ As empowered under section 33(3) of the VCGLR Act.



21. The following witnesses adopted witness statements and/or expert reports provided to the Commission¹⁹ and provided oral evidence at the hearing:

a) **Council**

- i. Ms Beverley Kliger, Beverley Kliger & Associates;
- ii. Associate Professor Peter Miller, Deakin University;
- iii. Dr Michael Livingston, Turning Point;
- iv. Mr Christopher Morrison, Monash University (by telephone);²⁰
- v. Ms Leanne Petrides, Cranbourne Information and Support Services Inc (**CISS**);

b) **Chief Commissioner and Licensing Inspector**

- i. Senior Sergeant Karen Porter;
- ii. Sergeant Royce Dayton;
- iii. Sergeant Ian Lane;
- iv. Superintendent Timothy Hansen (by telephone);

c) **Licensee**

- i. Ms Jane Homewood, Director, Urbis;
- ii. Dr John Henstridge, Data Analysis Australia Pty Ltd;²¹ and
- iii. Mr Glenn Weston, Director, Public Place Melbourne.

22. Witness statements were also received from the following persons on behalf of the Council, who did not appear at the hearing:

- a) Major Robert Evans, Salvation Army; and
- b) Mr Robert Nyhuis, Senior Minister, South Eastern Christian Centre.

23. During the hearing, the Commission received the following documents:

a) **Council**

- i. Trade Area Map of the Premises marked with a 2.5 kilometre radius;

¹⁹ Subject to minor amendments in the cases of Dr Livingston, Ms Homewood and Mr Weston.

²⁰ The Commission may allow a witness to provide evidence by telephone pursuant to its powers under sections 26(4) and 34 of the VCGLR Act.

²¹ Dr Henstridge's expert report was titled 'Review of Research Paper on Disaggregating Relationship between Off-premise Alcohol Outlets and Trauma, Project: Woolworths/23, August 2015' (**Henstridge Expert Report**).



- ii. PowerPoint Presentation slides prepared by Ms Beverley Kliger;
 - iii. Letter by Mr Christopher Morrison dated 31 August 2015;
 - iv. Excerpts of an article from the National Drug Research Institute titled “*Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*” (**NDRI, 2007**);
 - v. Article by Anne Kavanagh et al titled “*Access to alcohol outlets and harmful alcohol consumption: a multi-level study in Melbourne, Australia*” (**Kavanagh et al, 2011**);²²
 - vi. Article by Wenbin Liang and Tanya Chikritzhs titled “*Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability*” (**Lang and Chikritzhs, 2011**);²³
 - vii. Map of Casey showing road centrelines and suburb boundaries;
 - viii. Website screenshots regarding the Licensee’s ‘Lowest Liquor Price Guarantee’;
 - ix. Website screenshot of Licensee’s ‘Bargain Bin’;
 - x. Article by Allan Stewart-Oaten et al titled “*Environmental Impact Assessment: “Pseudoreplication” in Time?*”;
 - xi. Correspondence from Mr Christopher Morrison dated 5 September, 19 September and 11 October 2015 regarding draft and final versions of the Henstridge WA Report;
 - xii. Closing Submission on behalf of the Council dated 9 December 2015 (**Third Council Review Submission**);²⁴
- b) **Chief Commissioner and Licensing Inspector**
- i. Various maps of the relevant area in support of the statement by Senior Sergeant Karen Porter;
 - ii. Various graphs of ambulance attendance and hospital admissions data for Casey;
 - iii. Comparison of packaged liquor outlet floor areas within Casey;
 - iv. Media releases by the Australian Bureau of Statistics (**ABS**) titled “*Apparent alcohol consumption hits a 50 year low*” and “*Apparent Consumption of Alcohol – Long-term trends*”;

²² As to details of this publication, see further at paragraph 174(b).

²³ As to details of this publication, see further at paragraph 174(c).

²⁴ Council also provided documents titled “*Casey & Cardinia PSA Response Zones*” and “*Review of Porter incidents by police response zone population*”, however later withdrew those documents and did not seek to rely on them for the purpose of the Review Application.



- v. Closing Submission on behalf of the Chief Commissioner and the Licensing Inspector dated 9 December 2015, with attachments (**Third Victoria Police Review Submission**);
- c) **Licensee**
- i. Photographs of liquor products purportedly for sale within Casey;
 - ii. Website screenshots of low-priced wine products available for sale at Liquorland, Aldi and First Choice Liquor;
 - iii. Further draft versions of the Henstridge WA Report dated October 2010 and November 2010, and a final version of the Henstridge WA Report dated November 2010; and
 - iv. Closing Submission on behalf of the Licensee dated 9 December 2015 (**Second Licensee Review Submission**).
24. By a Summons dated 14 October 2015 issued to Ms Jane Homewood on the request of the Council pursuant to section 17 of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) as in force immediately prior to the repeal of Division 5 of Part 1 of that Act,²⁵ the Commission was provided with a document titled “*Alcohol policy and research – a review of literature*” (**Urbis Literature Review**), which was referred to and relied on by the Licensee in the Urbis Supplementary Report.
25. Each of the Commissioners separately visited the site of the Premises in the period between the first four sitting days and the final two sitting days.

LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION

26. In setting out the legislative framework and the task before the Commission, the Commission acknowledges that it has had the benefit of detailed written and oral submissions provided by the Council, Victoria Police, and the Licensee in respect of these matters, for which it was most appreciative. While it is not practical for these submissions to be set out in their entirety in the body of these reasons, the Commission has considered each and all of these submissions.

Legislative Framework

27. Under the LCR Act, an application for a packaged liquor licence may be contested or uncontested. Pursuant to section 3(1), a contested application relevantly includes “*an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of*

²⁵ As empowered under section 33(3) of the VCGLR Act.



which any objections are received under Division 5 of Part 2 within the period set out in that Division for those objections (or that period as extended under section 174).²⁶

28. Under Division 5 of Part 2, objections for the grant, variation, transfer or relocation of a licence can be made by various categories of persons.²⁷ Relevantly, these include the Chief Commissioner (section 39), a council of the municipal district in which the relevant premises are situated (section 40) and a licensing inspector (section 41).²⁸
29. The bases upon which an objection may be made varies depending on who is making the objection:²⁹
- a) the Chief Commissioner “... *may object to the grant ... of a licence ... on any grounds he or she thinks fit*” (section 39(1));
 - b) the council of the municipal district in which premises are situated may object:
 - i. to the grant of a licence “... *on the ground that the grant, variation or relocation would detract from or be detrimental to the amenity of the area in which the premises are situated*” (section 40(1)); and
 - ii. to the grant of a packaged liquor licence or late night (packaged liquor) licence in respect of those premises “... *on the ground that the grant, variation or relocation would be conducive to or encourage the misuse or abuse of alcohol*” (section 40(1A));³⁰
 - c) a licensing inspector may, inter alia, object to the grant of a licence on the grounds that:
 - i. “... *the grant ... would detract from or be detrimental to the amenity of the area in which the ... proposed licensed premises are situated*” (section 41(1)(b)(i)); or
 - ii. “... *the grant ... would be conducive to or encourage the misuse or abuse of alcohol*” (section 41(1)(b)(ii)).³¹

²⁶ Conversely, an “uncontested application” is defined in section 3(1) as being “*an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174)*”.

²⁷ While not at issue in this matter, it is noted that the powers to object vary in some instances depending on whether the objections relate to a licence or BYO permit.

²⁸ An objection may also be made by any person on the ground that “*the grant ... would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated*” (section 38(1)) or, in respect of an application for a grant of a packaged liquor licence or late night (packaged liquor) licence, on the ground that “*the grant ... would be conducive to or encourage the misuse or abuse of alcohol*” (section 38(1A)). There were no objections other than those lodged by the Chief Commissioner, the Licensing Inspector and the Council.

²⁹ Sections 38 to 41 also specify the times within which objections may be made.

³⁰ Section 40(3) specifies considerations that are not valid reasons for an objection under this section.

³¹ Section 41(4) specifies considerations that are not valid reasons for an objection under this section.



30. Given the objections to the Licence Application lodged by the Council, the Chief Commissioner and the Licensing Inspector as set out in paragraphs 4 to 12 above, the Licence Application was, and remained, a contested application.
31. On receipt of an application for internal review under section 153, the Commission is to make a fresh decision that:
- a) affirms or varies the reviewable decision; or
 - b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.
32. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the Licence Application. In doing so, it must consider all the information, material and evidence before the original decision maker.³² It may also consider further information, material or evidence as part of making its decision.³³

Conduct of an inquiry

33. Section 34 of the VCGLR Act provides that subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter are:
- a) section 33 of the VCGLR Act, which provides, inter alia:
 - “(1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.*
 - ...
 - (3) When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed by the Governor in Council and Division 5 of Part I (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly.”*
 - b) section 25(3) of the VCGLR Act, which provides:
 - “In performing a function or duty the Commission—*
 - (a) except when exercising a power under Division 5 of Part I of the Evidence (Miscellaneous Provisions) Act 1958, is not bound by the rules of evidence but may inform itself in any way it thinks fit;*
 - (b) is bound by the rules of natural justice.”*

³² Section 157(2).

³³ See section 157(3).



- c) section 47(3) of the LCR Act, which provides that before granting or refusing a contested application under subsection (1), the Commission:

*“(a) may have regard to any matter the Commission considers relevant; and
(b) may make any enquiries the Commission considers appropriate; and
(c) must give the applicant and each objector a reasonable opportunity to be heard.”*

- d) sections 47(3A)-(3B) of the LCR Act, which provide:

*“(3A) If an inquiry is conducted for the purposes of this section—
(a) the Commission must conduct the inquiry in public unless the Commission determines that the inquiry, or part of the inquiry should be conducted in private as—
(i) confidential information will be disclosed at the inquiry; or
(ii) it is in the public interest to conduct the inquiry in private; or
(iii) it is in the interests of justice to conduct the inquiry in private; and
(b) the Commission may grant or refuse a contested application without hearing from a person who has notice of the inquiry if the person is not present or represented at the time and place appointed for the inquiry; and
(c) the Commission may consider evidence of anything said or done at the inquiry in any internal review of that decision.
(3B) A person who has a right to be heard by the Commission may—
(a) appear and be heard in person; or
(b) be represented by any other person.*

...”

34. During the inquiry of the Review Application, each of the parties provided material to the Commission on a confidential basis.³⁴ During the examination of witnesses pertaining to this material, the Commission determined to hold those parts of the inquiry in private pursuant to section 47(3A)(a)(i) of the LCR Act. As to the way the Commission will discuss its consideration of this material in these reasons, see paragraph 54 below.

Determination of a contested application

35. Where an application is a contested application, pursuant to section 47(1):

“Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.”³⁵

36. In exercising its discretion to either grant or refuse a contested application under section 47(1), the Commission must have regard to the objects of the LCR Act and any Ministerial decision-making guidelines.

³⁴ For the Council: the Harvest Report; for Victoria Police: hotspot analysis of Victoria Police data referred to in the statement of Senior Sergeant Karen Porter, and two case studies attached to the statement of Sergeant Ian Lane; and for the Licensee: the document titled “Impact of Opening Additional Licences”, and the projected sales figures for the first 12 months of the Premises.

³⁵ Division 3 of Part 2 imposes a number of specific restrictions on the grant of licences. The Commission considers that none of the relevant restrictions (i.e. sections 22, 24 and 26B) were in dispute in this matter and, on the materials before it, the Commission is satisfied that the grant of the Licence Application is not precluded by virtue of the operation of any of these provisions.



37. Section 9(3) of the VCGLR Act provides that:

“The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”³⁶

38. The objects of the LCR Act are set out in section 4(1), which provides:

“(1) The objects of this Act are—

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—*
 - (i) providing adequate controls over the supply and consumption of liquor; and*
 - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life;³⁷ and*
 - (iii) restricting the supply of certain other alcoholic products; and*
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and*
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and*
- (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and*
- (d) to regulate licensed premises that provide sexually explicit entertainment.”*

39. Section 4(2) further provides that:

“It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.”

40. Section 9(4) of the VCGLR Act provides that the Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5 of that Act.

41. Decision-making guidelines titled *“Grant of Licences for the Sale of Packaged Liquor”* dated 7 June 2012 were issued by the then Minister for Consumer Affairs and Minister responsible for administering the *Liquor Control Reform Act 1998* (**Packaged Liquor Guidelines**). However, these Packaged Liquor Guidelines in particular *“cover licensed venues in the State of Victoria that operate for periods in excess of ordinary trading hours as defined in section 3 of the Act, including, but not exclusive to, licensed venues that operate on a 24-hour basis”*. *“Ordinary trading hours”* are defined in section 3(1) as being, inter alia:

“...

³⁶ There are no objects specified in the VCGLR Act itself.

³⁷ Issues with respect to *“amenity of community life”*, *“amenity of the area”* and *‘amenity’* more generally are considered further at paragraph 79 to 91.



- (c) *in relation to a packaged liquor licence or late night (packaged liquor) licence—*
- (i) *the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and*
 - (ii) *the hours between 10 a.m. and 11 p.m. on Sunday; and*
 - (iii) *the hours between 12 noon and 11 p.m. on ANZAC Day; ...”*

42. As the Licensee is not proposing to operate the Premises outside of ordinary trading hours, the Commission is satisfied that the Packaged Liquor Guidelines have no substantial impact on the Review Application.

43. Decision-making guidelines titled “*Assessment of the Cumulative Impact of Licensed Premises*” dated 7 June 2012 were issued by the then Minister for Consumer Affairs and Minister responsible for administering the *Liquor Control Reform Act 1998 (Cumulative Impact Guidelines)*. The Cumulative Impact Guidelines provide, inter alia, that:

“It is the policy of the Victorian Government that the Victorian Commission for Gambling and Liquor Regulation may assess the contribution of a new licensed premises, or the variation or relocation of an existing licensed premises, to the cumulative impact of a concentration of licensed premises in an area.

This may include consideration of:

- *The situational context with regard to:*
 - *any cumulative impact assessment already undertaken by the responsible planning authority;*
 - *proximity to sensitive uses (for example, schools, kindergartens, or drug or alcohol treatment facilities);*
 - *activity mix (the balance between licensed premises and other uses);*
 - *existing levels of local amenity;*
 - *available public amenities, including transport;*
 - *the number and types of existing licensed premises in the area and their patron numbers and operating hours;*
 - *any current enforcement proceedings against existing licensed premises in the area;*
 - *any existing patron behaviour issues involving intoxicated persons; and*
 - *any other relevant matter that the Victorian Commission for Gambling and Liquor Regulation can consider under the Liquor Control Reform Act 1998;*
- *whether the proposed use would contribute positively to the diversity of uses and activities in the area;*
- *whether the proposed use would generate unreasonable amenity impacts or significantly increase the number of people in the street at any given time; and*
- *whether any negative impacts could be satisfactorily mitigated by the application of liquor licence conditions or changes to the venue management plan.”*

44. The Cumulative Impact Guidelines further provide:

*“From its date of gazettal, these guidelines supersede the Statements of Policy gazetted on 5 October 2010 and on 4 August 2011, on the assessment of the cumulative impact of licensed premises. These guidelines will apply from the date of gazettal.”*³⁸

³⁸ The Cumulative Impact Guidelines were gazetted on 7 June 2012: Victoria, *Victoria Government Gazette*, No G 23, 7 June 2012, pp.1175-6. The Licensee initially made reference to the Statement of Policy dated 5 October 2010 (see Licensee Application Submission at [12] and following; Tab 3) and then subsequently to the Statement of Policy dated 4 August 2011 (see Licensee Further Application Submission at [46] to [51]). Victoria Police noted that the 2010 policy had



45. The Commission notes that reference has also been made in various submissions to the Planning Practice Note 61, in particular by the Licensee. The Planning Practice Note 61 is not a decision-making guideline issued by the Minister pursuant to section 5 of the VCGLR Act. The Planning Practice Note 61 is issued by a Victorian Government Department and provides that:

“The purpose of this practice note is to:

1. *Explain cumulative impact in relation to licensed premises in the planning system.*
2. *Provide guidelines that:*
 - *assist a permit applicant when considering and responding to the potential cumulative impact of their proposal*
 - *support a council when assessing the cumulative impact of licensed premises as part of a planning permit application.*

This practice note provides guidance on preparing and assessing an application under Clause 52.27 of the planning scheme. Land uses likely to require a permit under Clause 52.27 include a Bottle shop, Nightclub, Restricted place of assembly, Food and drink premises, Restricted recreation facility and certain other premises that may be licensed to sell or consume liquor. Food and drink premises include Tavern, Hotel, Restaurant, Convenience restaurant and Take-away food premises.”

46. Issues with respect to evidence and submissions relating to the Planning Practice Note 61 are addressed in further detail at paragraphs 138 to 147.

47. Pursuant to section 47(2) of the LCR Act, the Commission:

... may refuse to grant a contested application on any of the grounds set out in section 44(2).

48. Relevantly for this Review Application, these grounds in section 44(2) include that the granting of the application would:

“... detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated (section 44(2)(b)(i));
... be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(i)).”

49. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.³⁹ Pursuant to section 3A(2) and (3), a list of non-exhaustive factors that may be taken into account in determining whether a proposed grant, variation or relocation would detract from or be detrimental to the amenity of the area include:

- “(a) the presence (or absence) of parking facilities;*
- (b) traffic movement and density;*
- (c) noise levels;*
- (d) the possibility of nuisance or vandalism;*
- (e) the harmony and coherence of the environment; and*
- (f) any other prescribed matters.”*

been superseded, but argued that the 2011 policy was operational by virtue of the operation of section 50(2)(c) of the VCGLR Act (see Victoria Police Application Submission at [9] to [13]). The Commission considers that by virtue of the words contained in the Cumulative Impact Guidelines set out in paragraph 44, the 2011 Statement of Policy has also been superseded.

³⁹ Section 3A(1).



50. Pursuant to section 3AA, the LCR Act further provides that for the purposes of that Act:

“... evidence of any of the following factors, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to, that premises, are taken to constitute evidence of detraction from, or detriment to, the amenity of the area in which the licensed premises is situated—

- (a) violent behaviour;*
- (b) drunkenness;*
- (c) vandalism;*
- (d) using profane, indecent or obscene language;*
- (e) using threatening, abusive or insulting language;*
- (f) behaving in a riotous, indecent, offensive or insulting manner;*
- (g) disorderly behaviour;*
- (h) causing nuisance;*
- (i) noise disturbance to occupiers of other premises;*
- (j) obstructing a footpath, street or road;*
- (k) littering.”*

51. The LCR Act does not define the meaning of the term “*misuse or abuse of alcohol*”, nor specify factors that constitute evidence of that which would be “*conducive to or encourage the misuse or abuse of alcohol*”.

52. Where an application is granted, the Commission may impose any condition it thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.⁴⁰

53. Section 157(4) and (5) of the LCR Act provide:

(4) The Commission must, as soon as practicable after a decision is made under subsection (1), give a written notice to the applicant setting out—

- (a) the reasons for the decision of the Commission on review under subsection (1); and*
- (b) the findings on material questions of fact that led to the decision, referring to the evidence or other information or material on which those findings were based.*

(5) The Commission on review may, in its discretion, exclude personal and confidential information from the reasons for the decision if the Commission considers it appropriate in the circumstances.

54. Each of the parties provided the Commission with information on a confidential basis (as outlined in footnote 36). Pursuant to section 157(5), the Commission has determined to exclude from these reasons its detailed discussion of material provided by the parties on a confidential basis, to the extent that such discussion would disclose the nature of the confidential material. The Commission will clearly indicate in the reasons where such discussion has been excluded. For the avoidance of doubt, the exclusion of a detailed discussion of confidential material does

⁴⁰ Section 49.



not indicate that the Commission has not taken such material into account. Any such exclusion is to ensure the confidentiality of the material provided by the parties.

The task before the Commission

55. Within this legislative framework, the task before the Commission in this Review Application has been addressed in the decision of the Court of Appeal of the Supreme Court of Victoria in *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 (**Kordister**).⁴¹
56. Generally, the determination of applications (including an application to grant a licence) is governed by Division 6 of Part 2 of the LCR Act. Section 47(1) provides that a contested application must be either granted or refused. In exercising its discretion under section 47(1), the Commission must have regard to the objects of the LCR Act and any relevant Ministerial decision-making guidelines. Consideration must be given to whether the grant of the application would be consistent with the objects of the LCR Act, with specific focus (pursuant to section 4(2)) on the concept of harm minimisation and the risks associated with the misuse and abuse of alcohol.
57. In this regard, according to *Kordister*, the “... question which needs to be determined by the decision maker is whether the grant of the application would be consistent with the objects of the Act.”⁴²
58. It was the Council’s submission that:
- “the relevant tests under the Act are twofold, namely:
- (a) whether the grant of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated (ss 44(2)(b)(i), 47(2)); and
 - (b) whether the granting of the application would be conducive to or encourage the misuse or abuse of alcohol (ss 44(2)(b)(ii), 47(2)).”⁴³

⁴¹ In considering the application of the principles outlined in *Kordister*, the Commission has had regard to the fact that the factual matrix in *Kordister* differs in various respects to that which applies in this Review Application. These differences include, but are not limited to, *Kordister* relating to an application by a licensing inspector, on behalf of the Chief Commissioner, for a variation to an existing licence pursuant to section 29 of the LCR Act, whereas this matter involves an application for the grant of a new licence by the Licensee. Further, there have been modifications to the legislative framework that was applicable in *Kordister*, which now apply to this Review Application (see further paragraphs 66 to 68).

⁴² At [222] per Tate JA, see also [31] per Warren CJ and Osborn JA. In this, the Court of Appeal was adopting the position set out in the earlier decisions of Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207 at [75] and Davis SM in *Kordister Pty Ltd v Director of Liquor Licensing* [2010] VCAT 277 at [29]).

⁴³ Third Council Review Submission at [15].



59. The Commission also notes the initial submission by Victoria Police that:

“The fundamental statutory task for the Commission is to determine whether or not the grant of the application furthers “the primary regulatory object of the Act”.”⁴⁴

60. While both of these submissions encompass aspects of the task before the Commission, the Commission does not accept that either, as expressly stated, properly and fully describes the relevant task to be undertaken in this Review Application.
61. It is clear from the decision in *Kordister* that the application is to be determined having regard to the objects of the LCR Act. Having adopted this position, Warren CJ and Osborn JA stated in *Kordister* at [25] to [26] with respect to section 47(2) and the grounds set out in section 44(2) that these *“criteria are concerned with grounds for refusal and not grant”*.
62. This is consistent with the wording of sections 44 and 47, which together specify grounds upon which the Commission **may** (emphasis added) refuse to grant a contested application. There is nothing in these sections which requires that an application be refused if a ground set out in section 44(2) is established.
63. At the same time, there are differences in the terms used in sections 4(1) and 44(2) – for example, the use of the term *“amenity of community life”* in section 4(1)(a)(ii) and the term *“amenity of the area”* in section 44(2)(b)(i)). As discussed below at paragraphs 80 and 81, the Commission accepts that *“amenity of community life”* is a broader concept than that of *“amenity of the area”*. As a result, this could give rise to a situation in which in exercising its discretion having regard to the objects of the LCR Act, the Commission considers that an application should not be granted, yet the basis for such a conclusion does not satisfy a narrower ground which is expressly specified in section 44(2) as a basis upon which the Commission may refuse to grant an application.
64. Consequently, the Commission considers that while the grounds outlined under section 44(2) provide relevant criteria for consideration,⁴⁵ specifying as they do bases upon which a refusal to grant an application may be made, the ultimate determination of the application is made pursuant to section 47(1) with reference to the objects of the LCR Act.⁴⁶

⁴⁴ Victoria Police Application Submission at [13], citing *Kordister* at [35] (although more relevant citations appear to be [19] per Warren CJ and Osborn JA and [188] per Tate JA).

⁴⁵ In determining whether any of the grounds outlined under section 44(2) are satisfied, the Commission also considers that these grounds should be considered in light of the objects of the LCR Act.

⁴⁶ A corollary of this position is that the grounds sets out in sections 44(2) are not an exhaustive list of grounds upon which a contested application may be refused.



65. In having regard to the objects of the LCR Act and in particular the concept of harm minimisation, *Kordister* sets out a range of principles that are applicable to this Review Application:

- a) harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “*the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions*”;⁴⁷
- b) as to the meaning of ‘harm minimisation’:
 - i. it can be understood in the following terms:

*‘Harm minimisation is a concept which has been central to the National Drug Strategic Plan (1993-1997) which guided the development and implementation of alcohol and drug policies across Australia through the 1980s. The concept was defined as an approach that aims to reduce the adverse health, social and economic consequences of alcohol and other drugs by minimising or limiting the harms and hazards of drug use for both the community and the individual without necessarily eliminating use ... The approach includes preventing anticipated harm and reducing actual harm.’*⁴⁸

- ii. there is “*potential complexity*” with respect to the concept of harm minimisation.⁴⁹

As Warren CJ and Osborn JA stated in *Kordister* at [17]:

*“... the objectives recognise that the manner of supply and consumption of liquor may positively contribute to the amenity of community life and may encourage a culture of responsible consumption of alcohol. It follows that the notion of harm minimisation is not simply one of limiting the supply of alcohol. Rather, it is concerned with regulating supply of alcohol so as to ensure, as far as practicable, net community benefit.”*⁵⁰

- iii. as the concept of harm minimisation “*seeks to address the issue of alcohol misuse and abuse from the point of net community impacts. Notions of individual fault from the law of torts could not assist in the resolution of the issues*” that the Commission is required to address;⁵¹ and
 - iv. it is “*not a synonym for a form of prohibition*”;⁵²
- c) while harm minimisation is the primary regulatory object of the LCR Act “*this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects*”.⁵³ Hence the primacy of the concept of harm minimisation does not “*make irrelevant the other express objects of the Act, including, in particular, the*

⁴⁷ *Kordister* at [19] per Warren CJ and Osborn JA; at [188] per Tate JA.

⁴⁸ *Kordister* at [12] per Warren CJ and Osborn JA; at [110] per Tate JA.

⁴⁹ See *Kordister* at [20] per Warren CJ and Osborn JA.

⁵⁰ *Kordister* at [17] per Warren CJ and Osborn JA (and also at [20]).

⁵¹ *Kordister* at [62] per Warren CJ and Osborn JA.

⁵² *Kordister* at [13] per Warren CJ and Osborn JA.

⁵³ See *Kordister* at [188] per Tate JA. Similarly, Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [270] held that the harm minimisation objective must “*be weighed in the balance with the positive benefits which are brought to the community by the liquor industry, as reflected in the other objects*”.



development of a diversity of licensed facilities reflecting community expectations”.⁵⁴

Ultimately, the task is “*to balance each of the objects and arrive at an appropriate synthesis in the particular circumstances of the case by the way of a discretionary judgment*”;⁵⁵

- d) the question for the Commission is “*essentially a prospective one directed to a predictive conclusion*”.⁵⁶ Accordingly, the Commission has to assess the Licence Application not in a static context, but rather within one which is subject to change and to changing understanding;⁵⁷ and
- e) further, because the concept of harm minimisation is itself anticipatory there may be cases in which a conservative approach should be adopted.⁵⁸ In this context, a conservative approach may mean a precautionary approach leading to the conclusion that if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified.⁵⁹

66. In having regard to these principles, the Commission notes that *Kordister* was determined having regard to a legislative framework in place prior to the establishment of the Commission. While the substantive task required to be undertaken by the Commission under the LCR Act is in many respects unchanged, one aspect of the legislative framework that has been altered, and which is potentially of issue, is that pursuant to section 9(3) of the VCGLR Act:

“The Commission must, when performing functions or duties or exercising its powers under ... the Liquor Control Reform Act 1998 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.

⁵⁴ *Kordister* at [21] per Warren CJ and Osborn JA.

⁵⁵ *Kordister* at [18] per Warren CJ and Osborn JA. Similarly Tate JA at [222] held that in determining whether the grant of the application would be consistent with the objects of the Act, it was necessary to:

“... strike an appropriate balance between the need to minimise harm arising from the misuse and abuse of alcohol and the interests in developing a diversity of licensed facilities reflecting the community expectations”.

⁵⁶ *Kordister* at [33] per Warren CJ and Osborn JA.

⁵⁷ *Kordister* at [33] per Warren CJ and Osborn JA.

⁵⁸ *Kordister* at [34] per Warren CJ and Osborn JA. Similarly, Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [178] held in respect of harm minimisation for example, it “*requires a prediction to be made about the degree of likelihood of harm occurring*”.

⁵⁹ *Kordister* at [34] per Warren CJ and Osborn JA, approving *Nardi* at [51]. However, as the Licensee submitted, this may not always be the case (Licensee Further Application Submission at [18]; First Licensee Review Application at [21]), citing the report of the then Liquor Licensing Panel to the then Director of Liquor Licensing dated 7 August 2007 in respect of the Preston Dan Murphy’s at [31] in which it was held that:

“To quote from His Honour Judge Bowman in Nardi at para 51(a)(vii), “Whilst I agree that a policy of harm minimisation should be anticipatory and not merely reactive, there is nothing in the material that persuades me that the opening of this particular outlet in this particular location will create a density of outlets which will have a deleterious effect. Put another way, there is nothing in the granting of a licence possessing the qualifications of Woolworths in this particular shopping centre, in this particular area, which causes the ringing of alarm bells to which Mr Larkins referred.”



67. This gives rise to a question as to whether the passage of the VCGLR Act, and the related changes to the LCR Act, have had the effect of altering the relative weight the Commission gives to the objects set out under the LCR Act. In particular, whereas section 4(2) of the LCR Act makes specific reference to giving “*due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol*”, section 9(3) simply references “*the objects of the Act*”.
68. Having regard to the approach taken by Tate JA in *Kordister* at [177] to [187] with respect to the interpretation of similar clauses, and consistent with the oral and written submissions made by the Licensee, the Council, and Victoria Police, which accepted the primacy of the harm minimisation objective, the Commission considers that the position as set out in *Kordister* has not been altered as to the primacy to be given to the harm minimisation object.
69. In addition to the principles set out in *Kordister*, the Commission also accepts the following principles that have been outlined in earlier decisions at the Victorian Civil and Administrative Tribunal (VCAT) with respect to liquor licence applications:
- a) as held in *Joshamie Nominees Pty Ltd v Director of Liquor Licensing* [2009] VCAT 2188 (**Joshamie**) at [22] per Megay SM, reliance should be placed on the:
- “... experience of the intended operator and in balancing the public interest with the requirement to minimise harm and to guard against the misuse of alcohol, affirm that the applicant is entitled to the benefit of the presumption that he will comply with the law”*; and
- b) as held in *Black & Cooke v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459 (**Black & Cooke**) per Kellam J and Angell M at pp.113-4:
- “We are not prepared to assume that there will be liquor sold to or by underage persons at the premises. If that occurs in the future, no doubt the Director will take appropriate action. In our opinion, the logical extension of the argument that the increased availability of liquor leads to an increase in youth drinking problems would mean no new licences would be granted in order to minimise the harm created by youth underage drinking. In our view, the particular circumstance, site and premises should be taken into account and dealt with in a specific context.”*
70. The Licensee submitted that, in considering the appropriateness of adopting a conservative approach in assessing an application having regard to the objects of the LCR Act, this did not mean that all applications should be rejected on the basis of adopting such an approach, and further, that care should be taken not to consider matters that were fanciful or trivial. In support, the Licensee cited:
- a) Bowman J in *Nardi v Director of Liquor Licensing* [2005] VCAT 323 (**Nardi**) at [51], where it was held:
- “(viii) There may indeed be circumstances in which a cautious conservative approach to the granting of a licence should be adopted. However, this does not mean that*



applications should be virtually automatically rejected upon the creation of the slightest doubt or misgiving. As I have stated earlier, and as was stated in Black's case, the logical extension of an argument such as this would be that no new licences would be granted, in order to minimise harm. The proper foundations should exist so as to justify a decision, fairly and properly made, to refuse an application for a licence.”; and

- b) Davis SM in *Hansen & Ors v Director of Liquor Licensing* [2006] VCAT 2544 (**Hansen**) at [51], where it was held:

“In my view, while it is possible harm may be caused by the grant of a liquor licence and that may be taken into account when considering the grant of a licence, I do not believe it was the intention of Parliament that matters which are fanciful should be considered. Put a different way, the risk must be more than trivial.”

71. The Commission considers that submissions of this nature are consistent with the principles outlined in *Kordister* in that the Commission is required to have regard to the circumstances of the specific application, and in doing so is required to give weight to and balance the objects having regard to those circumstances. Whether the circumstances of the application give rise to matters that are only trivial or fanciful, and hence may not warrant the refusal to grant an application, is to be determined on the evidence relevant to the application.
72. Relatedly, the Council submitted that a precautionary approach requires the application of the precautionary principle, which is understood in the environmental law context to have the following meaning:
- “The precautionary principle is a statement of common sense and has already been applied to decision-makers in appropriate circumstances prior to the principle being spelt out. It is directed towards the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty. Its premise is that where uncertainty or ignorance exists concerning the nature or scope of environmental harm (whether this follows from policies, decisions, or activities), decision makers should be cautious. [Fn: *Leatch v National Parks and Wildlife Service* (1993) 81 LEGRA 270; *Western Water v Rozen* (2008) 24 VR 133]”⁶⁰
73. The Commission is not aware of, nor was it provided with, any binding authority that supports the submission that consideration of this Review Application requires the application of the ‘precautionary principle’ as specified in the Council’s submission. The Commission understands that the precautionary principle has been incorporated in statutory frameworks and policy guidelines as a binding consideration on decision-makers.⁶¹ With respect to the LCR Act, however, the Commission does not consider that the approach outlined in *Kordister* supports a strict or mandatory application of the precautionary principle. It is not explicitly referenced in the LCR Act. Further, the position enunciated in *Kordister* (at [34]) is that “*a conservative approach may mean a precautionary approach*”. No specific reference was made to the precautionary

⁶⁰ Cited in the First Council Review Submission at [33]-[34].

⁶¹ See, for example, section 6 of the *Public Health and Wellbeing Act 2008* (Vic); section 19 of the *Transport Integration Act 2010* (Vic).



principle. As such, the Commission does not accept the Council's submission that it is required to apply either a precautionary approach or the precautionary principle in its consideration of liquor licensing applications. Whether the Commission should adopt a precautionary approach is discretionary having regard to the particular circumstances of the application being determined. Similarly, the application of the precautionary principle is also at the discretion of the Commission.

74. In outlining its task in this Review Application, the Commission considers it appropriate to address submissions as to the Commission's approach to issues associated with the "misuse or abuse of alcohol" and "amenity" grounds.

Misuse or abuse of alcohol

75. The Council⁶² and Victoria Police⁶³ submitted that in the context of section 44(2)(b)(ii), having regard to their ordinary meanings, the terms "conducive to" and "encourage" should not be equated with or treated as synonyms for the verb "to cause". In support of this position, the Council relied upon the decision of Tate JA in *Kordister*, where her Honour stated:

*"There must also be a connection between the licensed premises and the locality evidence. But that connection need not be causal ... As far as locality evidence is concerned, it is sufficient to show that it demonstrates that the object of harm minimisation "would not be well served" by granting a licence for packaged liquor in that locality."*⁶⁴

76. The Licensee, in addressing this question, submitted that this ground requires the Commission to be satisfied that the Licence Application "**would**" [emphasis added] be "conducive to or encourage the misuse and abuse of alcohol". The Licensee noted that it "*is not qualified in the sense that it probably would be conducive or that possibly would be conducive, and therefore it requires there to be evidence to founder [sic] a ground of objection.*"⁶⁵
77. The Commission accepts the words "conducive to" and "encourage" should be given their ordinary meaning. According to the Australian Concise Oxford Dictionary (3rd Edition), "conducive" is an adjective meaning "contributing or helping"; by reference to the same dictionary "encourage" in this context means "to stimulate".⁶⁶ Adopting such definitions does not, however, negate the requirement under the LCR Act that the Commission be satisfied that the Licence Application "would" be "conducive to or encourage" the misuse and abuse of alcohol. In

⁶² See Third Council Review Submission at [17]-[18]; see also Transcript Day (T) 1, p-19.

⁶³ See T6, p-201, lines 22-27.

⁶⁴ *Kordister* at [192] per Tate JA.

⁶⁵ See T6, p-212, lines 4-17.

⁶⁶ "by help, reward, etc.", see p.433.



assessing whether or not this ground is satisfied, the Commission has adopted the evidentiary principles as set out in *Kordister*, which are addressed in paragraphs 92 to 100 below.

78. The Commission notes that the definition adopted for “conducive” contrasts with that posited by the Council, which was “*making a certain situation or outcome likely or possible*”. The Commission also notes that the Council has submitted that proof is not required of a causal connection between the Licence Application and the misuse or abuse of alcohol.⁶⁷ In doing so, it appears to be relying on the words of Tate JA set out above. The Commission considers that the Council is seeking to link its desired definition of “conducive” with the evidentiary approach outlined by Tate JA in a manner that is inconsistent with the relevant provisions of the LCR Act. The Commission draws a distinction between the relationship between the relevant Premises and the locality evidence (for which it is clear from Tate JA’s words that there needs to be a connection, but not a causal relationship) and the totality of the evidence upon which the Commission relies and whether or not it considers the relevant ground has been established – in this case, that the grant of the Licence Application would be conducive to the misuse or abuse of alcohol – which does require there to be a relationship as described in the paragraph above.

Amenity

79. Issues associated with amenity arise in various contexts, including:
- a) pursuant to section 4(1)(a)(ii), which specifies with respect to the object of contributing to minimising harm arising from the misuse and abuse of alcohol, that it includes by “*ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the **amenity of community life***” [emphasis added];
 - b) pursuant to section 47(2)(b) and 44(2)(b)(i), which together provide that a ground for refusal in respect of a contested application may be that “*the granting of the application would detract from or be detrimental to the **amenity of the area*** [emphasis added] *in which the premises to which the application relates are situated*”; and
 - c) as Warren CJ and Osborn JA held in *Kordister* at [28] to [30] in considering whether to grant or vary a licence, the decision maker will ordinarily consider whether the section 17(1) condition will be adequate to prevent detriment to the amenity of the area. The potential impact of the supply of liquor during the hours in question must be considered within the framework of relevant licence conditions. Compliance with any relevant code of

⁶⁷ See Third Council Review Submission at [17].



conduct and with conditions in any relevant planning scheme might also bear upon the management and regulation of relevant amenity impacts.⁶⁸

80. According to Warren CJ and Osborn JA in *Kordister* at [16], ‘*the amenity of community life*’ ... is necessarily a broader concept than ‘*the amenity of the area*’, a concept utilised elsewhere in the Act. There is limited guidance that has been provided in previous decisions as to the scope of that difference. According to Kellam J and Angell M in *Black & Cooke* at p.22, the meaning of “*amenity of community life*” is not as wide reaching as to include an individual’s “*own personal amenity or personal preference for attending specific premises because they offered particular services which he found to be both convenient, desirable and which met all his criteria and needs as a wine connoisseur.*” Rather, “*it is the exact nature of the facility available and the range of services and benefits that it offers to the public which are relevant when considered in the context of the general surrounding area and of the amenity of the community within that area.*”
81. At a minimum, the Commission considers that the concept of “*amenity of community life*” will encompass those notions contained in “*amenity of the area*”, and include those elements set out in section 3A of the LCR Act.
82. In *Avery*, having regard to consideration of the meaning of amenity in planning cases, Davis DP and Urquhart M at [85] summarised the concept of amenity in the following terms:

“Briefly, the conclusions reached by the authorities concerning what is included in the concept of amenity may be summarised as follows:

- *The quality which a neighbourhood has of being pleasant and agreeable;*
- *It is not confined to the negative factor of freedom from physical discomfort through the effects of noise and smell;*
- *It relates also to the preservation of such characteristics as make it pleasing in appearance to a passer-by, as well as a resident;*
- *It includes the layout which makes for a comfortable and pleasant life;*
- *It is a wide and flexible concept which may embrace the resident’s subjective perception of his or her locality;*
- *Knowing the use to which a particular site is or may be put may affect one’s perception of amenity;*

⁶⁸ As Warren CJ and Osborn JA set out in *Kordister* at [28]-[29]:

“The Act further deals with the concept of amenity of an area by way of the imposition of mandatory licence conditions. By s 11(3), a packaged liquor licence is subject to among other things:

- (aad) a condition that the licensee comply with the code of conduct (if any) determined by the Minister under sub-section (5) as in force from time to time; and*
- (a) the condition set out in section 16 (compliance with planning scheme); and*
- (b) if the licence authorises the licensee to supply liquor outside ordinary trading hours, the conditions set out in section 17(1). ...*

Section 17(1) provides:

- (1) Subject to subsection (2), it is a condition of every licence that authorises the supply of liquor outside ordinary trading hours that the licensee does not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the hours outside ordinary trading hours to which it relates.”*



- *It embraces pleasantness and convenience;*
- *It includes harmony and coherence of the environment, its enjoyment for any permitted use;*
- *It does not include a person's preference or choice for a particular premises or product;*
- *It includes the convenience of accessing sites with particular uses, such as liquor stores, and the beneficial effects of the availability of such a product;*
- *The wider meaning of "amenity" takes into account the village or community "feel" of the particular area, the particular characteristics of the proposed application and the effects these would have on the particular area in question."*

83. However, as noted by Kellam J and Angell M in *Black & Cooke* at pp.21-22:

"...the meaning of the word "amenity" when used in the [LCR] Act is a wide and flexible term but not as liberal as that used in the planning legislation. The word "amenity" clearly includes and takes into account the effect upon the senses such as the physical appearance of the premises, the convenience of accessing liquor, parking, traffic, the services provided and the beneficial aspects of liquor being available within a certain area. However, we do not accept that it goes so far as to say that one person's particular preference or specific choice to attend a particular premises and have available a larger range of specialist wines constitutes what would be defined as the "amenity of the area". Rather, it is the wider meaning of the word "amenity" which takes into account the village or community feel of the particular area and the particular characteristics offered by the proposed application and the effects they would have on the particular area in question which are relevant."

84. It was submitted by the Council (and Victoria Police) that having regard to the inclusive definition of amenity of the area in section 3A, this concept allows for consideration of private as well as public amenity, that is, the amenity (including safety) of one's home. Further Council submitted that Ms Homewood had no hesitation in agreeing with this proposition. However, Council were not able to provide any authority in support of this proposition.
85. The Commission considers matters of family violence to be of critical importance to the community. As highlighted in closing submissions by Victoria Police,⁶⁹ the Commission is also mindful that in assessing evidence that addresses rates and percentages with respect to family violence, it is important that it never loses sight of each individual incident, and the lives that are impacted by such family violence. The specific issue for consideration here, however, is whether evidence of family violence is a factor that can appropriately be considered in determining whether the grant of an application will detract from, or be detrimental to, the amenity of the area in which the licensed premises is situated. Consistent with the approach outlined in *Black and Cooke*, the Commission considers that the concept of amenity of the area in the LCR Act is one directed towards the character of public areas proximate to the relevant premises (noting that this character may impact upon private dwellings; for example, through noise effects). Such an approach weighs against issues of family violence being encompassed in the concept of amenity for the purposes of the LCR Act. However, that is not to say that such issues are not relevant to the Commission's decision-making generally, or have not been in this matter.

⁶⁹ See T6, p-197, lines 1-14.



Rather, the Commission's view is that having regard to the LCR Act as currently legislated, consideration of family violence is more appropriately raised and addressed in the context of "misuse or abuse of alcohol". The Commission is mindful that the definition of amenity has been subject to legislative change; and notes that there may be benefit in this aspect being clarified.

86. It was further submitted by Council that:

*"... the harmony and coherence of the environment includes community concern and opposition associated with an application. If an application creates significant disquiet within the community or a part of the community, that is a relevant amenity impact."*⁷⁰

87. The Commission accepts that community concern and opposition to an application are relevant factors to be considered in assessing the amenity impact of an application and in particular whether the grant of the Application furthers the objects of the LCR Act. The Commission notes that the Council's submission appropriately limits such consideration of community concern and opposition to the application under consideration. As such, a community-wide survey responding to the impacts of the particular application is likely to be given more weight and assist the Commission in its task to a greater extent than a broad statement unsupported by evidence that the community is generally concerned with the impact of alcohol-related harm or levels of consumption.
88. It was further submitted by Council that the factors listed in section 3AA are not exhaustive. On its face, the natural meaning of section 3AA is that only evidence of those specified factors will be "*taken to constitute evidence of detracting from, or detriment to, the amenity of the relevant area*", and as such may be regarded as exhaustive. This compares to the use of the word "include" in section 3A(2) (read together with section 3A(3)), which demonstrates Parliament's intention that those factors specified in section 3A(2) are by way of example and are non-exhaustive. However, the Commission considers that section 3AA must be read in light of section 3A. As the factors that may be taken into account under section 3A(2) are not limited, so too the evidence that may be taken to constitute evidence of detracting from, or detriment to, the amenity of the relevant area should not be limited. It remains within the discretion of the Commission to determine if evidence of other factors, together with evidence of factors included in section 3AA, is sufficient in the particular circumstances of the application to demonstrate a relevant impact on the amenity of the area.
89. Related to the issue of amenity is the question of what constitutes the relevant area within which amenity (and any other aspect) should be considered by the Commission. In the case of amenity of the area, section 3AA provides that evidence must be in respect of factors

⁷⁰ First Council Review Submission at [23].



“*sufficiently proximate*” to the premises that are the subject of the relevant application. No equivalent words apply with respect to the Commission’s assessment of the “misuse or abuse of alcohol” ground.

90. The Commission is not aware of any binding authority as to the meaning of “sufficiently proximate” that it is required to adopt in this Review Application. The Licensee in various Submissions made reference to Planning Practice Note 61 which provides, inter alia, that it should be used in an area where there is a cluster of licensed premises. Under the heading “*What is a cluster?*”, the Planning Practice Note further states, inter alia, that as “*a general guide, a cluster would occur where there are: three or more licensed premises (including the proposed premises) within a radius of 100 metres from the subject land; or 15 or more licensed premises (including the proposed premises) within a radius of 500 metres from the subject land.*”. As discussed above, this Practice Note is not a decision-making guideline issued pursuant to section 5 of the VCGLR Act; it is, however, relevant to the Commission’s considerations.⁷¹
91. More broadly, the Commission considers that whether evidence is “*sufficiently proximate*” is a matter to be determined on a case by case basis having regard to the specific application at hand. Hence, regard will necessarily be given to such factors as the nature of the application, the type of licence being considered, and the nature of evidence to be considered. Separately though relatedly, the Commission needs to determine the relevant area for its consideration of the “misuse or abuse of alcohol” ground. While these may not be the same in all instances, given the nature of the Licence Application, the Commission considers the same relevant area is applicable for both grounds. These matters are considered in detail in paragraphs 129 to 140 below.

Evidential considerations

92. In addition to setting out the scope of the task for the Commission, the Court of Appeal in *Kordister* has also set out a range of principles with respect to how evidence should be considered by the Commission in applications of this nature.

⁷¹ This is particular so with respect to the application of the Cumulative Impact Guidelines insofar as they refer to consideration being given to “*any cumulative impact assessment already undertaken by the responsible planning authority*”. Such an assessment would appropriately have regard to Planning Practice Note 61.



93. Generally, the Court of Appeal in *Kordister*⁷² distinguished between three different kinds of evidence:
- a) general evidence, which in *Kordister* related to alcohol-related harm but which the Commission considers may also relate to other matters, such as the other objects of the LCR Act (**general evidence**);
 - b) evidence of the local, social, demographic and geographic circumstances of licensed premises (or proposed licensed premises) (**locality evidence**); and
 - c) evidence of specific incidents concerning the operation of licensed premises (**incident evidence**).
94. As there is not yet any business operating at the Premises, it is not possible for there to be incident evidence. Hence for the purposes of this Review Application it is only possible to consider locality evidence and general evidence in determining the likely effect of the grant of a licence.
95. With respect to these different categories of evidence:
- a) where general evidence is adduced, the Commission must take it into account.⁷³ While general evidence cannot be relied upon as the sole determinant of a liquor licence application, general evidence is nonetheless relevant.⁷⁴ It is not appropriate for the Commission to dismiss general evidence on the basis that, if it is taken into account, the object of harm minimisation will invariably result in a negative answer to the issuing of further licences. Conversely, the general evidence relating to the potential misuse and abuse of alcohol may not always form a sufficient basis to refuse the grant of a licence;⁷⁵
 - b) in deciding what weight to give general evidence, the Commission must consider the extent to which it has a connection to, or is reinforced by, the particular local, social, demographic and geographic circumstances of the relevant premises (that is, locality

⁷² At [35]-[40] per Warren CJ and Osborn JA; at [189]-[197] per Tate JA.

⁷³ See *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 per Bell J at [273]:

“General evidence of this kind presented by the director is relevant and must be given due consideration, alongside the specific evidence, in the application of the harm minimisation object in the liquor licensing decision-making process. Such evidence, with other evidence, allows the tribunal to determine whether harm arising from the misuse and abuse of alcohol is occurring or likely, the degree of that likelihood and the nature and magnitude of the harm. The determination can then be weighed in the balance with the benefits which the licensed premises brings to the community.”

⁷⁴ *Kordister* at [51]-[52] per Warren CJ and Osborn JA; [191] per Tate JA. Similarly, Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [185]:

“... as the Tribunal has held, every application for a liquor licence cannot be refused on the basis of general harm minimisation evidence. That would be a perversion of the regulatory scheme.”

⁷⁵ See *Black & Cooke* at [13] cf *Nardi* at [51] per Bowman J.



evidence).⁷⁶ In other words, the Commission must assess any general evidence that is adduced in light of the locality evidence, and apply the general evidence to the relevant local context;⁷⁷

- c) in considering locality evidence, a relevant question for the Commission is whether the particular local, social, demographic and geographic circumstances surrounding the proposed licensed premises are conducive to or encourage the misuse and abuse of alcohol – that is, whether the object of harm minimisation “would not be well served” by the grant of a licence. This will necessarily involve the Commission turning its mind to each of the four distinct elements identified in section 4(1)(a)(i)-(iv) of the LCR Act. It is not necessary to attribute specific responsibility for anticipated harm to the proposed licensee. However, there must be a connection between the licensed premises and the locality;⁷⁸ and
- d) the manner in which both general and locality evidence is to be considered also applies to the other objects of the LCR Act. As such, the task is as Bell J in *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207 at [273] noted:

“Such evidence, with other evidence, allows the tribunal to determine whether harm arising from the misuse and abuse of alcohol is occurring or likely, the degree of that likelihood and the nature and magnitude of the harm. The determination can then be weighed in the balance with the benefits which the licensed premises brings to the community.”

96. In addition to all of the matters above, there were various other submissions made by parties to the Review Application with respect to the decision in *Kordister* that the Commission considers appropriate to address directly.
97. First, in the Licensee Further Application Submission at [72], the Licensee submitted:

⁷⁶ *Kordister* at [51]-[52] per Warren CJ and Osborn JA. Tate JA at [191] explained this point as follows:

“[W]hile a decision-maker should take into account any general evidence adduced about the use and misuse of alcohol, a significant factor in determining how important the general evidence of harm minimisation is to a particular application is whether the general evidence has a connection with, or is reinforced by, the particular local, social, demographic and geographic circumstances of the relevant premises; the “locality evidence” ... By reference to such locality evidence a decision-maker can avoid the object of harm minimisation resulting in an invariably negative answer to the issuing of further licences and an invariably positive answer to any application for reduction of trading hours.”

⁷⁷ Warren CJ and Osborn JA at [51]-[52] also explained that this approach was consistent with earlier decisions of VCAT.

⁷⁸ In the context of an application for a variation to an existing licence, this was explained by Tate JA in *Kordister* at [192] as follows:

“There must also be a connection between the licensed premises and the locality evidence. But that connection need not be causal. It is rather a matter for those applying to reduce trading hours to prove that, for one reason or another, the particular local, social, demographic and geographic circumstances surrounding the premises are conducive to the misuse of alcohol. The judge was correct, in my view, in concluding that, as far as locality evidence is concerned, it is not necessary to establish that the operation of licensed premises in issue caused, or was responsible for, the anti-social behaviour. As far as locality evidence is concerned, it is sufficient to show that it demonstrates that the object of harm minimisation “would not be well served” by granting a licence for packaged liquor in that locality, or relevantly, by refusing to reduce the trading hours of a 24-hour licence for packaged liquor.”



“The “availability theory” was explicitly rejected by the Tribunal in Nardi and this rejection was cited with approval in Kordister [Fn: Kordister Pty Ltd v DLL (2012) 39 VR 92, 160]. In Nardi, Judge Bowman at paragraph 19 held regarding general evidence of alcohol-related social harm that, The real problem with his evidence ... seems to be that, to succeed, it basically must establish that increased availability leads to increased consumption which leads to increased harm. If this proposition is correct, and were taken to its logical conclusion, no further licences should be granted in this state because so to do would be conducive to or encourage the misuse or abuse of alcohol.”

98. The Commission does not accept that the “availability theory” was rejected by *Nardi* or that any such finding was “cited with approval” in *Kordister*. Contrary to the submission of the Licensee, the Commission considers that Tate JA at [160] is providing a summary of Bell J’s analysis and discussion of Judge Bowman’s approach in *Nardi*. Tate JA does not indicate any level of approval or rejection of either that analysis or the “availability theory” in general, nor did her Honour find that the “availability theory” is wholly irrelevant. Further, the Commission considers *Kordister* and previous cases provide support for the approach that:
- a) general evidence about an increase in the availability of access to alcohol leading to increased harm from misuse and abuse of alcohol would, on its own, be insufficient for a decision-maker to refuse an application on that basis; and
 - b) a decision-maker must, in determining how important the general evidence of harm minimisation is to a particular application, consider whether the general evidence has a connection with, or is reinforced by, the particular local, social, demographic and geographic circumstances of the relevant premises: see [191] of *Kordister*.
99. Secondly, the Licensee (see First Licensee Review Submission at [23]) relied on the decision of *Joshamie* at [34] per Megay SM where it was held:
- “ ... It strikes me that the residents of the area will continue to buy alcohol no matter whether they get it from another packaged liquor outlet, from the local pub or from the local supermarket. Whether or not this outlet is operating, purchases will continue in the immediate area.”*
100. The Commission considers that the decision in *Joshamie* related to the specific circumstances of that matter, and did not purport to specify a principle that the establishment of an additional licensed premises could not impact on the aggregate supply of liquor and consequently harm in all circumstances where there were one or more other premises already operating in the proximity. In each instance, the task before the Commission is to determine, having regard to the circumstances of the particular application, whether such an outcome will occur.

DETERMINATION OF THE LICENCE APPLICATION

101. The Commission is required to exercise its discretion consistent with the objects of the LCR Act to determine whether to grant or refuse the Licence Application. In doing so, the Commission is



required to consider both general evidence and locality evidence. The Commission is also required to have regard to decision making guidelines.

102. In detailing the reasons for its determination of this Review Application, the Commission first sets out evidence and submissions as to the general context of the Licence Application, and also addresses three other preliminary matters:
- a) with respect to locality evidence, what is the relevant area in relation to which the Commission has assessed the Licence Application;
 - b) with respect to the Cumulative Impact Guidelines, the manner and extent to which the Commission has had regard to these guidelines; and
 - c) with respect to general evidence, considerations that the Commission has had regard to in relation to different types of research evidence before it.
103. Having regard to the legislative framework and the task before the Commission, in determining this Review Application these reasons for decision then address the following questions:
- a) whether the Commission considers the granting of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol;
 - b) whether the Commission considers the granting of the Licence Application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated;
 - c) whether, having regard to the objects of the LCR Act and any relevant decision-making guidelines, the Commission considers it appropriate to exercise its discretion to grant or refuse the Licence Application.

Context

The location of the Premises

104. The Premises are situated at 1S Linsell Boulevard, Cranbourne East. Cranbourne East is a suburb of Casey. Casey is located in the south-east of Melbourne, approximately 43 kilometres from the Melbourne CBD.
105. The Premises will form part of a larger retail development known as Cranbourne East Neighbourhood Activity Centre (**the Centre**), which comprises 6,395 m² of retail and shop floor area. Over half of this floor space is taken up by a Woolworths' supermarket, just over 20 per cent will be the proposed Dan Murphy's store, and the remainder is to be made up of other retail stores. In addition, the Centre contains a medical centre. According to the Urbis SIA, the Centre



is intended to meet the demand for a local retail centre for new and existing residents in Cranbourne East and the adjacent suburbs of Cranbourne, Cranbourne North and Clyde North.

106. With primary and secondary arterial roads in close proximity, the Centre is easily accessed by car, bicycle, pedestrians and other forms of transport. It has over 300 car parking spaces and 40 parking spaces for bicycles. There are bus stops located to the south-east corner of the Centre, approximately 100 metres from the site of the Premises.
107. The immediate vicinity and surrounding areas contain both existing and new residential housing development which will be served by the Centre. Those dwellings to the south and west of the Premises form part of the Hunt Club residential development, which has been built on the site of the former Melbourne Hunt Club. The Hunt Club estate also includes the Hunters Green Retirement Village, a 200 villa independent living facility, which is located to the east of the Premises. Also located within the Hunt Club estate are the Cranbourne East Primary School, and the Cranbourne East Secondary School, as well as a long day childcare centre for children aged 0 to 6 years, and a family resource centre where local residents can access a kindergarten, Maternal & Child Health Services and a community multi-purpose room.

Demographic and socio-economic profile of the surrounding area

108. A range of evidence was provided to the Commission with respect to the demographic and socio-economic profile of the community in the area surrounding the Premises. The nature of this evidence varied according to the geographic unit utilised for analysis, and the distance from the Premises encompassed in that analysis.
109. Ms Homewood, who holds a Bachelor Degree in Architecture, a Graduate Diploma in Urban Planning and Policies and a Masters in Planning and Design (Urban Design), provided evidence with respect to a study area that encompassed two regions – the first being that area within a 500 metre radius of the Premises, and the second being that area within a 2 kilometre radius of the Premises (**2 km zone**). According to Ms Homewood, this approach considered the pattern of development in the area and the likelihood that residents using the site may be located beyond the Hunt Club development. The evidence with respect to demographic and socio-economic characteristics of the study area contained in the Urbis SIA related primarily to the 2 km zone and showed:
 - a) according to the ABS Census 2011, over 17,000 people lived in the 2 km zone, comprising 7 per cent of the population of Casey;
 - b) the population density of the 2 km zone (at 1,722 people per km²) is greater than Casey, reflecting the recent pattern of new residential development in the area;



- c) both the 2 km zone and Casey have a higher proportion of children aged 0-13 and a lower proportion of older people aged 60 or more when compared to the Melbourne Greater Capital City Statistical Area (**Melbourne GCCSA**). In contrast, the proportion of 14-24 year olds in the 2 km zone (14 per cent) is lower than the Melbourne GCCSA level (15 per cent), whereas the proportion for Casey is higher (16 per cent). Conversely, the proportion of 25-39 year olds in the 2 km zone (26 per cent) is higher than the Melbourne GCCSA level (23 per cent), while the equivalent figure for Casey is lower (22 per cent);
- d) the cultural and linguistic diversity of the 2 km zone is representative of the Melbourne GCCSA, with 33 per cent of people born overseas and 67 per cent born in Australia;
- e) attainment of tertiary education certificates is low in the 2 km zone, with only 10 per cent of residents having a bachelor degree or higher. This is slightly lower than for Casey as a whole (13 per cent), and considerably lower than the average for the Melbourne GCCSA (24 per cent);
- f) higher proportions of people employed in blue collar occupations are found in the 2 km zone (45 per cent) and Casey (40 per cent) compared to the Melbourne GCCSA (28 per cent);
- g) average annual household incomes in the 2 km zone are 18 per cent lower than for Casey and 23 per cent lower than for the Melbourne GCCSA;
- h) the 2 km zone has a higher proportion of households that earn less than \$65,000 per annum (57 per cent) compared to the Melbourne GCCSA (47 per cent);
- i) the 2 km zone has a greater proportion of one parent families (21 per cent) compared to the Melbourne GCCSA (15 per cent); and
- j) based on the ABS SEIFA⁷⁹ Index of Relative Socio-economic Disadvantage, overall, the resident population in the 2 km zone experience high levels of socio-economic disadvantage. However, there is substantial variation in the level of disadvantage that exists across the 2 km zone. The SA1s⁸⁰ in the eastern part of the 2 km zone have much

⁷⁹ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.

⁸⁰ Statistical Areas Level 1 (SA1) have been designed by the ABS as the smallest unit for the release of Census data. An issue arose during the public hearing as to the typical number of persons within an SA1. Ms Kliger stated that SA1s contained between 200 and 800 people (see T1, p-108, lines 35-38). On the second last day of the hearing, the Licensee sought to introduce evidence with respect to the population of SA1s, and submitted that SA1s may contain more than 800 people. The Commission declined to hear this evidence as no notice had been provided to it or any parties of the evidence which the Licensee was seeking to adduce. In any event, there was already material before the Commission which indicated that it was possible for SA1s to have more than 800 people, that is, Table 3 on p.15 of Morrison & Smith, 2015, which showed that in that study, the maximum population for SA1s used for analysis was 3,042.



lower levels of disadvantage than those to the west. The areas of the 2 km zone experiencing the highest levels of disadvantage exist in the suburb of Cranbourne, to the south west of the Premises.⁸¹

110. Ms Homewood also provided evidence with respect to population levels and population growth, comparing the suburb of Cranbourne East, a region encompassed by the area within a 5 kilometre radius of the Premises, Casey and the Melbourne GCCSA. Using figures based on ABS statistics, Ms Homewood detailed in the Urbis Supplementary Report that Casey has the most residents of any municipality in Victoria, and is the third fastest growing municipality in Victoria. Further, Casey's population is forecast to grow from approximately 288,000 in 2015 to over 492,000 by 2041. The suburb of Cranbourne East experienced a population growth of 98 per cent between 2006 and 2011, and it is estimated to grow by 516 per cent between 2006 and 2026. This compares to 69 per cent in the Casey local government area and 40 per cent across metropolitan Melbourne.
111. The BKA Report prepared by Ms Kliger applied a 5 kilometre radius around the subject site as the basis for its demographic and socio-economic analysis, rather than the 2 kilometre radius utilised by Ms Homewood in the Urbis SIA.⁸² Ms Kliger, who is a social policy and planning consultant and has a Masters of Social Science in Urban Policy and Planning, stated that the 5 kilometre radius was used in recognition that people travel to purchase low cost alcohol from an off-premises licensed bulk liquor outlet.⁸³ Where available, she used data relating to Cranbourne East and the area within a 5 kilometre radius of the Premises, and detailed with respect to demographic characteristics that:
- a) in 2011, the majority of the population in Cranbourne East (66 per cent) was under 40 years of age, with 32 per cent between the ages of 15 and 34. This is higher than for metropolitan Melbourne (56 per cent) and Casey (61 per cent);
 - b) within the 5 kilometre radius, 17 per cent of the SA1s have the highest populations of young people (within the top five per cent for metropolitan Melbourne). Further, there are two SA1s which are in metropolitan Melbourne's top 10 for density of people between 12-17 years of age. The increases of the proportion of people in the band 15-24 are forecast to continue to 2041;
 - c) in 2011 Cranbourne East had more females than males as a proportion of the total population, as did Casey; but a higher proportion of males between 25 and 39 (28.7 per

⁸¹ Urbis SIA, pp.20-29.

⁸² Ms Kliger also relied on the fact that in its planning application before VCAT, the Licensee had used a 5 kilometre radius as the basis for the Premises' likely trade area: see T1, p-112, line 44 to p-113, line 4; T2, p-40, lines 10-14.

⁸³ BKA Report p.23.



cent) than Casey (21.8 per cent) and metropolitan Melbourne (at 22.9 per cent), and a higher proportion of males between five and 14 (15.2 per cent) than metropolitan Melbourne (12.5 per cent);

- d) Cranbourne East had a higher proportion of people with their highest level of school qualification being year 9 (19.1 per cent) than Casey (17.8 per cent) and metropolitan Melbourne (12.8 per cent). Further, Cranbourne East had a higher proportion of young people in the workforce than in metropolitan Melbourne, with half the population employed full time, compared to metropolitan Melbourne at 34.1 per cent;
- e) Cranbourne East has high levels of car ownership, with more than 60 per cent of residences having two or more motor vehicles, higher than metropolitan Melbourne at just under 51 per cent;
- f) Cranbourne East has a majority of people who speak only English (73.9 per cent), higher than metropolitan Melbourne at 65.9 per cent; and
- g) Cranbourne East is populated by a majority of new residents, particularly people who moved in the past five years (65.2 per cent), compared to metropolitan Melbourne at 43.2 per cent.

112. Ms Kliger also provided evidence of the level of socio-economic advantage/disadvantage, based on the SEIFA Index of Advantage/Disadvantage. Similar to the evidence of Ms Homewood, mapping of this index showed higher levels of disadvantage to the west of the site of the Premises.

The proposed operation of the Premises

Spatial characteristics and product range

113. The Dan Murphy's business model is a warehouse style or "big box" retail premises, large in area and with an extensive range of wines, beers and spirits sourced locally and from overseas and offered at competitive price points to allow customers to purchase for cellaring or consumption at different times.
114. Consistent with this business model, the proposed Dan Murphy's store at Cranbourne East is to have a floor area of 1,400 square metres,⁸⁴ and stock a wide range of liquor products. According to Ms Kliger, Dan Murphy stores have the largest liquor range in Australia, each carrying over 3,500 product lines.⁸⁵

⁸⁴ Urbis SIA p.8.

⁸⁵ BKA Report p.15.



115. A home delivery service is also provided for an additional charge and free delivery is available for “my Dan Murphy” members who pay an annual subscription fee of \$50.⁸⁶

Lowest Liquor Price Guarantee

116. A feature of the Dan Murphy’s business model is a guarantee to beat the price of its competitors subject to certain conditions requiring products to be identical and competitors’ premises being within 10 kilometres of a store.⁸⁷

117. The Commission notes that liquor can be and is sold at prices lower than Dan Murphy’s by other retailers, including Aldi, First Choice and Liquorland. This is in respect of product lines that are not stocked by Dan Murphy’s.⁸⁸

Operating hours vs. ordinary trading hours

118. Pursuant to section 3 of the LCR Act, ordinary trading hours in relation to a packaged liquor licence are:

- a) the hours between 9 a.m. and 11 p.m. on each day other than Sunday, Good Friday, ANZAC Day or Christmas Day;
- b) the hours between 10 a.m. and 11 p.m. on Sunday; and
- c) the hours between 12 noon and 11 p.m. on ANZAC Day.⁸⁹

119. Consistent with the standard operating hours for Dan Murphy’s stores,⁹⁰ the proposed hours of operation for the Premises, as contained in the Town Planning Permit, are:

- a) Monday – Wednesday.....9.00 a.m. – 8.00 p.m.
- b) Thursday – Friday.....9.00 a.m. – 9.00 p.m.
- c) Saturday.....9.00 a.m. – 8.00 p.m.
- d) Sunday.....10.00 a.m. – 6.00 p.m.

120. These proposed operating hours are less than the ordinary trading hours for packaged liquor licences and are more aligned to shopping centre hours

⁸⁶ BKA Report p.16.

⁸⁷ BKA Report p.15 and <https://www.danmurphys.com.au/help/price-guarantee-content>.

⁸⁸ Examples of such products were provided by the Licensee at the hearing: see paragraph 23.c)ii).

⁸⁹ See section 3.

⁹⁰ Urbis SIA p.7. The First Licensee Review Submission (at [99]) also made reference to “usual” Dan Murphy’s hours being until 9 p.m. on all days during daylight savings.



Responsible Service of Alcohol

121. The Licensee provided Operational Guidelines⁹¹ and details of the training provided to staff that is applicable to Dan Murphy's stores. These materials emphasise the importance of responsible supply of alcohol to its customers. Refusal of service, as required by law, is mandated if the customer is a minor, if the customer is intoxicated or if the customer is purchasing alcohol on behalf of a minor.
122. The Operational Guidelines include a practice of requiring proof of age from any person who appears to be under the age of 25 and provide guidance to staff in identifying possible intoxication and secondary supply.
123. The Licensee is also a foundation member of the committee which oversaw the establishment of the Code of Conduct for holders of packaged liquor licences which has been gazetted by the Victorian Government, and remains an active member of that committee. The Licensee is also a contributing member of the Casey liquor accord,⁹² and intends to continue in this capacity.
124. Further, it was the evidence of the Licensee that it has an unblemished record with respect to its compliance with the LCR Act, which was not disputed by any party.⁹³

Responsible Purchasing Policy

125. The Licensee has also adopted a policy in relation to Dan Murphy's stores of not stocking for sale product lines that it considers are conducive to or encourage misuse or abuse of alcohol. This policy is encompassed in the Licensee's *Responsible Buying Charter*. Examples of products which are not stocked by Dan Murphy's stores include "SHOT BUCKETS" and "LEMON ED".⁹⁴

Other licensed premises in the vicinity of the Premises

126. As at the time of these reasons, in respect of other licensed premises in the vicinity of the proposed Dan Murphy's store, there were 21 licensed premises located within a 2 kilometre radius of the site of the Premises, of which one was the Aldi store at the Centre. Of the three licensed venues closest to the site, these comprise an on-premises licence at the Cranbourne Indoor Sports Complex, which is 850 metres to the south west of the proposed site. This licence offers alcohol to patrons of the sports centre. To the west of the site, between 700 metres and 1 kilometre away, are the Settlement Hotel, which operates a general (late night) licence as well

⁹¹ Urbis SIA Appendix A.

⁹² As to liquor accords, see Div 6 of Pt 8 of the LCR Act.

⁹³ A submission to the contrary was raised in closing submissions by Victoria Police and immediately withdrawn with a request that it be disregarded (see T6, pp-200-201).

⁹⁴ Examples were provided by the Licensee at the hearing: see paragraph 23.c)i).



as offering packaged liquor for sale and consumption off the licensed premises, and the White Jasmine Thai Restaurant, which is licensed to permit patrons to possess and consume liquor on the premises during its hours of operation.

127. A cluster of licensed premises is found within the Cranbourne Town Centre, 1.6 kilometres south-west of the site. These licences include four packaged liquor licences, a late night general licence and a BYO permit. The remaining licensed premises located within 2 kilometres of the site include four on-premises licences to the south of the site associated with the Casey Indoor Sports Complex, the Blue Hills Rise residential retirement development and the Amberlee Reception and Function Centre. To the north west of the site is a restricted club licence at the Donnelly Reserve Sporting Club.
128. Within a 5 kilometre radius, the Commission's records show that there are 75 liquor licences. Of these, there are 25 licences that permit sale for off-premises consumption (22 packaged liquor licences, two late night (general) licences and one general licence). There is only currently one licensed 'big box' liquor outlet, which is Dan Murphy's Marriott Waters in Lyndhurst.

Other preliminary matters

Relevant area

129. To enable it to fulfil its legislative task, a key preliminary matter to be addressed by the Commission is the relevant area that it ought to consider in determining whether to grant or refuse the Licence Application.
130. According to the Council, alcohol purchased from packaged liquor outlets is not consumed on licensed premises, but rather in diverse settings such as homes, parks, railway stations, at private parties and in other suburban settings.⁹⁵ As such, the impacts of consumption of alcohol purchased from packaged liquor outlets can be widely dispersed, hence:
- "[p]articularly in the context of packaged liquor, the area to be analysed for the purposes of amenity impact is not confined to the immediate environs of the licensed outlet, but extends to the broader setting which is affected by the sale and consumption of liquor."*
131. In the particular circumstances of this Licence Application, the Council described the relevant area as consisting of an established suburban neighbourhood and a new suburb, with future growth suburbs further to the east that are not yet in existence.⁹⁶ Further, the Council adduced evidence of the existing conditions between 2.5 kilometres and 5 kilometres from the subject site, as, in the Council's view, this area equates to the catchment area of the proposed Dan Murphy's store.

⁹⁵ See Council First Review Submission at [24]-[25].

⁹⁶ Third Council Review Submission at [34].



132. The Council also noted that all expert witnesses considered an area greater than that within a 500 metre radius of the Premises to be relevant: Ms Kliger analysed both a 2.5 kilometre and 5 kilometre radius from the subject site; Ms Homewood primarily used a 2 kilometre radius; Mr Weston⁹⁷ considered outlets within a 5 kilometre radius, and agreed under cross-examination that this was an appropriate area for analysis; and in his 2010 study, Dr Henstridge adopted a relevant area of 5 kilometre radius, based on the likely catchment area of a Dan Murphy's store. Further, Council submitted that the use of a radius of 5 kilometres was particularly relevant regarding existing levels of harm because it is an existing community that will be impacted by the Premises.
133. Referencing evidence of Mr Morrison and Dr Henstridge that data collected at the level of a large spatial area was considered to be problematic, the Council also submitted that *"it is less than useful to take ... [the Licensee's] approach of comparing average rates of harm in Casey with other LGAs in Victoria."* In addition, the Council relied on the evidence of Ms Kliger, who stated in the BKA Report (at p.19) that Planning Practice Note 61 *"does not appear to account for the travel patterns of customers of off-premises licensed packaged liquor outlets such as Dan Murphy's stores that are destination bulk liquor outlets, which attract customers based on lowest prices and diversity of stock."*
134. Victoria Police submitted that the relevant area to be considered was the total catchment area for customers of the 'big box' outlet. Further, in this Review Application, Victoria Police submitted the total catchment area for customers of the Premises is appropriately measured as a 5 kilometre radius from the Premises. In support, reference was made both to the BKA Report and the Council's submissions, as well as aspects of the Licensee's own evidence.⁹⁸ It submitted further that the relevant area *"should not be constrained by the areas which come within the scope of the cumulative impact assessment required under the applicable Statement of Policy and Guidelines"*.⁹⁹
135. According to Victoria Police, this approach reflects the reality that customers of such outlets do not usually consume liquor on or near the licensed premises, but that the overwhelming majority will take the liquor away for consumption at home.¹⁰⁰
136. Victoria Police also submitted that this approach appropriately reflected the objects of the LCR Act, particularly as they relate to packaged liquor licences. As Tate JA observed in *Kordister*,

⁹⁷ Mr Weston is a researcher and analyst with over 15 years' experience in impact assessment, evaluation, quantitative and qualitative research and program design and management.

⁹⁸ See Third Victoria Police Review Submission at [16]-[17].

⁹⁹ Victoria Police Application Submission at [16].

¹⁰⁰ *Kordister* at [124] per Tate JA.



“the new risk-based licensing system reflected an understanding of the contribution to alcohol-related violence and disorder made by late night trading and packaged liquor outlets for off-premises consumption.”¹⁰¹

137. The Licensee submitted that the use of a 5 kilometre radius from the subject site as adopted by Council (and Victoria Police) was too wide, and should be rejected on the basis that *“it frames the appropriate measures for assessing the harm minimisation/social impact of the current application far too broadly.”*
138. In support of its position, the Licensee made reference to Planning Practice Note 61 as well as the Cumulative Impact Guidelines and the 2011 and 2012 Statements of Policy.¹⁰² It argued that these instruments militated in favour of areas within a 100 metre and 500 metre radius of the Premises. Secondly, it submitted that in a related planning matter at VCAT, Council had urged VCAT to consider a 2 to 3 kilometre radius. Thirdly, it argued that using a 5 kilometre radius completely ignores the presence of another bulk packaged liquor outlet within that radius. Fourth, it submitted that even if the 5 kilometre radius proposed by Ms Kliger was adopted, that *“insofar as persons are concerned who live within the 5 kilometre radius, it is absolutely logical to assume that the amounts of liquor they purchase will remain the same (although it is accepted ... that those who remain close to an existing outlet, will continue to purchase from that outlet, whilst those who will be close to the proposed Dan Murphy’s will presumably change and purchase their liquor from the proposed Dan Murphy’s).”*
139. The Licensee also relied upon the Urbis SIA, and the expert evidence provided by the report’s author, Ms Homewood, in identifying the local area. The Urbis SIA noted that defining a study area was a critical part of a social impact assessment, as this established the area in which the liquor licence application was likely to have the most impact. One of the key factors to be considered is the density and type of liquor outlets that currently exist in the surrounding area. Ms Homewood referred to the framework provided by Planning Practice Note 61. The study area used for the Urbis SIA included an assessment of the 500 metre radius and extended to encompass a 2 kilometre radius surrounding the subject site. Further, in the Urbis Supplementary Report, Ms Homewood provided evidence that compared the suburb of Cranbourne East, the area within 5 kilometres of the Premises, Casey and the Melbourne metropolitan area.
140. In assessing this Review Application, the Commission considers that in having regard to the local, social, demographic and geographic circumstances of the Premises, it is appropriate to

¹⁰¹ *Kordister* at [124].

¹⁰² See footnote to paragraph 44.



consider the range of evidence that was put before it by all of the parties, and to give such weight to each element as it considers appropriate in the totality of the circumstances of this Review Application. In this regard, the Commission was mindful, as discussed at paragraphs 43 to 45 that Planning Practice Note 61 referred to by the Licensee was not a decision making guideline issued pursuant to section 5 of the VCGLR Act, and further that the Statements of Policy referred to by the Licensee have been superseded. For the purposes of this decision, the Commission has determined the relevant area to be generally the area within a 5 kilometres radius of the Premises. However, the Commission also recognises that depending on the circumstances, greater weight may appropriately be placed on evidence that relates to areas more proximate to the Premises than that which is further away. Further, the weight to be placed on particular evidence may also need to have regard to other factors, such as the location of physical infrastructure (for example, roads, railway lines) and the location of other licensed premises. Finally, the Commission also notes that where evidence has been provided on a broader scale – for example, on a suburban or local government area scale – such evidence is also of relevance but the weight given to it may be adjusted to the extent that it may not fully reflect the circumstances of the relevant area.

Cumulative Impact Guidelines

141. The parties put forward differing views as to manner in which the Cumulative Impact Guidelines should be considered by the Commission in relation to the Licence Application.
142. The Licensee submitted that, as the proposed Premises would not be licensed and open after 11 p.m. and as it was not in an area in which there was a cluster of licensed premises, in accordance with Planning Practice Note 61, the granting of the licence would not increase or create a cumulative impact. Moreover, the proposed store would be only one of two large format liquor stores in a 5 kilometre radius of the proposed site.
143. In contrast, Council submitted that the Cumulative Impact Guidelines were a relevant consideration applicable to determining the Licence Application, but were of limited application given the situational context of the Premises, which did not involve the clustering of late night entertainment venues.
144. In relation to the applicability of Planning Practice Note 61 to the Licence Application, Council submitted that it was used to guide decision making in another forum with a different statutory context and a different set of statutory criteria to apply, and for that reason could only be of ancillary interest and not a matter of determinative weight for the Commission.



145. The Council submitted further that, should the cumulative impact of the application be a matter considered by the Commission, the expert witnesses have considered an area greater than 500 metres to be the relevant area for the purposes of the assessment. Ms Kliger and Mr Weston both used a 5 kilometre radius and Ms Homewood used a 2 kilometre radius as the appropriate area for analysis. The Council submitted that the Commission should not be limited to a 500 metre radius, as has been advanced by the Licensee, noting that the Cumulative Impact Guidelines do not refer to a 500 metre radius, nor Planning Practice Note 61.
146. Victoria Police submitted that the application of Planning Practice Note 61 is discretionary. However, Victoria Police also submitted that, given the overarching primary objective of the LCR Act, to limit the Commission's consideration based on Planning Practice Note 61 would "*unduly constrain [the Commission's] ability to exercise [its] statutory discretion*".¹⁰³
147. The Commission considers that in determining this matter, it is necessary by operation of section 9(4) of the VCGLR Act to have regard to the Cumulative Impact Guidelines issued by the Minister. Further, the Commission notes that these guidelines relate to all aspects of the task before it, and hence are relevant in addressing each of the three questions set out below. The Commission also recognises that these guidelines define "cumulative impact" as being the "*impacts arising from a concentration of licensed premises in a defined area*". Consistent with the submissions of both the Licensee and the Council, the evidence provided at paragraphs 126 to 128 points to a limited "concentration of licensed premises", whether the "defined area" is taken to be an area encompassed by as little as a 100 metre radius or as large as that within a 5 kilometre radius of the Premises. As such, the Commission considers the Cumulative Impact Guidelines have limited bearing on its determination of the Licence Application.

Research evidence

148. Research evidence put before the Commission took a variety of forms:
- a) original research with respect to alcohol-related matters set out in peer-reviewed journal articles or research reports. This included articles authored (or co-authored) by persons who gave oral evidence, and by those who did not;
 - b) original research with respect to non-alcohol-related matters set out in peer-reviewed journal articles;
 - c) original research with respect to alcohol-related matters undertaken on behalf of industry stakeholders;

¹⁰³ See T6, p-199, lines 38-44.



- d) reviews of alcohol-related literature undertaken by persons giving evidence at the public hearing; and
- e) reviews of alcohol-related literature undertaken by persons who did not give evidence at the public hearing.

149. Evidence was given and submissions made in relation to the weight that the Commission should give to specific categories of research evidence. In particular, with respect to the research contained in peer-reviewed journal articles or research reports:

- a) Dr Livingston¹⁰⁴ and Associate Professor Miller¹⁰⁵ both provided evidence as to the robustness of such research, which resulted from the peer review process. This process including the reviews undertaken prior to any materials being accepted for publication,¹⁰⁶ the nature of the people undertaking those review processes,¹⁰⁷ the hierarchy of publications in terms of quality,¹⁰⁸ and the practice and purpose of authors identifying limitations in their work (and whether those limitations mean that the general thrust of the research should be disqualified or discounted);¹⁰⁹
- b) in contrast, it was the evidence of Dr Henstridge¹¹⁰ that:
 - i. in principle, the peer review process “*acts as a quality mechanism on the publication process*”;¹¹¹
 - ii. speaking as a statistician, he could “*think of very many cases where a peer review process has failed in respect to the statistics*”;¹¹² and
 - iii. it is a common occurrence that the peer review process is less than ideal in the case of the statistical content;¹¹³ and
- c) in its closing submission, the Council argued in support of the evidence put forward by Dr Livingston, Associate Professor Miller and Mr Morrison on the basis that they were

¹⁰⁴ Dr Livingston holds a PhD in public health, and has completed undergraduate degrees in mathematics and criminology (see T1, p-21, lines 8-9).

¹⁰⁵ Associate Professor Miller holds a Bachelor of Arts with a First Class Honors in Psychology, and a PhD in Sociology. At the time of giving evidence, he was an Associate Professor within the School of Psychology at Deakin University.

¹⁰⁶ Livingston, T1, p-21, lines 40-47.

¹⁰⁷ Livingston, T1, p-22, lines 4-7.

¹⁰⁸ Miller, T1, p-77, lines 32-38.

¹⁰⁹ Livingston, T1 p-29, lines 16-27.

¹¹⁰ Dr Henstridge holds a Ph.D in Statistics at The Australian National University, and since 2013 has been the national president of the Statistical Society of Australia Incorporated. He is the owner of Data Analysis Australia, at which he holds the dual roles of managing director and principal consultant statistician.

¹¹¹ See T4, p-40, line 46.

¹¹² See T4, p-41, lines 4-5.

¹¹³ See T4, p-41, lines 6-7.



“three leading academic researchers in this area who have gone through a rigorous peer review process and who are doing independent research.”¹¹⁴

150. The Commission considers that generally the weight it should give to research set out in articles in peer reviewed journals is greater than non-peer reviewed work due to that research being subject to the process as outlined by Dr Livingston and Associate Professor Miller. The Commission also considers that the weight to be given to any individual article is necessarily also subject to the assessment of other evidence relating to the veracity of that research.
151. Evidence was led and submissions made with respect to the Harvest Report.¹¹⁵ The Council submitted that it contained relevant information, that at no stage had Council indicated that a witness would be called to give evidence in relation to its contents, and that resourcing constraints precluded this from occurring. The Licensee submitted that as no persons were called to give evidence on it, nor was any individual identified as an author, the Harvest Report ought to be entirely disregarded.¹¹⁶ In the same submission, the Licensee submitted that certain aspects of the Harvest Report should be relied upon, specifically the data relating to levels of packaged liquor floor space, numbers of packaged liquor outlets per 1,000 adults, and rates of floor space per 1,000 adults.¹¹⁷ Victoria Police did not object to the Council relying on the Harvest Report. Having regard to these circumstances, the Commission has considered the Harvest Report in determining this Licence Application but as no person was called to give evidence in relation to its contents, this affected the weight that the Commission could place upon it. To the extent that reference has been made and reliance has been placed on the Harvest Report, this is only to the extent specifically detailed in these reasons for decision (noting also that this report was provided by Council on a confidential basis, and hence reference to its contents is subject to potential exclusion).
152. The research evidence that was provided may be relevant for different aspects of the task before the Commission. For the avoidance of doubt, the Commission notes that where below it makes detailed reference to research evidence, in determining this Review Application its consideration of such general evidence has been done having regard to locality evidence in accordance with the approach outlined by the Court of Appeal in *Kordister*. To the extent that the research evidence is set out separately below, it is done primarily to facilitate the reading of this decision.

¹¹⁴ T6, p-199, lines 27-28.

¹¹⁵ See Expert Report of Dr Henstridge at [49] to [61], in which Dr Henstridge provided a detailed response to the Harvest Report.

¹¹⁶ T6, p-211, lines 36-45.

¹¹⁷ See T6, p-214, lines 39-43. It was clarified by the Licensee at T6, p-215, line 35 that the Licensee sought to have the Harvest Report entirely disregarded save for the points raised.



Assessment of the Licence Application

Would the grant of the Licence Application be conducive to or encourage the misuse or abuse of alcohol?

153. In considering whether the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol, the Commission has had regard to both general evidence and locality evidence.

General evidence

154. Considerable evidence was put before the Commission showing the relationship between the supply of alcohol and the misuse or abuse of alcohol to be complex and multi-faceted.

155. Evidence was led by both the Licensee and the Council with respect to the harms that have been associated with the consumption of alcohol generally. Mr Weston noted broadly that:

“... at times excessive alcohol consumption may be associated with negative health impacts for drinkers and/or antisocial behaviour and violence, which can affect drinkers and non-drinkers.”¹¹⁸

156. The nature of these harms were set out in more detail by both Dr Livingston and Ms Kliger. According to Dr Livingston (Witness Statement, p.4):

“While much of the public media focus about alcohol-related harm in Victoria centres around nightclubs and other late-night venues in entertainment precincts, the impacts of alcohol are felt much more broadly, with chronic diseases like liver cirrhosis, stroke, alcohol dependence and some cancers contributing to substantially more of the alcohol-attributable disease burden than assaults. Furthermore, while estimates are not particularly robust, Victorian police data suggests that alcohol-related violence in the home is probably at least as prevalent as the late-night assaults that often generate media coverage.”

157. Similarly, in the BKA Report (at pp.20-21), Ms Kliger detailed that:

“Alcohol-related harms could be considered in 3 broad categories; Health; Safety and Amenity.

... the misuse of alcohol can be directly associated with a number of health impacts such as alcohol dependence, sexual offences, violent crimes and fear of crime. In addition, alcohol is a known risk factor for cancer. Heavy alcohol use can cause short and long term health problems such as cirrhosis of the liver, strokes, suicide, cancers of the mouth, pharynx, larynx, oesophagus, colorectum, and breast.

....

Safety issues encompass:

- *Road and traffic accidents including both vehicular incidents that may result in injury or death.*
...
- *Violence against persons including assault in a family environment and in a social setting. ... Additionally a significant proportion of offenders and victims of sexual assault have consumed alcohol.*

....

¹¹⁸ Weston Report p.4.



Amenity-related crime and disorder includes anti-social behaviour that impacts on a sense of safety and security for local communities. Anti-social behaviour includes: indecent or offensive behaviour in public; use of indecent or offensive language in public; public drunkenness, under-age drinking ... weapons related offences; theft; assault and property damage. The types of anti-social behaviour associated with licensed premises include littering, offensive behaviour (public drinking, noise, urination, vomiting), vandalism and fighting. Anti-social behaviour is most prevalent at night, having a substantial impact on perceptions of safety and security."

158. Relatedly, Associate Professor Miller stated further that:

"... when alcohol is involved in an incident ... compared to when it's not, there is more likely to be: (a) physical violence; (b) a resulting injury, and this is more likely to be a physical injury; and (c) police involvement."¹¹⁹

159. Having regard to the specific nature of the Licence Application, a focus of the evidence was the type of alcohol-related harms associated with the supply of alcohol from packaged liquor outlets. Superintendent Hansen provided evidence with respect to the links between the supply of alcohol from packaged liquor outlets and family violence. Similarly, Ms Homewood made reference to research that suggested a strong correlation between packaged liquor licences and assault¹²⁰ and, noting various caveats and cautions, domestic violence.¹²¹

160. Evidence was also presented highlighting the growing prominence of packaged liquor outlets. According to Associate Professor Miller, the proportion of alcohol purchased from packaged liquor had grown substantially over the past two decades, and whereas "20 years ago, around 70% of alcohol was purchased from hotels. Recent research suggests that over 80% is now purchased from packaged liquor outlets."

161. In the context of these changing patterns of alcohol supply in the community, evidence was put before the Commission with respect to a considerable body of academic and industry research that has examined the relationship between the supply of liquor from packaged liquor outlets and alcohol-related harms.

162. In relation to the theoretical underpinnings of the relationship between supply of liquor from packaged liquor outlets and harms, this literature indicates an initial consideration has been the basis upon which the presence of an outlet may impact on the level of alcohol consumption.

¹¹⁹ Miller Witness Statement at [23].

¹²⁰ Urbis Supplementary Report p.8.

¹²¹ Urbis Supplementary Report, p.10. Relatedly, Liang and Chikritzhs (2011) at p.534 state when comparing violence associated with the supply of liquor from on- and off-premises outlets that:

"[T]he fundamental mechanisms by which on- and off-site outlets influence levels of violence appear to differ. We conclude that our findings support the notion that the link between on-site outlets and violence may be primarily underpinned by negative amenity effects, while the presence of off-site outlets alters alcohol availability in the surrounding area. Furthermore, we speculate that it is the economic availability of alcohol that is most influenced by liquor stores. Alcohol sales volumes from off-site outlets influence levels of violence, which occur at both licensed and residential settings."



Prominent amongst these is availability theory,¹²² which according to Morrison and Smith (2015) (at p.7):

“... suggests lower total costs (including financial and convenience costs) lead individuals to consume greater quantities of alcohol ... By that mechanism, greater density of larger and chain outlets with lower prices may reduce the total cost of alcohol for local populations, leading to greater consumption within neighbourhoods. Greater consumption is itself associated with more traumatic injury ... Thus it is possible that larger and chain outlets selling cheaper alcohol products will contribute to greater incidence of trauma than smaller and independent outlets selling more expensive products.”

163. Morrison and Smith (2015) (at p.7) further argue generally that:

“[d]ue to economies of scale, retail stores selling equivalent commodities (such as alcohol) differ in a predictable manner ... Larger stores and chains maintain profits through low margins and high sales volumes. Unable to compete on price, smaller and independent stores are forced to appeal to potential customers by alternate means (for instance, product range, service, ambiance). After accounting for differences in land and structure rents, larger stores selling cheaper products will need to sell greater volumes of lower cost alcohol to be profitable.”

164. Evidence led on behalf of the Licensee provided some support for this theory. In particular, according to the expert report prepared by Mr Weston dated August 2015 (**Weston Report**):

*“It would be unsurprising if there is a relationship between outlet density and the consumption of alcohol. This is because development of new outlets reduces the average distance people have to travel to access a store. ... It is also possible that as new outlets appear in an area the intensity of competitive pricing practices may increase, enhancing the relative buying power of consumers ...”*¹²³

165. However, Mr Weston noted further:

*“... in areas where there are many existing opportunities to buy alcohol, and where price competition is already high, a new outlet may have less impact on the full cost of alcohol ... than in area [sic] with few outlets and little competition.”*¹²⁴

166. Mr Weston also detailed his opinion that the relationship between the accessibility of packaged liquor (physical and/or economic) and frequent/heavy drinking is characterised by two way causality – *“on the one hand, increased accessibility stimulates demand, on the other a population that already includes heavy drinkers will be typified by greater sales volumes encouraging greater supply of liquor outlets.”*¹²⁵

¹²² Other theories referenced in the evidence provided included social disorganisation theory, routine activities theory, drinking context theory and niche theory (see Liang and Chikritzhs, 2011:525). Also detailed by Liang and Chikritzhs (2011) was a framework developed by Dr Livingston that combines elements of both availability theory and the routine activities theory, which proposes that outlets may potentially influence both ‘proximity’ of access to alcohol (availability) and the ‘amenity’ of the community surrounds. Amenity effects relate to the undesirable or negative effects which outlets may have on the physical environment of neighbourhoods. By virtue of their collective appeal, premises that are located in close proximity to one another may apply a multiplicative pressure on violence and disorder as they draw large numbers of potential perpetrators and victims into close contact with one another – they may function as magnets for violence, disorder and ‘trouble’.

¹²³ Weston Report at p.6.

¹²⁴ Weston Report at p.6.

¹²⁵ Weston Report at p.8.



167. In support of his position, Mr Weston made reference to a quote from Dr Livingston in his 2012 paper *'The effects of changes in the availability of alcohol on consumption and health and social problems'*, School of Population Health, University of Melbourne, in which Dr Livingston is said to state:

"Given Melbourne's already high level of alcohol availability, increases in off-premise outlet numbers would be expected to reduce the convenience cost of alcohol purchases by relatively small amounts and would thus be unlikely to greatly affect population level drinking."

168. Evidence was also led as to the processes by which supply of alcohol from packaged liquor outlets may affect the nature of alcohol consumption. According to Mr Weston:

"... information collected [from personal research undertaken] suggests that alcohol purchased from packaged liquor outlets is typically consumed away from the premises. ... There are possible exceptions to the above, however. An example is a packaged liquor outlet located within an entertainment precinct and open late enough to capture patrons of on-site venues."¹²⁶

169. In this context, Associate Professor Miller provided evidence of the practice of pre-loading; that is, the practice of drinking alcohol purchased from off-premises outlets prior to attending on-premises outlets. In relation to this practice, the *'DANTE'* report funded by the National Drug Law Enforcement Research Fund (NDLERF), of which Associate Professor Miller was a co-author, stated (at p.131) that *"pre-drinking was ... primarily caused by a very substantial disparity between the price of alcohol between on-premise venues and packaged liquor stores."*

170. In considering the relationship between alcohol-related harms and the supply of liquor from packaged liquor outlets, the research has also examined the factors that may mediate that relationship. Generally, the NDRI study (**NDRI, 2007**) (at p.190) concluded with particular reference to outlet density that the relationship between the supply of alcohol from packaged liquor outlets and *"... various types of alcohol-related harms are complex and the outcomes are dependent on other environmental and situational factors."*¹²⁷ According to Ms Homewood, regard must be given to such factors because *"... the desire to consume alcohol is not solely motivated by the number of outlets but by a number of socio-economic and psychological factors and if a person wishes to consume alcohol they will decide to do this with scant regard to the number of licensed premises"*.¹²⁸

¹²⁶ Weston Report at p.15.

¹²⁷ Further, according to the NDRI (2007) (at p.30):

"... the impact of changes to outlet density in a given region may be considerably different for alcohol-related drink-driving behaviour than for alcohol-related aggression. This is because associations between source of alcohol, drink driver mobility and driving patterns which factor strongly in models of alcohol-related road crashes and outlet density cannot be applied to predict associations between alcohol-related violence and outlet density. Furthermore, the relationship between alcohol-related violence and outlet density appears to be strongly influenced by situational factors and routine activities in the licensed drinking environment ..."

¹²⁸ Urbis Supplementary Report at p.9.



171. According to Dr Livingston, there is growing evidence that the relationship between outlets and harms vary across neighbourhood types, with evidence pointing to larger effects for outlet density in socio-economically disadvantaged areas.¹²⁹ Relatedly, Mr Morrison stated that:
- “[[l]ower income populations are commonly observed to have greater risk of alcohol-related problems, despite consuming less alcohol”*;¹³⁰
 - “... greater concentrations of outlets are found in areas with greater demand for alcohol, in areas where the resident population has lower income, and adjacent to areas where the resident population has higher income”*;¹³¹ and
 - “... analysis demonstrated that outlets located in areas of greater social disadvantage sold cheaper alcohol”*.¹³²
172. Dr Livingston noted further that some researchers have attempted to identify whether or not there are critical thresholds for outlet density or proximity that could be used to inform detailed planning or licensing policies.¹³³ These studies appear not to be conclusive based on the summaries provided.
173. In seeking to summarise the research, Ms Homewood (Urbis SIA, p.19) stated that
- “A number of studies have found positive relationships between AOD [alcohol outlet density] and rates of violence ... studies have shown that when making these correlations a number of other variables need to be considered in addition to that of AOD. The research suggests that its impact is also mediated by factors such as:*
- the socio-economic conditions of the locality*
 - the clustering of liquor outlets in agglomerations*
 - established patterns of drinking, including the reporting of alcohol-related problems*
 - the pattern of land use in the locality and the extent to which the location is an inner urban, suburban or outer urban area (Livingston 2008: 1078)*
 - the differential impacts of off-premise and on-premise outlets ...”*.
174. In addition to the evidence given with respect to the body of literature relating to the relationship between the supply of liquor from packaged liquor outlets and alcohol-related harms, in the course of the inquiry, the Commission was provided with a number of peer-reviewed journal articles which addressed specific aspects of this relationship.¹³⁴ These were:

¹²⁹ Livingston Witness Statement at pp.8, 11.

¹³⁰ Morrison Witness Statement at [12].

¹³¹ Morrison Witness Statement at [13].

¹³² Morrison Witness Statement at [20].

¹³³ Livingston Witness Statement p.9.

¹³⁴ In addition, excerpts of Chikritzhs, T.; Gray, D; Lyons, Z. and Siggers, S. (2007) *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*, National Drug Research Institute (NDRI), Curtin University of Technology (NDRI, 2007) were also provided by Council. For brevity, while the Commission has reviewed this research in its entirety, it has limited its description of the articles in these reasons to that contained in the abstracts.



- a) Costa, B.; Kaestle, C.; Walker, A.; Curtis, A.; Day, A.; Tombourou, J. and Miller, P. (2015) 'Longitudinal predictors of domestic violence perpetration and victimization: A systematic review', *Aggression and Violent Behavior*, Vol 24, pp.261-272 (**Costa et al, 2015**)

This was a “systematic review of longitudinal studies that have prospectively investigated childhood and/or adolescent predictors of DV [domestic violence] perpetration and/or victimization among adult men and women in intimate relationships.” It found that “[c]hild and adolescent abuse, family of origin risks, child and adolescent behavioural problems, adolescent peer risk, and socio-demographic risks were all identified as significant predictors of DV perpetration and/or victimization. It is concluded that early childhood and adolescent factors are consistent predictors in the development of DV perpetration and/or victimization and that prevention and early intervention approaches targeting these factors are likely to prove the most effective.” It found that alcohol and drug use in adolescence increased the likelihood of DV perpetration and victimization in adulthood for both males and females.¹³⁵

- b) Kavanagh, A.; Kelly, M.; Krnjacki, L.; Thornton, L.; Jolley, D.; Subramanian, S.; Turrell, G. and Bentley, R. (2011) 'Access to alcohol outlets and harmful alcohol consumption: a multi-level study in Melbourne, Australia', *Addiction*, Vol 100, pp.1771-1779 (**Kavanagh et al, 2011**)

The purpose of this study was to assess the association between access to off-premises alcohol outlets and harmful alcohol consumption. It involved a multi-level study of 2334 adults aged 18-75 from 49 census collector districts in Melbourne. Alcohol outlet density was defined as the number of outlets within a 1 kilometre road network of respondents' homes and proximity was the shortest road network distance to the closest outlet from their home. Using multi-level logistic regression the authors estimated the association between outlet density and proximity and four measures of harmful alcohol consumption: drinking at levels associated with short-term harm at least weekly and monthly; drinking at levels associated with long term harm and frequency of consumption.

The reported results of this research were that density of alcohol outlets was associated with increased risk of drinking alcohol at levels associated with harm. The authors found no association between proximity and harmful alcohol consumption. The authors concluded that the number of off-premises alcohol outlets in a locality is associated with

¹³⁵ Costa et al (2015) at p.11.



the level of harmful alcohol consumption in that area. Reducing the number of off-premises alcohol outlets could reduce levels of harmful alcohol consumption.

- c) Liang, W. and Chikritzhs, T. (2011) 'Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability', *Drug and Alcohol Review*, Vol 30, pp.524-535 (**Liang and Chikritzhs, 2011**)

This was an ecological cross-sectional study that aimed to investigate the effect of outlet numbers and alcohol-related sales on the risk of assault in WA. It examined the relative effects of on- and off-site outlets by simultaneously applying both counts of outlets and alcohol sales made by those same outlets to predict assaults occurring at residential and licensed settings. For 2000/01, information on type, number and wholesale alcohol purchases of all licensed outlets in operation, police reported assault offences, and socio-economic/demographic data were obtained from official sources. Multivariate negative binomial regression was applied to local government areas in order to assess associations between outlet density, alcohol sales and violence occurring in both licensed and domestic settings.

The reported results of this study were that average alcohol sales volume per off-site outlet was significantly associated with all measures of assault. Numbers of on-site outlets predicted violence occurring at on-site outlets. The authors concluded that the link between on-site outlets and violence may be primarily underpinned by negative amenity effects while off-site outlets occur via increased availability. Alcohol sales volumes from off-site outlets influence levels of violence, which occur at both licensed and residential settings.

- d) Livingston M. (2008) 'A longitudinal analysis of alcohol outlet density and assault', *Alcoholism Clinical and Experimental Research*, Vol 32, No. 6, July 2008, pp.1-6 (**Livingston, 2008**)

This study examined (a) the links between violence rates and changes in outlet density and (b) the characteristics of regions in which changes in outlet density are most strongly associated with changes in violence rates. It did so by examining nine (1996 to 2005) years of data measuring alcohol outlet density and alcohol-related violence. The relationships between three types of alcohol outlet density and alcohol-related violence were assessed using fixed-effects models. The postcodes were then grouped into five clusters based on their socio-demographic profile and separate fixed-effects models were fitted to assess whether the relationships between outlets and violence differed based on the type of region being examined.



The reported results of this research were that the initial models found overall positive relationships between all three types of alcohol outlets and violence. When separate models were developed for postcode clusters, they demonstrated that the link between outlet density and violence was significant in all neighbourhood types, but the specific relationships varied significantly. The authors concluded that changes in the number of alcohol outlets in a community are linked to changes in the amount of violence the community experiences. The relationship varies across the clusters of suburbs examined, with packaged liquor outlets consistently associated with violence in suburban areas and general (hotel) and on-premise (nightclubs, restaurants, and bars) licences associated with violence in inner-city and inner-suburban areas.

- e) Livingston M. (2011) 'A longitudinal analysis of alcohol outlet density and domestic violence', *Addiction*, Vol 106, pp.919-925 (**Livingston, 2011a**)

This study involved a longitudinal examination of the relationship between alcohol outlet density and domestic violence. It examined nine (1996 to 2005) years of data measuring alcohol outlet density and domestic violence. The relationships between three types of alcohol outlet density and domestic violence were assessed using fixed-effects models.

The reported results of this research were that alcohol outlet density was associated significantly with rates of domestic violence over time. All three licence categories were positively associated with domestic violence rates, with small effects for general (pub) and on-premises licences and a large effect for packaged liquor licences. The authors concluded that in Melbourne the density of liquor licences is positively associated with rates of domestic violence over time. The effects were particularly large for packaged liquor outlets, suggesting a need for licensing policies that pay more attention to off-premise alcohol availability.

- f) Livingston M. (2011) 'Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms', *Drug and Alcohol Review*, Vol 30, pp.515-523 (September 2011) (**Livingston, 2011b**)

This study involved a longitudinal examination of the relationship between alcohol outlet density and violence and alcohol use disorders. It examined 14 (1994 to 2007) years of data measuring alcohol outlet density and hospital admission data for assault and for alcohol use disorders. The relationships between three types of alcohol outlet density and both violence and chronic harms were assessed using fixed-effects models.



The results of this study suggest that the density of alcohol outlets where the main activity is alcohol consumption (i.e. pubs) is positively related to rates of assault-related hospital admissions, while the density of off-premise alcohol outlets is related to the rate of alcohol use disorders. The authors concluded that these findings have significant implications for alcohol policies in Victoria, in particular pointing to the significant contribution of packaged alcohol outlets to both acute and chronic alcohol-related harm

- g) Miller P.; Droste, N.; Baker, T. and Gervis, C. (2015) 'Last drinks: A study of rural emergency department data collection to identify and target community alcohol-related violence', *Emergency Medicine Australasia*, Vol 27, No 3, pp.225-231 (**Miller et al, 2015**)

This study was a pilot project designed to measure the sources and location of alcohol-related harm by implementing anonymised 'last drinks' questions in the emergency department (ED) of a local community. It involved a series of 'last drinks' questions being added to the triage process in the hospital between November 2013 and July 2014 for all injury presentations aged 15 or over. Based on the data being collected by this process, the authors concluded that the pilot demonstrated the feasibility and reliability of implementing sustainable 'last drinks' data collection in the ED, and the ability to effectively map the source of alcohol-related ED attendances in a rural community.

- h) Miller P.; Droste, N.; De Groot, F.; Palmer, D.; Tindall, J.; Busija, L.; Hyder, S.; Gilham, K. and Wiggers, J. (2014) 'Correlates and motives of pre-drinking with intoxication and harm around licensed venues', *Drug and Alcohol Review*, May 2015, Online (**Miller et al, 2014**) (Peer review copy provided)

This study investigated the prevalence of pre-drinking culture in the night-time economy and its impact on intoxication and alcohol-related harm and violence experienced by patrons. It involved cross-sectional surveys conducted in and around licensed venues in Newcastle (NSW) and Geelong (Vic) during peak trading hours (typically 9 p.m. to 1 a.m.). Participants completed a five minute structured interview which targeted: demographics, past and planned movements on the survey night, safety/experience of harm, and patrol intoxication. 3,949 people agreed to be interviewed, a response rate of 90.7 per cent. Around half (54.9 per cent) of interviewees were male, and the mean age was 24.4 years.

The study found "66.8% of participants reported pre-drinking prior to attending licensed venues. On a 1-10 scale measuring self-rated intoxication, pre-drinkers scored significantly higher compared to non-pre-drinkers ... Compared to non pre-drinkers, patrons who had consumed 6-10 standard pre-drinks were 1.5 times more likely to be involved in a violent incident in the past 12 months ... increasing to 1.8 times more likely



for patrons who had 11-15 drinks. ... Pre-drinking was also associated with both self-rated and observer-rated intoxication, as well as increased probability of illicit drug use. Amongst pre-drinkers, price was the most commonly reported motive for pre-drinking." The authors concluded that "[p]re-drinking' was normal behaviour ... and contributes significantly to the burden of harm and intoxication in the NTE. Price disparity between packaged vs. venue liquor is a key motivator for pre-drinking."

- i) Morrison, C. and Smith, K. (2015) 'Disaggregating relationships between off-premise alcohol outlets and trauma', Foundation for Alcohol Research and Education & Monash University School of Public Health and Preventative Medicine, May (**Morrison and Smith, 2015**)
- j) Morrison, C.; Smith, K.; Gruenewald, P.; Ponicki, W.; Lee, J. and Cameron, P. (2016) 'Relating off-premises alcohol outlet density to intentional and unintentional injury' *Addiction*, Vol 111, No 1, pp.56-64 (**Morrison et al, 2016**)

The above two papers relate to a study that examined the association between alcohol sold through off-premise outlets, such as liquor stores, in Australia and the incidence of traumatic injury in surrounding areas. Two independent observers assessed alcohol price (based on price of the cheapest bottle of wine) and the volume of alcohol available for sale (paces of shelf space) in 295 liquor outlets in Melbourne. The study then constructed spatial models assessing counts of ambulance attendances for intentional injuries (such as assault, stabbing and shooting) and unintentional injuries (fall, crush, and strike by an object).

The reported results were that, consistent with economies of scale, the study found that larger liquor outlets and chains sold cheaper alcohol than their independent counterparts. Cheaper outlets were also located in disadvantaged areas. Importantly, chains have cheaper alcohol available than independent outlets, and this relationship could not be explained by land and structure rents or other features of the alcohol market.

The authors concluded that intentional and unintentional traumatic injuries occurred more commonly in areas with greater concentrations of off-premise alcohol outlets. These relationships extended to areas adjacent to where the outlets were located. Further, chain outlets contributed most substantially to trauma risk, with each additional chain outlet associated with a 35.3 per cent increase in intentional injuries and a 22 per cent increase in unintentional injuries in the local SA1 area.¹³⁶ Chains sold cheaper alcohol than

¹³⁶ According to Morrison et al (2016) at p.62:



independent stores, so this might partly explain their greater harmful effect. Stores in disadvantaged areas have cheaper alcohol, so any harms related to cheap alcohol disproportionately affect disadvantaged people. The authors concluded that these findings suggest that limiting the exposure of local populations to off-premise alcohol outlets, particularly chain outlets, may reduce the incidence of trauma in neighbourhoods.

- k) National Drug Law Enforcement Research Fund (NDLERF) (2012) 'Dealing with alcohol-related harm and the night-time economy (DANTE): Final Report', *Monograph Series No. 43 (NDLERF, 2012)*

This study involved a comparison of approaches to dealing with alcohol-related harm and interventions to address same in Geelong, Victoria and Newcastle, NSW.¹³⁷ It involved multiple research methodologies, including surveys and interviews. It focused predominantly on the harms associated with entertainment precincts, and considered the merits and effectiveness of different forms of intervention.

175. In considering this research evidence, the Commission notes that the authors of these articles themselves point to the limitations associated with the research that they have undertaken, and which are encompassed in their research findings. This include limitations that are specific to the individual research (see Liang and Chikritzhs, 2011 at pp.533-4; Livingston, 2008 at p.5; Livingston, 2011b at pp.521-522; Miller et al, 2014, pp.16-17; Miller et al, 2015 p.6; Morrison et al, 2016 at p.63)), as well as more general limitations associated with particular methodologies or data. Hence, Liang and Chikritzhs (2011:525) stated "*[i]t is nevertheless a limitation inherent to count-based models (even longitudinal studies) that they cannot account for the inevitable variation between outlets and their variable capacity to influence alcohol availability in the communities they serve.*"

176. Similarly Livingston (2008:1) detailed that "... for time-series methods to be utilized, comparable licensing and assault data need to be available for a jurisdiction for at least 20 years" and Livingston (2011a:921) stated:

"It should be noted that using a policing driven measure of domestic violence creates the potential for biases in the analyses (e.g. reporting rates may be higher in some areas and thus higher rates recorded in those areas). In addition, many incidents of domestic violence are likely to be excluded from police-based statistics, for example, the ... finding that just 36% of female victims of physical assault reported the incident to police. This represents a significant

"Indeed, off-premises outlets may place a greater overall burden on public health through unintentional injury than intentional injury due to substantially greater cumulative incidence of the former. ... A greater focus on unintentional injuries in this literature may be warranted."

¹³⁷ See Project objectives at 1.4 (NDLERF, 2012, at p.12).



source of potential bias to the study, particularly if reporting rates vary along with the availability of alcohol.”

177. Beyond the specific and general limitations noted by respective authors, additional evidence was also put before the Commission that was critical of certain aspects of the research that was presented to it.
178. In respect of research undertaken by Mr Morrison (Morrison and Smith, 2015; Morrison et al, 2016), this research was criticised by Dr Henstridge in his expert report and in oral evidence on a number of bases including:
- a) inconsistency of data collection;¹³⁸
 - b) issues with the definition of the relationship with neighbours using Thiessen polygons;¹³⁹
 - c) issues with the number of neighbours for the Thiessen polygons determined;¹⁴⁰
 - d) that the failure to correctly identify neighbours could lead to significant biases in the fitting of the regression model;¹⁴¹
 - e) apparent uncertainty as to how stores that are part of buying and marketing cooperatives (such as *Cellarbrations*) were handled;¹⁴²
 - f) the precision of the definitions of chains, which Henstridge stated was “... *apparently in error*”;¹⁴³
 - g) the treatment of missing values in the dataset;¹⁴⁴
 - h) the recorded values for beer prices (although the Commission notes this was not relevant to the analysis undertaken);¹⁴⁵
 - i) that in summary, “*the outlet dataset as analysed has numerous errors and has been assembled in a manner that is statistically highly questionable*”;¹⁴⁶
 - j) that for SA1s containing no off-premises outlets, the outlet level variables included in the injury models were both imputed as the mean value of all SA1s containing any outlets;¹⁴⁷

¹³⁸ See Henstridge Expert Report at [12].

¹³⁹ See Henstridge Expert Report at [13]. Thiessen polygons are polygons whose boundaries define the area that is closest to each point relative to all other points.

¹⁴⁰ See Henstridge Expert Report at [15], though Dr Henstridge indicated in oral evidence these may have been correct.

¹⁴¹ See Henstridge Expert Report at [18].

¹⁴² See Henstridge Expert Report at [19].

¹⁴³ See Henstridge Expert Report at [19(b)].

¹⁴⁴ See Henstridge Expert Report at [20].

¹⁴⁵ See Henstridge Expert Report at [20].

¹⁴⁶ See Henstridge Expert Report at [23].

¹⁴⁷ See Henstridge Expert Report at [26]. According to Dr Henstridge’s oral evidence, this risked biasing the results, but he could not say what the bias would be, or in what direction (see T4, p-32, lines 11-19).



- k) that the distance to the nearest neighbour data is unreliable for short distances and in any event should not be used as linear term – rather it should have been transformed;¹⁴⁸
- l) that oversampling of SA2s¹⁴⁹ with lower outlet densities was undertaken because of concerns that the “*sample would include outlets that were predominantly located in high density inner city areas*”, but the erroneous use of sampling weights as analysis weights has instead increased the emphasis of outlets in SA2s with higher outlet densities;¹⁵⁰ and
- m) that the disaggregated models have two parameters for the equivalent effect of outlets, one for chain outlets and one for independent outlets. It was noted that the parameter for chain outlets is significantly different from zero, while the parameter for independent outlets is not. It was then concluded that the effect on injuries of a chain outlet is substantially greater than the effect of an independent outlet. In doing so the research ignores that fact that the parameters for the effect of independent outlets have very wide bounds of uncertainty and are not significantly different from the parameters for the effects of chain outlets. That is, the parameter provides no evidence of a difference in the effects of the two types of outlets.¹⁵¹

179. It was the conclusion of the Henstridge Expert Report¹⁵² that:

“Despite the admirable aims and the opportunity to produce a significant study based on a very rich geographical dataset of injuries, this Paper [Morrison and Smith, 2015] fails in a number of ways.

- *Most critically, the decision to restrict the study to a non-contiguous subset of Melbourne created significant problems of properly knowing what outlets are nearby a site and reduced the sample size to one that, with the benefit of hindsight, is too small.*
- *The data collection process for outlets did not maintain a high standard of quality and the following data management introduced further data quality problems.*
- *The models fitted to the data were not properly selected.*
- *The statistical tests to answer the key question embedded in the title of the Paper were not carried out.*

These failings unfortunately mean that the results of the analysis in the Paper cannot be considered reliable and thus the conclusions of the Paper should be disregarded to the extent that they depend upon the analysis presented.”

180. Dr Henstridge further stated with respect to Mr Morrison’s research that:

*“... the peer review process ... ideally it does pick up issues. In my opinion it does not pick up serious shortcomings in this case ...”*¹⁵³

181. Finally, Dr Henstridge noted at [65] that it is “*appropriate to caution at this stage that the statistical analysis, even if carried out correctly, can at best prove the existence of association*

¹⁴⁸ See Henstridge Expert Report at [30(c)].

¹⁴⁹ SA2s are a general-purpose medium-sized area built from whole SA1s. Their aim is to represent a community that interacts together socially and economically.

¹⁵⁰ See Henstridge Expert Report at [33].

¹⁵¹ See Henstridge Expert Report at [42(f)-(g)].

¹⁵² Henstridge Expert Report, Executive Summary on page i.

¹⁵³ T4, p-42, lines 17-18.



between outlets and injuries. Proving causation is more difficult since it would have to rule out alternative explanations of the association.”

182. In response to these criticisms, Mr Morrison stated:¹⁵⁴

a) the research had been subject to a peer review process, and that:

“Addiction is the highest ranked journal ... and they have a particularly rigorous review process. It was reviewed by four reviewers, including the Journal’s resident statistician and was accepted based on their recommendations”¹⁵⁵

b) with respect to the overarching conclusions of the research, adjustment for clear data processing errors does not appear to impact on results in any substantive way. However it was noted that time had not permitted a re-run of the Bayesian spatial models upon which the research findings had been based; and

c) Mr Morrison maintained his position with respect to the research findings and stated that Dr Henstridge’s criticisms should in no way diminish the weight the Commission places on the findings of the study.¹⁵⁶

183. Further commentary on Mr Morrison’s research was provided by Mr Weston, who agreed that the criticisms made by Dr Henstridge did not mean that the results of that research should be dismissed, or more specifically, that *“we shouldn’t throw out the baby with the bathwater”*.¹⁵⁷

184. Having reviewed the evidence presented with respect to the research undertaken by Mr Morrison (and his colleagues), the Commission accepts the evidence of Dr Henstridge that there were a number of errors in the dataset upon which the research findings were based. This was conceded by Mr Morrison. However, the Commission accepts Mr Morrison’s evidence that these errors were of a minor nature, and as such not a basis to dismiss the research in its entirety.

185. The Commission also accepts the evidence of Dr Henstridge that a range of methodological choices have been made by the researchers which could have an impact on the results of the research conducted. However, the Commission considers these are choices that are of a type ordinarily required to be made in studies of this nature (as was the case with research separately undertaken by Dr Henstridge (see paragraphs 194 to 199). The Commission does

¹⁵⁴ See Letter from Morrison to Ms Emily Porter dated 31 August 2015 (Morrison Response to Henstridge Expert Report); see also Transcripts at T2, p-16 line 13 to p-18 line 19. Mr Morrison also pointed to what he saw as specific errors in Dr Henstridge’s report and in oral evidence provided additional details in relation to his research including with respect to the definition of “chains”.

¹⁵⁵ Morrison, T2, p-13 lines 5-8.

¹⁵⁶ Morrison Response to Henstridge Expert Report.

¹⁵⁷ T5, p-102, lines 40-45.



not accept the evidence of Dr Henstridge that the choices made means that no weight can be placed on the research undertaken.

186. Further, the Commission gives weight to the evidence of Dr Henstridge with regard to the comparison of results with respect to the model outputs for independent and chain outlets. The Commission is mindful though that the manner in which Mr Morrison enunciated his interpretation of the results of his research in his witness statement differed in emphasis from that contained in the Morrison et al (2016) article.¹⁵⁸ The Commission considers that the tables in the relevant articles themselves detail the results that are supported by the research evidence. As detailed in Morrison and Smith (2015:16), these results show when disaggregated by outlet characteristic, the models demonstrate that chain outlets (as defined by the study) were statistically significantly associated with an increased occurrence in both intentional and unintentional injuries.
187. Finally, the Commission notes the limitations in the research recognised by Mr Morrison and his co-authors.
188. In summary, the Commission accepts the position put forward by Mr Weston with respect to Mr Morrison's research. The Commission considers that this research study is supportive, though not determinative, of a relationship existing between the presence of packaged liquor outlets and particular types of alcohol-related harm, being unintentional and intentional injuries. The Commission notes that the findings do not include a sales volume variable. Hence, it is not clear whether the findings fully specify the factors mediating harm given the findings of the Liang and Chikritzhs (2011) study.
189. In respect of Liang and Chikritzhs (2011), this research was criticised by Dr Henstridge on a number of bases:
- a) that the analysis was based on a dataset using local government areas that “*vary in size massively*” and with widely varying geographical and demographic characteristics, which meant that the research relied on a dataset that needed to be treated with considerable caution;¹⁵⁹

¹⁵⁸ Specifically, Mr Morrison stated that the overall findings were that “*areas with greater density of off-premises outlets had greater incidents of intentional injuries and unintentional injuries, and among off-premises outlets, chain outlets contributed most substantially to trauma risk*”, whereas in the Morrison et al (2016) article, it was concluded that “*greater off-premises outlet density is [emphasis added] related to greater incidence of traumatic injury, and chain outlets appear [emphasis added] to contribute most substantially*”.

¹⁵⁹ See T4, p-49.



- b) the structure of the model was incorrect on the basis of the parameter estimates that were produced;¹⁶⁰ and
- c) the model did not constrain parameters appropriately, which may impact on the values of other parameters.¹⁶¹

190. Mr Weston also gave evidence with respect to the research undertaken by Liang and Chikritzhs, and stated that their findings ran counter to the speculations of Dr Livingston that packaged liquor outlets increase alcohol-related violence due to their role as a place where people meet and entertain themselves.

191. Mr Weston also stated in relation to Dr Henstridge's criticisms:

"My understanding of what he said ... was that he had been unable to obtain the data that underpinned the study, and his criticisms relate to the structure of the model which limit its usefulness as a predictive tool. And I agree with that analysis. However, all of these studies have limitations, and to throw the baby out with the bathwater I think would be wrong. The study provides some interesting insights, which aren't necessarily negated by the limitations of the model as a predictive tool. ...

The most interesting part of the study is that when a model is constructed that describes those differences, which includes only counts of outlets and not a measure of sales volume, that the counts become significantly associated with the incidents of violence, but if the same model is reproduced and this time a controlled variable is added ... which is the total sales volume, that that association ... is now zero. ... It shows that any study that does not include control for sales ... and then finds a direct association between harm and counts of outlets, essentially is showing that where there is more consumption, there is more harm, which is not particularly surprising."¹⁶²

192. Having reviewed the evidence presented, the Commission accepts the evidence put by Mr Weston in this regard. The approach which he outlines is consistent with the Commission's general approach with respect to the peer reviewed research outlined in paragraphs 149 and 150 above. Having regard to that approach, the contents of the Liang and Chikritzhs' article are clear on their face, and the Commission was not assisted, and its decision not affected, by the evidence of Dr Henstridge in relation to this article.

193. During the public hearing in this matter an issue arose as to whether Dr Henstridge should be permitted to give evidence in relation to the Liang and Chikritzhs article that had been tendered by the Council. The Commission allowed the witness to provide this evidence. The Council requested that the Commission provide reasons for this decision. The reasons were as follows:

- a) The Commission considers that the processes by which it determines applications such as this Review Application are inquisitorial in nature. In that context, the Commission has

¹⁶⁰ See T4, p-50.

¹⁶¹ See T4, p-50.

¹⁶² T5, p-102, lines 16-38.



a wide discretion as to the information that it may seek to rely on, and the manner in which its processes are conducted. As noted in paragraphs 33.b) to 33.c), the Commission is specifically not bound by the rules of evidence, but is subject to the rules of natural justice. In aggregate, this tends towards an approach in which the Commission is open to the receipt of information that may be relevant to its considerations.

- b) The matter had been conducted in such a way that all parties were given the opportunity to lodge materials before the Commission prior to the hearing. All parties did so.
- c) In the case of Council, these materials included witness statements to which a number of peer reviewed research articles were appended. However, these materials did not include the research articles in relation to alcohol-related harm that were tendered during the hearing, being NDRI (2007), Kavanagh et al (2011) and Liang and Chikritzhs (2011).
- d) At the hearing, the Council adduced evidence as to how the Commission was to consider peer-reviewed articles of this nature (see paragraph 149).
- e) The Council in cross-examining Ms Homewood made reference to and tendered the three research articles. In the first instance, only excerpts of the article relating to the issues being cross-examined were put before the Commission. In the other two instances, the full articles were put before the Commission. At the time this occurred, the Commission questioned whether or not the full article was being put before the Commission.¹⁶³ At the time, the Licensee also objected to the material being introduced. The Commission permitted the material to be put before it on the basis that it was relevant to the matters being determined.
- f) It is incumbent on the Commission to review all of the relevant materials that it permitted to be put before it. Where that is a complete article that had been peer-reviewed, it further considers that the weight to be placed upon it will appropriately be influenced by the fact that it has undergone such a process. As outlined above, the veracity of such research is still subject to challenge in each instance. However, being provided with such materials during the hearing meant that the Licensee (and Victoria Police) was not in a position to prepare such material in response.
- g) In these circumstances, having regard to the legislative framework under which the Commission operates as set out in sub-paragraph (a) above, the Commission considered

¹⁶³ This occurred in respect of the Kavanagh et al (2011) article (see T3, p-63, line 41 to T3, p-64, line 5). In relation to the Liang and Chikritzhs (2011), the Council made clear at the outset that the full article was being put before the Commission (see T3, p-66, line 41-42).



that the balance of natural justice lay in allowing the Licensee to lead evidence from Dr Henstridge in relation to the material put before the Commission by the Council.

- h) The Commission recognised that in doing so, the Council did not have the opportunity at the time to prepare for cross-examination of such evidence. To address this, the Commission provided both the Council and Victoria Police with the opportunity to prepare for cross-examination of Dr Henstridge in relation to the evidence that has been provided and also to lead evidence, either written or oral, from either the authors of the relevant article or such other persons as may be appropriate.¹⁶⁴ Neither Council nor Victoria Police chose to avail themselves of this opportunity.
- i) While issues associated with research materials were the subject of considerable submissions from all parties, the Commission notes that in relation to the Liang and Chikritzhs (2011) article, it did not consider that Dr Henstridge's evidence was of substantive value as it did little other than detail matters that were clear on the face of the article. Further, the Commission notes that its determination in this matter was not affected by Dr Henstridge's opinion expressed in relation to this article.

194. In addition to peer reviewed journal articles and academic research reports, the Commission was also provided with, and in the case of the first study oral evidence was led in relation to, additional research undertaken on behalf of industry stakeholders as to the relationship between the supply of liquor from packaged liquor outlets and alcohol-related harm. These were:

- a) Data Analysis Australia (DAA) (2010) '*A Study of the Balga, Albany and Mandurah Dan Murphy's Outlets in Western Australia*', various versions (**Henstridge WA Report**)

The aim of this research was to better understand the localised impact on harm measures of opening or a change in a liquor store. It assessed the impact of changes in three Dan Murphy's stores in WA – Balga, Albany and Mandurah – focusing on whether the changes over time were comparable in the control and impact areas or whether the stores appeared to have an effect, positive or negative. Measures used were emergency presentations and road crash data (other measures were considered/sought but not obtained, in some instances due to unavailability of such data). The research also identified some issues with the nature of emergency presentation data, such as small count sizes and it being heavily "confidentialised".

The reported result was that analyses of both sets of data suggested that the impact of the Dan Murphy's stores was too small to be detected with the available data. The authors

¹⁶⁴ See T4, p-52, lines 1-19.



concluded (in the final version of this report) *“These analyses indicate that with the data available there is no objective evidence of change, positive or negative. If there has been a change in these levels of harm, it is well below what can be detected with the data.”*

b) Woolworths Liquor Group (2013) *Impact of opening additional licences*

This study examined the impact of new liquor store openings on existing Woolworths liquor stores in NSW.¹⁶⁵

195. As was the case with peer-reviewed journal articles, the authors of the Henstridge WA Report noted that the research was subject to limitations. In the September version at p.1 of that paper the authors stated:

“It must be highlighted that there are limitations to the analyses undertaken, due in large part to the available data. None of the data that was made available was collected for the purposes of analysis and hence none of it is ideal. In reality, it is not practical to expect such data to be recorded in a manner that would be ideal for analytical purposes and the analyses presented here was designed to the best possible in this context.”¹⁶⁶

196. In relation to the Henstridge WA Report, this research was criticised on a number of bases by Mr Morrison:

a) with respect to the theoretical approach underpinning the research:

- i. that it deals with situations where Dan Murphy’s replaced other liquor stores, which is not the case in this Licence Application;
- ii. the result is uncertain because when it is concluded that *“[t]he authors find no evidence to support this hypothesis, and conclude that “the impact of the Dan Murphy’s stores was too small to be detected with the available data”. This interpretation should be considered in light of a very important caveat: the finding that a hypothesis is not supported does not provide evidence against the hypotheses”*;
- iii. it is unclear what theoretical mechanism is the basis for the hypothesis being assessed, though by implication it appears to be availability theory, *“which suggests that alcohol consumption is related to the full costs of obtaining alcohol (ie convenience costs and financial costs), and that harms are related to alcohol consumption”* – if this is so, then no effect would be expected as there has been no

¹⁶⁵ This study was provided by the Licensee on a confidential basis. The Commission has excluded detailed discussion of confidential information provided in this study from this paragraph pursuant to section 157(5) of the LCR Act.

¹⁶⁶ A similar note was included in page 2 of the final version of this study. As to other data limitations, see also the September version of the Henstridge WA study at p.3.



- substantial change in availability, though this will depend on price at different stores – in relation to which there is no information;
- iv. no attempt is made to explore issues as to the theoretical basis underpinning possible spatial interaction between liquor purchases at packaged liquor stores and road crashes, which are asserted to be complex;
- b) with respect to the methodology utilised:
- i. Mr Morrison argued that dichotomizing geographic regions into “impact” vs “control” areas is highly likely to introduce bias, as this approach assumes either full exposure or no exposure, which is unlikely in this instance;
- ii. the selection of boundaries “is very crude” – in support of this opinion Mr Morrison referenced the example of the area named Malaga which has a high rate of attendance at the Balga store, but which is classified as part of the control area (as compared to the impact or buffer area);
- iii. in relation to road crash data:
- A. the methodological approach reduced the sample size for each area of analysis to two;
- B. the statistical tests used were questioned, though it was noted that a better test was not able to be used because of limited degrees of freedom; and
- C. the manner in which the tests were used was flawed because of differences in character between impact and control areas for which there has been no adjustment;
- iv. in relation to emergency department data:
- A. it did not include any data for Mandurah (noting that this data was not available);
- B. there was an issue with the spatial size used – which Mr Morrison considered meant there were a small number of spatial units for the research being undertaken;
- C. using monthly data does not resolve issues related to the small number of spatial units upon which the analysis relied;
- D. it would have been better to use longer periods, as the use of monthly data leads to cells being marked “<5” as opposed to exact counts;



- E. inappropriately large spatial units (as was asserted to be the case for the study) will introduce aggregation bias, attenuating estimates towards null (Mr Morrison suggests it would be better to use SA1s with populations of a mean 400 than Perth suburbs with populations of approximately 5,000);
- F. analysis only adjusts for age, and not a range of other factors that may be relevant including gender, socio-economic status, number of bars and other alcohol outlets – in particular other off-premise outlets within suburbs; and
- G. no attempt appears to have been made to adjust for either spatial or temporal autocorrelation. These effects violate “*the assumptions of standard generalised linear models, producing biased estimates*”.¹⁶⁷

197. It was Mr Morrison’s conclusion that:

- a) “*The theoretical orientation is lacking, the management of spatial data is poor, and the statistical analytic methods are subject to criticism on many levels. In my estimation, the Report is a work of very low scientific rigour, and its findings should not affect the outcome of the VCGLR hearing.*”;¹⁶⁸
- b) “*In [his] opinion, the Report is flawed in many respects, and does not meet many of the most basic standards required of scientific work in this area. [He] strongly recommend that the findings be disregarded by the VCGLR in this matter*”;¹⁶⁹ and
- c) “*The findings of this one study with a particularly small sample size and multiple possible sources of error are at odds with most other published research in this area. Thus, this one null finding does not support the authors’ very strong conclusion.*”¹⁷⁰

198. Dr Henstridge refuted Mr Morrison’s criticisms, particularly with respect to how the bolded text conclusion was worded in the final version, and rejected absolutely the suggestion that the Report was “contrived” to deliver a null result.¹⁷¹

199. More specifically Dr Henstridge stated:

- a) “*Morrison points out that while the Report considered several instances of a Dan Murphy’s store replacing an existing store, the proposed store in Cranbourne is not replacing an existing store. Morrison is correct in this but the Report does provide information on the*

¹⁶⁷ It was not made clear in what direction those biases would occur.

¹⁶⁸ Letter from Morrison to Gadens Lawyers dated 5 September 2015, p.6.

¹⁶⁹ Letter from Morrison to Gadens Lawyers dated 5 September 2015, p.1.

¹⁷⁰ Letter from Morrison to Gadens Lawyers dated 19 September 2015, at [15(d)].

¹⁷¹ Letter from Henstridge to King & Wood Mallesons dated 30 October 2015.



possible differences between a Dan Murphy's store opening at a site versus a smaller store opening at the same site."¹⁷² and

- b) "... Morrison points out that the conclusion of the report was that "the impact of the Dan Murphy's stores was too small to be detected with the available data". This is correct. However, such a finding, while not proving that there is no impact does place a bound on how large the impact may be. Morrison's statement that the null result is in part due to poor design and analysis is incorrect ...".¹⁷³

200. Having reviewed the evidence presented with respect to the analysis undertaken by Dr Henstridge (and his colleagues), the Commission considers that the study, and the nature of the criticisms and refutations made in relation to it, illustrate the complexity of undertaking research of this nature where the theoretical underpinnings of the research topic continue to evolve and the data available to conduct such research is incomplete. While the study adds to the body of research material, the weight which the Commission ascribes to it is in large part dependent upon the extent to which it informs the circumstances of the Licence Application before it. As the study focused on the impact of Dan Murphy's stores replacing existing outlets in metropolitan and regional Western Australia, it is of limited relevance in the circumstances before the Commission, which relate to the opening of an entirely new store in the south eastern suburbs of Melbourne.

201. More generally, the Commission considers that the evidence put before it indicates that research in this area has, as Ms Homewood stated,¹⁷⁴ developed over time, and that it is continuing to evolve.

202. The Commission also considers that the research evidence before it highlights that there is ongoing uncertainty as to the theoretical underpinnings of the relationship between supply of liquor from packaged liquor outlets and alcohol-related harm. This uncertainty was highlighted by Dr Livingston's evidence that:

"The evidence presented ... points to a reasonably robust association between alcohol availability and alcohol-related harm. The causal mechanism for this association remains contested. At its simplest, researchers have argued that increased availability leads to increased consumption and thus increased harm. Recent Australian data, which demonstrate steadily declining consumption over the past eight years (a time in which alcohol outlet numbers have continued to grow) throw doubts on this straightforward pathway. ... it may be that expanding alcohol availability affects the consumption of only a small number of marginalised or heavy drinkers, while the impact on the majority of the population is limited. This may be linked to the effects on price. There is growing evidence that heavy drinkers are particularly likely to drink cheaper alcohol and that marginalised drinkers in particular consume the cheapest alcohol. More research is needed to examine the

¹⁷² Letter from Henstridge to King & Wood Mallesons dated 30 October 2015 at [6].

¹⁷³ Letter from Henstridge to King & Wood Mallesons dated 30 October 2015 at [7].

¹⁷⁴ Urbis Supplementary Report at p.12 (Final Dot point).



*specific impacts of changes in alcohol availability on drinkers likely to be involved in incidents of alcohol-related harm.*¹⁷⁵

203. The Commission further accepts the position expressed in the NDRI (2007) research paper at p.191 that in relation to research conducted with respect to the relationship between the supply of liquor from packaged liquor outlets and alcohol-related harms. The authors consider that “... *[i]t must be recognised that most studies conducted in this area have examined various populations in the US and it is not clear to what extent findings of these studies are generalizable to Australian communities. ...*”¹⁷⁶
204. The Commission further notes that in various articles that were provided, researchers pointed to a range of policy steps that might be taken to address particular alcohol-related harms; for example:
- a) according to Costa et al (2015:17) “*greater delivery of effective interventions to reduce adolescent alcohol and drug use are needed, particularly targeting vulnerable youths exposed to multiple risks*”;
 - b) Morrison et al (2016) conclude by arguing that “*[r]esults provide support for the local policies aimed at reducing concentrations of off-premises outlets within neighbourhoods as a strategy to reduce the incidence of traumatic injury. Reducing concentration of chain outlets, possibly representing larger outlets selling cheaper alcohol, may yield the greatest public health benefit*”; and
 - c) Mr Weston posits that “*... the difficulty for regulators is that there is no necessary relationship between floor area and sales volume or pricing strategy,*” and proceeds to state that a possibly better response is to have a minimum price point for alcohol.¹⁷⁷
205. A corollary of this research is that the extent of harm that may result in any particular location may depend on the nature of other interventions that may be being adopted by government, the police or other interested parties. In this regard, the Commission’s role is to assess evidence having regard to the specific application before it, and in considering the extent to which new premises may result in harm, the Commission needs to have regard to other interventions that are occurring in the area where the Premises are located. It is not, however, for the Commission in such circumstances to undertake a general study of such policies, or to form a view on the totality of research evidence associated with the supply of alcohol in relation to the spectrum of

¹⁷⁵ Livingston Witness Statement at p.10.

¹⁷⁶ Similarly Livingston in his Witness Statement at p.6 notes that “*[while there is] general international evidence that the density of packaged liquor outlets contributes to a range of alcohol-related harms, the studies discussed were of a broad and general nature.*”

¹⁷⁷ Weston Report at p.10.



policy interventions that may be implemented. Nonetheless the Commission recognises that a more fulsome analysis of available research on this issue may guide its decision-making in the future; as such, it considers that there may be benefit in undertaking a community interest inquiry into this issue.¹⁷⁸

206. Having regard to the decision of the Court of Appeal of the Supreme Court of Victoria in *Kordister*, the task of the Commission is not to form a conclusion as to the general evidence outlined in paragraphs 154 to 205 above, but rather to assess the Licence Application having regard to this general evidence, considered in light of the locality evidence before it. It is to key aspects of the local, social, demographic and geographic circumstances of the area that the Commission now turns.

Locality evidence

207. There is a range of locality evidence relevant to the Commission's determination in this matter, and more specifically whether or not the grant of the Licence Application would be conducive to or encourage the misuse and abuse of alcohol. This includes the situational context set out in paragraphs 104 to 128. In addition, the Commission has had regard to evidence as to the extent of harm, and the vulnerability to harm, that is associated with the misuse or abuse of alcohol in the relevant area. A further element for consideration is the extent to which the grant of the Licence Application would impact upon the supply and consumption of alcohol in the relevant area.

Harms and vulnerability to harm

Council

208. Various witnesses provided evidence on behalf of the Council with respect to these issues:¹⁷⁹

Ms Kliger (BKA Report)

209. Ms Kliger gave evidence that:

- a) demographic analysis was undertaken which showed that the proposal will increase access to alcohol in an area that has population groups that have high to very high susceptibility to alcohol-related harm.

This finding relied upon analysis of (a) SEIFA index measures of Advantage and Disadvantage, (b) a remodelled Vulnerability Assessment for Mortgage, Petrol and

¹⁷⁸ The Commission may conduct a community interest inquiry pursuant to Subdivision 2 to Division 2 of Part 3 of the VCGLR Act.

¹⁷⁹ In addition, the Commission had regard to the witness statements of Major Robert Evans and Mr Robert Nyhuis with respect to their experience with respect to alcohol-related harm in the Cranbourne area.



Inflation Risks and Expenditure Index, and (c) the outputs of a Vulnerability to Alcohol-related Harms (VARH) index which was developed by BKA.

The VARH index incorporated four variables – Australian born as a proportion of all persons; persons 12 to 17 years as a proportion of all under 18 year olds; manual occupations as a proportion of all occupations, and males 18-45 as a proportion of all persons. These variables were respectively given weightings of 17.5 per cent; 17.5 per cent; 30 per cent and 35 per cent. According to Ms Kliger, the weighting given to each variable was assigned based on BKA's own estimations and were not derived based on any specific independent research.¹⁸⁰ It does not appear that the SA1s which the index estimates as being most vulnerable to alcohol-related harm correspond with the SA1s that the BKA Report suggests have higher alcohol-related harm. Ms Kliger stated that the index was “a first cut attempt”¹⁸¹ and is “an index that needs to evolve over time”.¹⁸² In the BKA Report (at page 34), Ms Kliger detailed her opinion of key common attributes of susceptibility to alcohol-related harm, being young people, both male and female between 18 and 20 years of age (and additionally that half of young people aged 12 to 17 were risky drinkers), and males, with the most susceptible markers being English speaking/Australian born, single and working in manual occupations with approximately \$80 recreational spending. Further, alcohol was responsible for the greatest burden of disease for males under 45 years of age;

- b) analysis at the municipal wide level which resulted in, amongst others, the following conclusions:
- i. in terms of the number of CAD calls for the police linked to alcohol, Casey consistently ranked second for the total number of calls, after the City of Melbourne, from 2008 to 2012. In 2013, Casey had the third highest number of calls. According to the BKA Report, the total number of such calls for Casey had declined in total from 7,444 in 2008 to 6,293 in 2013;
 - ii. in 2013, Casey had the second highest number of alcohol-related offences (2,664) in metropolitan Melbourne (after the City of Melbourne), but that alcohol-related offences as a proportion of total offences was higher than the City of Melbourne;
 - iii. since 2010 there has been an annual increase in the number of alcohol-related offences in Casey (and the City of Melbourne);

¹⁸⁰ T1, p-111, lines 15-19; T2, p-68, lines 24-37.

¹⁸¹ T2, p-46, line 19.

¹⁸² T1, p-111, line 18.



- iv. offences committed by young people in Casey have constantly been higher than the average for metropolitan Melbourne;
 - v. the proportion of crimes committed by young people which involve alcohol is higher in Casey than the average for metropolitan Melbourne in recent years (2011–2013);
 - vi. the occurrence of alcohol-related offences at home in Casey is higher than the metropolitan Melbourne average, but lower than in the City of Whittlesea – for both all ages and for offences by 15-24 year olds;
 - vii. over the seven year period from 2006 to 2013 Casey has had the highest number of recorded family violence incidences, and the highest number of reported family violence offences with the presence of alcohol;
 - viii. over the six year period from 2007/08 to 2012/13, Casey had the fifth highest alcohol affected ambulance attendance in metropolitan Melbourne, and in 2012/13 the second highest attendance numbers amongst 15-24 year olds after the City of Melbourne;
- c) point-in-time analysis of Victoria Police LEAP data from 2013 undertaken at the SA1 level that resulted in, amongst others, the following conclusions:
- i. there are a high number of alcohol-related 000 calls in close proximity to the Premises;
 - ii. the Premises is in close proximity to a number of SA1s with high numbers of alcohol-related offences;
 - iii. within a 5 kilometre radius of the Premises is an area of the highest intensity of offences related to alcohol in Casey. Mapping shows that of SA1s closest to the Premises, this is particularly so immediately to the west of the Premises, and to the south;
 - iv. 19.2 per cent of Casey's SA1s fall into the top 10 per cent of areas in metropolitan Melbourne with reported family violence offences. The SA1s around the site of the Premises in Cranbourne East have high incidences of family violence, and some are within the top one per cent of small areas with family violence for metropolitan Melbourne. In her oral evidence, Ms Kliger also noted that she could not say from the data in respect of any given area if it was the same person perpetrating the same offence;¹⁸³

¹⁸³ T1, p-116, lines 26-28.



- v. the Premises are located in a SA2 that was in the top 95-99 per cent of reported family violence offences for metropolitan Melbourne, and that two SA1s respectively located 800 metres and 1.7 kilometres from the Premises had the highest 1 per cent of alcohol-related family violence offences for metropolitan Melbourne; and
- vi. that the 5 kilometre radius of the Premises is the area with the highest prevalence for breaches of intervention orders in Casey.

210. In summary, Ms Kliger concluded that:

“... the grant of an off-premises packaged liquor licence at the proposed site would likely result in significant risk associated with abuse and misuse of alcohol and be detrimental to the amenity of the area as:

- *The area has pre-existing high incidence of alcohol-affected offences within the top 5 per cent of alcohol affected offences for metropolitan Melbourne.*
- *The site of the proposed Dan Murphy’s is a location of alcohol-related family violence hotspot [sic].*
- *The proposal is targeting an area with a population that has high, to very high susceptibility to harm related to alcohol.*
- *The local community of the area already has concern regarding alcohol usage and negative impact on amenity due to alcohol-related disturbances to the public.*
- *There is a high and projected increase in the population of young people in the area particularly susceptible to alcohol abuse and misuse and long-term harm*
- *Locating a Dan Murphy’s packaged liquor outlet at the site will decrease the availability cost for local residents, which research has found is linked to higher consumption; especially by young people who have cited the motivation for pre-loading being the lower costs of liquor purchased at off-premises packaged liquor outlets compared to on-premises licensed venues.”*

Dr Livingston

211. In his report Dr Livingston gave expert opinion that the available data for Casey as a whole demonstrates rapidly increasing rates of alcohol-related harm. While Dr Livingston stated that these harm rates are broadly in line with the Victorian averages, *“the underlying trends suggest that harm rates in ... Casey are increasing rapidly, and if they continue as they have for the last decade, then rates of harm in the City of Casey will likely overtake the Victorian average rates of harm.”*
212. He opined further that *“in the context of increasing rates of alcohol-related harm, the opening of an additional large liquor outlet in a relatively disadvantaged area of Casey is likely to increase the negative impact on the health, safety and amenity of local residents.”*¹⁸⁴
213. Dr Livingston stated further, in the course of oral evidence, that the data suggests that the rates of harm are increasing more quickly in Casey compared to the trends in Victoria as a whole. However, he noted a stabilisation in the rate increases over the final two years of the period raised questions as to whether the trend would continue.

¹⁸⁴ Livingston Witness Statement at p.11.



Ms Petrides

214. Ms Petrides, who is the Executive Officer of the CISS and a provisionally registered psychologist, outlined in her witness statement the community services that CISS provides to residents of Casey. It was clarified during the course of oral evidence that CISS services are provided to residents of Casey South, which includes Cranbourne.
215. CISS is described by Ms Petrides as a crisis intervention service. Some of the people who see CISS for assistance, potentially up to 10 a week, are said to do so because of issues relating to alcohol misuse and addiction, which can prevent people from functioning normally. This can present itself in a number of ways, including an inability to manage money due to the amount spent on alcohol; homelessness and social isolation; relationship breakdowns and suicidal ideation.
216. Ms Petrides stated that “*at CISS we have witnessed an increase in people coming for assistance over the years.*” She concluded that many of the Cranbourne population face serious issues including socio-economic disadvantage, housing stress, family violence and social isolation. Some of the clients CISS sees also have problems with alcohol that cause or exacerbate those issues.

Mr Morrison

217. In addition to detailing the findings of his research, in his Witness Statement (at [23] to [28]) Mr Morrison provided details of Ambulance Victoria data for Casey, and with respect to SA1s with a centroid within (a) 2.5 kilometre of the Premises and (b) 5 kilometres of the Premises. Over the three years for which Ambulance Victoria ambulance data was available (between 1 July 2011 and 30 June 2014), the incidence of intentional injuries in Casey was 2.6 per 1,000 population (n = 642) and the incidence of unintentional injuries was 5.9 per 1,000 per population (n = 1436). The equivalent figures for the 2.5 kilometre and 5 kilometre zones were:
- a) in relation to intentional injuries, 4.4 per 1,000 population (n = 109) and 9.4 per 1,000 population (n = 232); and
 - b) in relation to unintentional injuries, 2.8 per 1,000 population (n = 200) and 6.5 per 1,000 population (n = 473).

The Harvest Report

218. The Harvest Report is identified as being “*prepared by Harvest Digital Planning on behalf of the Southeast Melbourne Consortium of Councils.*” No author of the report was identified nor was anyone available at the hearing to give oral evidence.



219. The Council submitted to the Commission that the Harvest Report shows local information regarding packaged liquor accessibility and availability, harm, and vulnerability in the south east region of Melbourne. Casey is one of the municipalities covered by the study.
220. Council submitted that the Harvest Report identified relevant pockets of higher vulnerability to harm, which correlated with concentrated areas of family violence, CAD events (“for example public disturbance, pub brawls”) and offences.¹⁸⁵

Victoria Police

221. Victoria Police led evidence from four witnesses in relation to the harms in the area surrounding the Premises in Casey:

Sergeant Ian Lane

222. Sergeant Lane is a member of Victoria Police, based at Cranbourne Police Station. Since January 2014 he has been the officer in charge of the Family Violence Unit for the Casey Police Service Area. Sergeant Lane has been a police member for 37 years, a Sergeant for the past 23 years and has been at the Cranbourne Police Station for the past 14 years.
223. Sergeant Lane gave evidence that Casey has the highest levels of reported family violence in Victoria. With reference to the Family Violence Reports of June 2015, he outlined that alcohol was likely to be a factor in one in four of the reports in the Cranbourne Response Zone.
224. In 2014 there were 3,837 family violence incidents in Casey reported to police. The next highest is the City of Brimbank, which had 2,245 reported incidents. Sergeant Lane stated that there are likely to be more incidents than those, since family violence is underreported. Family violence in the Cranbourne Response Zone appears to be roughly twice that of the other two response zones in the Casey PSA, Endeavour Hills and Narre Warren.
225. Where alcohol is involved in an incident of family violence in Casey there are very few instances where that alcohol was consumed outside the home. Rather people are typically drinking alcohol at home and then an incident of family violence occurs. Alcohol is readily available from packaged liquor outlets throughout the Cranbourne area.
226. Sergeant Lane also stated that there are significant issues for children exposed to violence from a young age, but from a policing point of view, he commented that young male children exposed to family violence as a child are more likely to become perpetrators of family violence as an

¹⁸⁵ The Harvest Report was provided by the Council on a confidential basis. The Commission has excluded detailed discussion of confidential information provided in the Harvest Report from this paragraph pursuant to section 157(5) of the LCR Act.



adult, while young female children who are exposed to family violence are more likely to be victims in the future.

227. In addition, family violence incidents are risky incidents to attend for police officers and ambulance staff.

Sergeant Royce Dayton

228. Sergeant Dayton joined Victoria Police in 2008 and has been based at the Cranbourne Police Station, working in the Casey Police Service Area for the last three and a half years. His duties include liquor licence compliance and general duties.

229. Sergeant Dayton gave evidence that consumption of alcohol from packaged liquor outlets is almost impossible to monitor for Victoria Police, in contrast to licensed venues. He stated that areas where people drink off-premises are very hard for Victoria Police to manage. Parties are a particular problem in the Cranbourne area and in his experience alcohol is always involved. Dealing with problems arising from parties can take a long time and use numerous police resources. Problems that typically arise are:

- a) noise complaints from neighbours;
- b) “gate crashers” requiring Victoria Police attendance;
- c) people going too far and being stupid on the road outside parties;
- d) drink driving and causing motor accidents; and
- e) damage and nuisance to nearby neighbours or property.

230. Further, there are areas near the Premises that are public spaces that attract large groups of people where packaged liquor could be consumed without supervision which could cause problems for Victoria Police. He was concerned a new Dan Murphy’s store would make this problem worse.

231. Sergeant Dayton has also witnessed a high level of family violence in the Cranbourne area and often both the victim and offender are alcohol affected.

Senior Sergeant Karen Porter

232. Senior Sergeant Porter is based at the Dandenong Police Station and is an Intelligence Manager for part of the Southern Metro Region.

233. Division 3 of the Southern Metro Region is comprised of three Police Service Areas (**PSAs**): Casey, Cardinia and Greater Dandenong. The Casey PSA is comprised of three Response Zones: Cranbourne, Endeavour Hills, and Narre Warren. Her analysis was focused on ‘the



Cranbourne area', which includes the Cranbourne Response Zone, as well as the suburbs of Cranbourne, Cranbourne East, Cranbourne West, Cranbourne North, and Cranbourne South.

234. Senior Sergeant Porter provided an overview of Victoria Police data with respect to alcohol-related family violence. The data was sourced from the Crime Statistics Agency and covers the two-year period 1 April 2013 to 21 March 2015. The data depicts police attendance at family violence related incidents within Division 3 of the Southern Metro Region. Senior Sergeant Porter highlighted the proportion of these incidents recorded during the 2014/15 year which occurred in the Casey PSA and in the Cranbourne Response Zone. Similar proportions applied with respect to the equivalent data where alcohol was present in family violence incidents.¹⁸⁶
235. Senior Sergeant Porter also highlighted the proportion of family violence incidents in which children were present. She further stated that witnessing family violence is not only highly stressful for children; it is also a risk factor for a variety of psychosocial problems, mental illness, substance abuse, marital conflict and violence, physical abuse of children when the witnessing children become parents, and assaults and other crimes outside the family.¹⁸⁷
236. Senior Sergeant Porter also presented evidence with respect to a hotspot analysis, which was utilised to visually depict spatial incident trends of:
- a) family violence relative to the location of packaged liquor outlets; and
 - b) CAD events specifically related to drunk events that occurred during the 2014-15 year.
237. This analysis illustrated "hotspots" of varying degrees of intensity with respect to both categories of incidents.¹⁸⁸ In giving evidence, Senior Sergeant Porter stated that the hotspots shown on different maps represented different averages, because maps showing larger areas were analysing a larger number of incidents, whereas those showing a smaller area analysed a smaller number of incidents specific to that area.¹⁸⁹ Senior Sergeant Porter also stated that the maps only showed packaged liquor outlets, and did not show any other late night premises or on-premises venues.¹⁹⁰ Finally, she stated that no time or day of week analysis was done in relation to CAD events as timeframes for the preparation of the maps did not allow for it.¹⁹¹

¹⁸⁶ This information was provided by Victoria Police on a confidential basis. The Commission has excluded detailed discussion of confidential information provided from this paragraph pursuant to section 157(5) of the LCR Act.

¹⁸⁷ This information was provided by Victoria Police on a confidential basis. The Commission has excluded detailed discussion of confidential information provided from this paragraph pursuant to section 157(5) of the LCR Act.

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¹⁸⁹ See T2, p-126, lines 44-46.

¹⁹⁰ See T4, p-4, line 34.

¹⁹¹ See T4, pp-7-9.



238. The influence of alcohol in criminal offending and levels of alcohol-related crime and anti-social behaviour in the region was also addressed by Senior Sergeant Porter, who outlined:

- a) during the 2014/15 year, the percentage of crimes where the police member indicated in the LEAP database that the 'modus operandi' was 'alcohol/drug affected';¹⁹²
- b) intelligence and research suggests that the actual attribution is likely much higher than identified in the data; and
- c) the Australian Institute of Criminology Study of police detainees found that 30 per cent of the detainees attributed their offending to alcohol.

239. Reference was also made to Alcohol Drug Recorded Intelligence for Tasking (**ADRIFT**) data, which is collected by a police officer questioning an individual when they are taken into custody. This data showed that during the 2014/15 year, around 51 per cent of individuals said they had been drinking within the Greater Dandenong PSA, 36 per cent within the Casey PSA, and 13 per cent within the Cardinia PSA. Of the Casey PSA attendances, 24 per cent are attributable to the Cranbourne area. The vast majority of drinking locations were recorded as residential, street/park/beach, and public transport.

Superintendent Timothy Hansen

240. Superintendent Hansen is responsible for the Community Safety Division of Victoria Police, which is responsible for the following work areas – the Victim Support Unit; the Drug and Alcohol Strategy Unit; the Safer Communities Unit and Policing, Innovation and Research Unit.

241. Generally, Superintendent Hansen provided evidence with respect to:

- a) statistics concerning the presence of alcohol at family violence incidents attended by Victoria Police;
- b) current research identifying the connection between packaged liquor and alcohol-related harm; and
- c) an overview of the governance structures and current policy agenda of Victoria Police in respect of the role of alcohol and drugs in crime and, in particular, crime involving family violence.

242. With respect to family violence in Casey, Superintendent Hansen in his oral evidence noted that Victoria Police generally was seeing higher rates of family violence than ever had before, and

¹⁹² This information was provided by Victoria Police on a confidential basis. The Commission has excluded detailed discussion of confidential information provided from this paragraph pursuant to section 157(5) of the LCR Act.



also that alcohol was a primary driver for that.¹⁹³ Superintendent Hansen also provided evidence of support being given by Victoria Police to a project being undertaken by the South East Metro Council Alliance (SEMCA), an alliance of local councils in the south-eastern outer-metropolitan areas of Melbourne. He detailed research currently being undertaken by SEMCA into the extent to which off-premises alcohol density and sales affect social, economic and health determinants in the relevant communities. He stated that the first phase of this research which examines the availability of packaged liquor, both in terms of size of outlet and number of outlets, and its effects on health and wellbeing, was finished, and that this research was being refined and subject to further evaluation and testing in phases 2 and 3 of the project. He stated that the research has *“identified a particular ‘hotspot’ of harm in, amongst other areas, Cranbourne and noted that Cranbourne is more vulnerable to experiencing alcohol-related harm than other localities, meaning it is potentially more vulnerable to increases in the supply of packaged liquor.”* In this regard, vulnerability was determined by the access to packaged liquor floor space, a harm index score, the number of bars and the SEIFA Index of Relative Socio-economic Disadvantage.

243. At the hearing, Superintendent Hansen also provided evidence with respect to the trends in alcohol ambulance attendance in Casey, which rose in both number and rate in the period between 2006/07 and 2012/13. Over the same period hospital admissions have also been trending up in both number and rate, although there was a decrease in 2012/13.
244. More generally, Superintendent Hansen detailed Victoria Police’s data collection processes. In addition to providing evidence as to the manner in which data was collected and in respect of particular types of incidents, that is, family violence incidents, Superintendent Hansen detailed limitations with respect to the data that is collected. First, in the case of some family violence incidents, the circumstances make it difficult for police members to assess whether alcohol and drugs were a factor. Secondly, family violence incidents have historically been substantially underreported, and any data concerning the presence of alcohol and drugs must be considered in that context. Although it would appear that reporting has been increasing, it is likely that there still remains a gap between the number of incidents of which Victoria Police are aware and the true number of incidents taking place. Thirdly, family violence incidents are complex and identifying the primary aggressor can be difficult. Finally, Victoria Police data in relation to alcohol and drug prevalence has in part been based on manual, paper-based processes. As with any manual recording processes, there remains the risk that a relevant factor – such as alcohol and drugs – is erroneously omitted or included in a report, either by accident or due to

¹⁹³ See T2, p-94, lines 1-9.



insufficient information at the time of entering data from paper forms into the relevant database. Further evidence was provided as to initiatives being taken by Victoria Police to enhance their data collection processes.

Licensee

245. Three witnesses gave evidence on these matters on behalf of the Licensee:

Ms Homewood

246. In the Urbis SIA, Ms Homewood detailed a range of crime and health statistics associated with Casey:

- a) Casey recorded the lowest alcohol outlet density compared to all other LGAs in the Southern Metropolitan region, and this figure is lower than the average for Victoria;
- b) the liquor licence outlet density of Cranbourne is low when compared to other residential suburbs in Casey including the adjacent suburb of Cranbourne and the closely located suburbs of Narre Warren, Lynbrook-Lyndhurst and Berwick to the north;
- c) alcohol-related ambulance call outs are low in Casey compared to other LGAs in the Southern Metropolitan region;
- d) alcohol-related assaults in Casey are low when compared to six of the ten other LGAs in the Southern Metropolitan region, and lower than the Victorian and Southern Metropolitan Region average;
- e) the rate of alcohol-related serious road injury is falling within the Southern Metropolitan region, a pattern which is evident in all LGAs within the location;
- f) the number and rate of alcohol-related ambulance attendances in Casey fluctuated from 2008/09 to 2012/13. After a fall in 2009/10, the number and rate has steadily increased;
- g) while the number of assaults in Casey is high in relation to other municipalities, the rate of assault (the number per head of population) is lower when benchmarked against neighbouring LGAs, and is similar to a designated growth LGA (Whittlesea). In 2014, the rate of assault decreased by 1 per cent; and
- h) the rates of family violence in Casey have increased steadily from 2008/09 to 2012/13. When compared to other LGAs, Casey experiences a medium to high rate of family violence. The average rate of increase is lower in Casey when compared to other LGAs.



247. Ms Homewood stated that notwithstanding the recent increase in alcohol-related ambulance attendances in Casey, the data does not point to a disproportionate level of liquor availability in Casey, or negative liquor related impact when compared to other LGAs.
248. Ms Homewood concluded in the Urbis SIA, that based on the research and analysis detailed therein:
- a) the proposed packaged liquor licence will not be located within the areas of highest socio-economic disadvantage within the 2 km zone (see paragraph 259) surrounding the Premises;
 - b) below average spending on liquor in the 2 km zone suggests that the existing density and type of existing liquor outlets available does not disproportionately impact on the amount of household income spent on alcohol. This suggests minimum negative impact from alcohol on the community; and
 - c) the approval of the Dan Murphy's store and retail development will offer the area a focal point and neighbourhood destination.
249. Further Ms Homewood concluded that the grant of the Licence at the Premises would be unlikely to be detrimental to the amenity of the area or encourage the misuse or abuse of alcohol. Rather, it is Ms Homewood's view that her research and analysis suggests that it is more likely that, as part of the wider development proposal, the packaged liquor licence will "contribute to a greater connectivity in the local area."
250. In the Urbis Supplementary Report, which was prepared in response to the BKA Report, Ms Homewood provided the view that:
- a) the population of Casey has grown and is predicted to continue to grow significantly into the future, with especially significant growth projected for the suburb of Cranbourne East (see paragraph 110); and
 - b) when considering the statistical analysis of alcohol-related harm, both the total number of related incidents and the percentage of incidents occurring in a population need to be analysed when considering the trends in relation to incidents of harm locally and in comparison to other LGAs in metropolitan Melbourne.
251. When the levels of alcohol-related offences and family violence incidents described in the BKA Report are measured per 100,000 people, Casey was shown to have the second-lowest level of alcohol-related offences amongst the LGAs used in the BKA report, and had the second-lowest increases in family violence incidents where alcohol was present.



252. During the course of her oral evidence, Ms Homewood affirmed the view expressed in each of her reports, stating that she considered that there was no evidence that the proposal would necessarily increase harm for the local population.

Mr Glenn Weston

253. Mr Weston opined that in Casey the rates of alcohol-related harm are in line with Victorian averages and the rates of harmful drinking are not particularly high. Specific reference was made to rates of growth of alcohol-related family violence per 10,000 persons and that:
- a) between 2003/04 and 2012/13, 15 of 31 metropolitan local government areas experienced a higher rate of growth in the incidence of alcohol-related family violence than Casey;
 - b) between 2009/10 and 2012/13, the rate of alcohol-related family violence in Casey declined at a rate of 1.8 per cent per annum, while the Victorian rate grew by 0.8 per cent; and
 - c) between 2009/10 and 2012/13, only two Metropolitan LGAs had a greater rate of decline in alcohol-related family violence than Casey.
254. His opinion was that the proposed packaged liquor outlet would alter the accessibility of packaged liquor by a relatively small amount and this change would be insufficient to stimulate a material increase in the local rate of harmful alcohol consumption.

Dr Henstridge

255. With reference to the Harvest Report, Dr Henstridge gave evidence relating to the top 10 per cent of suburbs with the highest rates of alcohol-related family violence, alcohol-related offences and “computer aided dispatch” events. He also gave evidence relating to suburbs with a “high index” score and high number of packaged liquor outlets or floor space per 1000 adults.¹⁹⁴

Impact of the Premises on alcohol supply and consumption

256. Also relevant to the Commission’s assessment of whether the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol is the extent the Commission considers the grant of the Licence would impact upon the level of alcohol supply and consumption in the relevant area.
257. Evidence was presented to the Commission with respect to both national and local alcohol consumption levels and trends, as well as projected sales of alcohol at the Premises.

¹⁹⁴ This information was provided by the Council on a confidential basis. The Commission has excluded detailed discussion of confidential information provided in the Harvest Report from this paragraph pursuant to section 157(5) of the LCR Act.



258. According to Dr Livingston:

“Nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets, and this proportion has been steadily increasing.”¹⁹⁵

259. According to Ms Homewood (Urbis SIA pp.28-29), the per capita spending on alcohol is lower in the area within a 2 kilometre radius of the Premises compared to the Melbourne GCCSA average in all categories except take home purchases of beer.

260. Further, Ms Homewood stated in relation to the Premises that given its location relative to the Casey Shopping Centre and Cranbourne local activity centres:

“It is considered that the larger activity centre of Cranbourne will continue to attract most Cranbourne residents due to the greater retail and service choice available as well as the broader access to public transport. It is considered that the proposed Dan Murphy’s will be mainly used by residents of Cranbourne East who visit the local shopping precinct, and less often by residents from Cranbourne and Cranbourne North where existing activity centres meet existing demand.”

261. Pursuant to the Directions of the Commission dated 1 June 2015, the Licensee provided details of projected sales figures for the proposed Dan Murphy’s store. This information was said by the Licensee to be provided on a confidential basis and that it is to be used and disclosed only for the purposes reasonably necessary for the conduct of the Review Application. The projected sales figures estimated the expected annual dollar sales for the first year of the Premises, as well as the proportions for sales of beer, wine, spirits and liquor.

262. In relation to the figures provided, the Licensee made submissions relating to the anticipated level of increase in sales of liquor in Casey, and in the relevant area.¹⁹⁶ Generally, the Licensee submitted that there would not be a material increase in expenditure arising from the grant of the Licence Application.

263. It was also the Licensee’s submission that predicting volume sales figures is extremely difficult, given the range of product types intended to be sold at the Premises. Even should the Licensee undertake the exercise of making these calculations, it would merely be an estimate and may turn out to be entirely inaccurate or misleading. In any event, the Licensee rejected Victoria Police’s submission that the grant of the Licence Application would result in a greater volume of alcohol being sold.

264. In support of its position, the Licensee referred to Government statistics which showed that between 1997 and 2013, the number of liquor licences in Australia had grown from 32,269 to 56,862. The level of pure alcohol available for consumption over the same period has remained

¹⁹⁵ Livingston Witness Statement, p.4.

¹⁹⁶ This information was provided by the Licensee on a confidential basis. The Commission has excluded detailed discussion of confidential information provided in the Licensee’s projected sales figures from this paragraph pursuant to section 157(5) of the LCR Act.



relatively steady from 10.0 litres per person over 15 years of age in 1997 to 9.9 litres per person over 15 years of age in 2013. The overall trend indicated by these figures was supported by the evidence of Dr Livingston¹⁹⁷ and Ms Kliger.¹⁹⁸

265. The Licensee also relied on the evidence of Mr Weston, who opined that:

“While increasing the number of packaged liquor outlets in an area has the potential to facilitate increases in heavy drinking by lowering the full cost of alcohol, in established urban areas where there are many existing opportunities to buy alcohol, new outlets increase access by a relatively small amount.”

266. According to Mr Weston, as packaged liquor is currently readily available to the Cranbourne East community, while the proposed outlet would increase access, the change would be small and not sufficient to stimulate a material increase in excessive alcohol consumption.

267. Further to this, the Licensee provided on a confidential basis its analysis of the impact of opening additional licences on existing businesses based on actual experience where new large format liquor stores have opened at a number of different locations in another Australian state.¹⁹⁹ However, no evidence was led to establish whether the locations concerned were analogous or otherwise to the proposed site of the Premises and the local, social, demographic and geographic characteristics, including population growth projections, at Cranbourne East.

268. In his objection to the Licence Application, the Chief Commissioner objected on the ground, amongst others, that without the projected alcohol retail sales (price and volume), the Commission would be *“prevented from having all the relevant and available data with respect to harm minimisation and the risks associated with the misuse and abuse of alcohol”*. Victoria Police continued to seek forecasts of new and transferred expenditure including quantification of increased expenditure on alcohol and quantification of increased volume of sales. Further, Victoria Police submitted that to the extent that such information was not provided *“in a curial setting the failure to call such evidence might well lead to the drawing of the inference that it would be of assistance.”*²⁰⁰

269. In closing the Council disputed the expressed position of the Licensee that anticipated liquor volume data was not available, cannot be produced or was a matter of guesswork. The Council invited the Commission, in the absence of evidence on the topic, to take a *“precautionary approach”*. It was submitted that the Commission should proceed on the basis that the granting

¹⁹⁷ See Livingston at T1, pp-31-32; also at p-28.

¹⁹⁸ See Kliger at T2, p-45, lines 7-28.

¹⁹⁹ This information was provided by the Licensee on a confidential basis. The Commission has excluded detailed discussion of confidential information provided in this study from this paragraph pursuant to section 157(5) of the LCR Act.

²⁰⁰ First Victoria Police Review Submission at [43].



of the Licence Application would result in increased consumption or altered patterns of consumption of alcohol within the local area.

270. In addressing this input to its assessment of the Licence Application, the Commission notes that the Licensee provided information with respect to the future sales in accordance with the Commission's direction, and this is not disputed by any party. It is also the case that information regarding sales at all existing licensed premises are unlikely to be available to the Licensee, hence making estimates of projected new and transferred sales uncertain. The Commission recognises that in the future such uncertainty may be lower because wholesale sales data will be available.²⁰¹
271. The Commission also notes that while both the Council and Victoria Police asserted that the presence of a Dan Murphy's store would be associated with increased volumes of alcohol sold and consumed, there was no evidence provided by either party as to the nature of customers' spending patterns on alcohol in the relevant area, and how this might change if the Licence Application was granted. The Commission notes that it may be, for example, that even if customers in the relevant area would enjoy lower prices for a particular type or brand of liquor, the lower price may not result in the purchase of more liquor. It may, for example, mean that the money saved from lower priced liquor may be spent on other discretionary purchases, or saved, or alternatively, better quality liquor is purchased. The Commission does not consider, in the absence of any data regarding customers' preferences, that it can assume in the specific location of the Premises that a particular increased consumption pattern will necessarily occur.
272. Further, in an environment in which the population in the relevant area is increasing, the Commission considers that if the Licence Application is granted, overall liquor supply and consumption can be expected to increase. However, given the number of alternative sources of supply in the area around the Premises, the Commission accepts the evidence of Mr Weston and does not consider that any potential increase in the supply and consumption of liquor arising from the grant of this Licence Application is in itself likely to be substantial.
273. Finally, the Commission notes for completeness that to the extent that:
- a) the Chief Commissioner maintained his objection that the Licence Application should not be granted on the basis that inadequate future sales data has been provided; and
 - b) the Commission has discretion to refuse a Licence Application on grounds other than those expressly stated in section 44(2),

²⁰¹ Under legislative amendments which came into effect on 1 July 2015, wholesale sales data with respect to alcohol will be collected by specific licensees and reported to the VCGLR from 1 July 2016.



the Commission considers that in circumstances where the Licensee has complied with its directions with respect to prospective sales figures, this is not a ground upon which the Commission considers it should refuse the Licence Application.

Discussion

274. In relation to harm minimisation generally, the Licensee submitted that there was no evidence as to any harms that may be associated with the Premises, and further that the availability theory lacked foundation and had never been accepted as a basis for determining a liquor licence application. The Licensee also submitted that the area surrounding the Premises had no particular vulnerability to alcohol-related harms, and argued there were deficiencies and inaccuracies in Ms Kliger's analysis. In particular, the Licensee submitted Ms Kliger had failed to take into account that Casey is the third fastest growing municipality in Victoria and that in such circumstances it was not appropriate to rely on raw numbers of incidents, as compared to rates per head of population. The Licensee made reference to publicly available AOD statistics, and submitted that based on a five year average for the period 2008/09 to 2012/13, Casey did not rank amongst the top 20 LGAs in Victoria in relation to a range of alcohol harm measures, including alcohol-related family violence, hospitalisations, serious road injuries and ambulance attendances.²⁰² Further it submitted Casey was below the average Victorian rate for six of the eight measures available. The Licensee also submitted that the Victoria Police evidence was general in nature, and did not demonstrate that the area surrounding the Premises was associated with or would be at risk of alcohol-related harm if the Licence Application was granted. Further the Licensee pointed to a range of factors that would mitigate against the misuse or abuse of alcohol, such as the limited trading hours and the Licensee's responsible service of alcohol practices. Finally, the Licensee submitted that the academic research relied upon by the Applicants was flawed, equivocal and/or largely irrelevant.
275. In contrast, Victoria Police submitted that the Commission should refuse the Licence Application because the operation of the Premises would be conducive to, and would encourage, the

²⁰² The Commission notes the Council's position (at paragraphs 44-45 of the Third Council Review Submissions, and adopted by Victoria Police at T6, p-196, lines 24-25) that the AOD statistics referred to by the Licensee (and the abstracts of that data attached to its written submissions) were presented to the Commission by way of submissions and not evidence. The Commission considered those AOD statistics on that basis and gave them such weight as it considered appropriate in the circumstances. This approach was also applied in relation to other material provided to the Commission that was not the subject of oral evidence.



misuse or abuse of alcohol. Victoria Police stated that this was based upon the following factors:

- a) first, the proposed licensed premises are projected to supply a significant volume of alcohol to the community;
- b) secondly, the available research demonstrates that the increased availability of alcohol (especially discounted alcohol) has a clear correlation to increased levels of alcohol consumption and alcohol-related harm;
- c) thirdly, the relevant locality already experiences high levels of alcohol-related crime and anti-social behaviours; problems that the existing research indicates are likely to be exacerbated if discount alcohol is made more readily available;
- d) fourthly, and of particular concern, the relevant locality experiences a high level of alcohol-related family violence – again, a problem that will only be made worse if discounted alcohol is made readily available; and
- e) fifthly, young people (a growing demographic in the relevant locality) are particularly susceptible to discount alcohol promotions such as those offered by Dan Murphy's stores and this in turn increases the volume of alcohol sales and exacerbates the risks of alcohol-related harm in the community.

276. In closing submissions, Victoria Police also provided the Commission with graphical representation of annual AOD statistics in relation to Casey for the period 2003/04 to 2012/13.²⁰³ All of the measures detailed had increased over that period except serious road injuries; of the remainder only alcohol-related ambulance attendances appeared to show a continuing rising trend based on incidents per 10,000 people. In a number of instances, the Victoria Police graphs appear to show the increases have plateaued and were declining – in particular, with respect to alcohol-related family violence and alcohol-related ED presentations.

277. Similarly, the Council submitted with respect to harm minimisation and the misuse or abuse of alcohol that the locality evidence demonstrates that the relevant area features a number of individual predictors of hazardous alcohol use, including: young males; socio-economically disadvantaged; a disproportionate amount of household income spent on alcohol; lowest quintile disadvantage scores on the SEIFA index; and very high levels of family violence, including alcohol-related family violence. Further, Council submitted that in light of the lack of evidence as to the volume of alcohol the proposed Dan Murphy's store is likely to sell, and to whom, it is appropriate for the Commission to take a conservative and precautionary approach,

²⁰³ Except alcohol treatment episodes, which were provided from 2004/05 to 2013/14.



and refuse the Licence Application on the basis that it would be conducive to or encourage the misuse or abuse of alcohol. In setting out its position, the Council submitted more generally that it was not opposed to all packaged liquor outlets in the municipality, and indeed has approved a number of them. Rather, it is opposed to a large, freestanding, chain-operated packaged liquor store in a community that is vulnerable.

278. Whether the grant of this Licence Application would be conducive to or encourage the misuse or abuse of alcohol was extensively canvassed, having regard to the local, social, demographic and geographic circumstances of the area in which the Premises are situated and by reference to a significant body of research literature.
279. At the same time, it was also the case that there are limitations on the level and nature of information before the Commission upon which it is able to determine this Licence Application. As the Council noted in its closing submissions, the Commission is “*routinely required to make decisions in the face of imperfect information*”.²⁰⁴ As outlined above, information as to the impact of the Premises on future alcohol supply and consumption is not complete; so too there are other weaknesses, such as the bases upon which the vulnerability of the community in the relevant area has been assessed, and the rates of harm being experienced by the community in the relevant area.
280. It is with the benefit of the considerable evidence that is before it, and in light of uncertainties that are common to matters of this nature, that the Commission has undertaken its task.
281. The Commission places weight on both the Licensee and the Council led evidence relating to the harms generally associated with the consumption of alcohol. Mr Weston, Dr Livingston, Ms Kliger and Associate Professor Miller all gave evidence relating to negative health, safety and amenity-related impacts associated with the misuse and abuse of alcohol.
282. The Commission recognises the growing prominence of packaged liquor outlets as the primary channel of alcohol sales. Associate Professor Miller advised that whereas twenty years ago around 70 per cent of alcohol was purchased from hotels, now more than 80 per cent is purchased from packaged liquor outlets.
283. Given this change in supply, the question of whether a link could be drawn between the availability of alcohol and the level of consumption was canvassed. The research of Morrison and Smith is suggestive that chain outlets with lower prices may reduce the total costs of alcohol and lead to greater consumption, which is in itself linked to more traumatic injury. Mr Weston gave some support to this theory, and went on to say that where there were a range

²⁰⁴ T6, p-190, lines 4-5.



of outlets providing strong competition, consumers' relative buying power was enhanced. The Commission notes that the research undertaken by Morrison and Smith does not of itself establish the veracity of the availability theory, rather this is posited as the basis upon which to explain the results of their research. The Commission is mindful, as detailed throughout paragraphs 162 to 174, that there are a range of theories that seek to explain the relationship between the supply of alcohol and harms.

284. Ms Homewood noted that other environmental and situational factors than outlet density needed to be taken into account in understanding a person's choice to consume alcohol. She stated that while some research has found positive relationships between alcohol outlet density and rates of violence, other factors also needed to be considered.
285. The relationship between the supply of alcohol from packaged liquor outlets and alcohol-related harms, including family violence, was put forward in a series of peer-reviewed journal articles. The Commission acknowledges both the strengths and limitations of this body of research. It agrees with Ms Homewood that this is an area of research that has evolved significantly over time, and that its evolution continues.
286. In determining whether the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol, the Commission has considered the locality evidence before it.
287. Ms Klinger, Dr Livingston, Ms Petrides and Mr Morrison all provided evidence on behalf of the Council in relation to aspects of the local, social, demographic and geographic circumstances of the area. This included evidence that, in the locality of the Premises, demographic characteristics and socio-economic disadvantage exist such that increasing access to alcohol will increase the risk of misuse or abuse of alcohol. This contention was also supported by the evidence of alcohol-related harm already present in the relevant area (broken down by SA1s), and in Cranbourne and Casey more generally, and in the case of Ms Klinger, the vulnerability to harm in the relevant area which she had assessed based on a set of demographic characteristics.
288. Victoria Police supported this contention, with four witnesses providing evidence in relation to the harms experienced in the local area. In particular, evidence was provided relating to the high levels of reported family violence in Casey. Sergeant Lane stated that these are the highest levels in Victoria, and that alcohol was likely to be a factor in one in four of the reports in the Cranbourne Response Zone. In those incidents, the alcohol would most likely have been consumed in the home. Senior Sergeant Porter presented hotspot analysis of family violence incidents and noted the harm caused to those witnessing such violence as well as those experiencing it. Superintendent Hansen expressed the view that Cranbourne is more vulnerable



to experiencing alcohol-related harm than other localities, meaning it is potentially more vulnerable to increases in the supply of packaged liquor.

289. The Licensee submitted that, if the above evidence of the Applicants was accepted, it was “*extremely interesting ... and somewhat concerning*” that neither Council nor Victoria Police had objected to an application by a rival big box packaged liquor outlet in the same relevant area. The Licensee submitted that this “*brings into question the genuineness of the reasons for the Applicants for Review in objecting to the current application*”.²⁰⁵ Council submitted that it is not opposed to all packaged liquor outlets in Casey, and that a decision whether to object or not is based on all relevant circumstances of the individual application. Council also highlighted a number of differences between the Licence Application and previous applications to which it did not object.²⁰⁶ The Commission accepts the Council’s submissions and considers the objections brought by the Council and Victoria Police are not brought for other than appropriate purposes.
290. Ms Homewood provided a contrasting analysis of crime and health statistics associated with Casey. She stated that Casey was ranked lower than other local government areas on indicators such as outlet density, alcohol-related assaults and ambulance call-outs. Ms Homewood noted that while Casey experiences a medium to high rate of family violence, the average rate of increase is lower when compared to other local government areas. Mr Weston stated that rates of alcohol-related harm in Casey are in line with Victorian averages and that the rates of harmful drinking are not particularly high. Further, he supported Ms Homewood’s assertion as to the decline in the rate of growth of alcohol-related family violence in Casey when compared with other Melbourne local government areas.
291. In assessing the locality evidence before it, the Commission accepts there is evidence of alcohol-related family violence and other alcohol-related harm in the relevant area surrounding the Premises, and in Cranbourne and Casey more generally. In respect of Casey, the Commission finds that based on the data provided by Victoria Police for the period between 2003/04 and 2012/13 the rate of alcohol-related harm has risen over the past decade, but in a number of aspects this appears to have plateaued and in the case of family violence, it appears to be trending downwards. Irrespective of any relationship that may exist between family violence and alcohol, any decline of this nature is welcome. However, the Commission is also mindful that the data provided does not include the most recent years and that issues associated with family violence are of ongoing community concern. The Commission also considers that while evidence of the level and general trends of alcohol-related harm in the local

²⁰⁵ First Licensee Review Submissions at [114]; Second Licensee Review Submissions, Part 2 at [35].

²⁰⁶ Third Council Review Submissions at [1]-[8].



government area and the suburb in which the Premises are located is relevant, the weight that may be placed upon it is less than evidence specific to the relevant area surrounding the Premises. This is because there is scope for variation in outcomes within a local government area or suburb. It is on this basis that the Commission also accepts the evidence of Ms Petrides, and that of Major Robert Evans and Mr Robert Nyhuis, in relation to their experiences of alcohol-related harm in the Cranbourne area.

292. With respect to the evidence of harms in the relevant area, the Commission places weight on the “hotspot” analysis provided by Senior Sergeant Porter, but also recognises it is subject to some limitations.²⁰⁷ The Commission accepts the evidence with respect to alcohol-related harms at an SA1 level given by Ms Kliger but notes this evidence was provided on a numerical basis only. While this evidence is relevant, the basis upon which it has been provided affects the weight the Commission considers it may place upon it, given the variation in population that will typically exist between SA1s, and which may be exacerbated in areas experiencing rapid population growth. In assessing such incidents of violence, the Commission is mindful that each incident is of importance and concern, not simply for the harm that occurs at the time, but also for the harm that manifests over the longer term. However, having regard to its responsibilities under the LCR Act, the Commission considers per capita levels of such harms would be of benefit for its considerations. The Commission has also had regard to the Harvest Report, but has placed limited weight upon it for the reasons previously outlined.
293. In considering such evidence for the purposes of its determination as to whether or not the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol, an issue for the Commission’s considerations is whether the nature of the harms evidenced represent a particular vulnerability in the relevant area. In making this assessment, the Commission accepts that the Premises are situated in a region that has experienced considerable population growth, and one in which high growth rates are anticipated to continue to occur. While the Commission accepts that on a numerical basis, there is evidence of alcohol-related harm, including alcohol-related family violence, it is less clear that the harms are proportionally higher in the relevant area than elsewhere in the community, or whether they are increasing at a faster rate. On the evidence before it, the Commission also considers that the harms that have been detailed suggest the vulnerability in the relevant area surrounding the Premises is not uniform.

²⁰⁷ This information was provided by Victoria Police on a confidential basis. The Commission has excluded detailed discussion of confidential information provided from this paragraph pursuant to section 157(5) of the LCR Act.



294. Further, based on the evidence led and the differing views outlined above, the Commission does not consider that there is a clear basis on the demographic characteristics presented to conclude that the population in the relevant area surrounding the Premises is particularly vulnerable or susceptible to harms associated with misuse or abuse of alcohol that would arise if the Licence Application was granted. Having regard to the characteristics associated with risk of alcohol-related harm posited by Ms Kliger, it is not clear to the Commission based on the evidence of both Ms Homewood and Ms Kliger that the relevant area has a high proportion of persons between the ages of 18-20, and it appears that the cultural diversity of the relevant area is broadly similar to that of the Melbourne GCCSA. The Commission is also not prepared to assume that, in having regard to the proportion of 12 to 17 year olds, the Licensee would not comply with the legislation regarding the supply of alcohol to minors.²⁰⁸ The Commission notes that no evidence has been provided as to marital status, notwithstanding single males being a “marker” of susceptibility.
295. In relation to the demographic and socio-economic characteristics of the relevant area, the Commission does not consider that the evidence of Ms Kliger in relation to the vulnerability of the community in the area surrounding the Premises utilising a “vulnerability index” can be relied upon as a robust basis for determining that community’s susceptibility to harm. As Ms Kliger herself stated, it is “*an index that needs to evolve over time*”.
296. The Commission is, however, mindful of the evidence of Dr Livingston which found the propensity for greater alcohol-related harm to be associated with socio-economically disadvantaged areas and places weight upon it. The Commission accepts the evidence of both Ms Homewood and Ms Kliger that the area has high levels of disadvantage, in particular in areas to the west of the site of the Premises.
297. The task before the Commission is not, however, to make a determination of the levels or vulnerability to harm of a particular area. Rather it is to determine whether the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol. Levels and vulnerability to harm are relevant inputs into this determination; so too is the extent to which the grant of the Licence Application would impact on the supply and consumption of alcohol, and in so doing impact upon the misuse and abuse of alcohol.
298. On the evidence before it, the Commission does not consider that, to the extent that the grant of the Licence Application may result in an increase in the supply and consumption of alcohol, that any such increase would be substantive in circumstances where there are already a number of

²⁰⁸ See paragraph 69.



liquor outlets in the area. In forming this view, and also more broadly with respect to the potential impact of the Licence Application on alcohol-related harm, the Commission has had particular regard to the number and location of existing licensed premises. There are already 21 premises located within 2 km of the Premises, and 75 licences in the relevant area, including a late night (general) licenced premises approximately 700 metres to the west of the Premises, at the corner of Camms Road and the South Gippsland Highway.

299. The Commission is also mindful that the Licensee, by virtue of its previous good record, its limited trading hours and its commitment to responsible service of alcohol, would be well placed to minimise any potential negative impacts that might arise as a consequence of the Licence Application being granted. The Commission notes that the Council in cross-examination asked Ms Homewood questions that related to the issue of whether or not these factors should be considered in the context of assessing this ground (or the amenity ground), on the basis that they were factors relevant to the consideration of whether the Licensee is a suitable person.²⁰⁹ The Council also made a submission on this basis. The Commission respectfully considers such behaviours are relevant to its assessment of this ground (and the amenity ground).
300. In accordance with the approach outlined in *Kordister*, the Commission has also considered the general evidence presented, having regard to the locality evidence before it. Generally, the Commission has found the research was of relevance, but not determinative.
301. In the case of Mr Morrison's research, for example, to the extent that it shows a relationship between alcohol-related harm and particular types of packaged liquor outlets, such findings may be consistent with availability theory, but they do not conclusively establish that theory. This is recognised in Morrison et al (2016) where the authors note in their discussion of the research:

"Availability theory suggests the observed relationships between off-premises outlets and traumatic injury are mediated by greater alcohol consumption among local residents. That is, greater access to alcohol leads to greater consumption, producing greater incidence of alcohol-related problems. Future studies could test this hypothesis by coupling ecological data (e.g., outlet density) with person-level observations of alcohol consumption and injury rate. Alternate theoretical mechanisms should also be tested. For example, off-premises outlets may attract people at increased risk for involvement with violent crime. Relationships may also be confounded by the tendency of outlets to be located in disorganised neighbourhoods, and for disorganised neighbourhoods to have greater incidence of traumatic injury (where disorganisation refers to the "inability of a community structure to realise the common values of its residents and maintain effective social controls")."

302. The Commission also notes that it has not been provided with any general research that directly informs it as to individual consumer behaviour and how this may be related to the relevant area. The Commission acknowledges that to date alcohol supply data has not been collected in Victoria, which makes research of this nature difficult. As Dr Livingston indicated, this issue is in

²⁰⁹ See T3, pp-79-80.



the process of being addressed, with wholesale sales data to be collected from the next financial year. According to Dr Livingston, he will be doing that research in two to three years, when the data is widely available.²¹⁰ The Commission welcomes this research being undertaken. However, this is not the only form of research relating to this aspect that could be informative – for example, survey data of individual consumer preferences or anticipated behaviour would also likely be of relevance. In this regard, the Commission also notes that it was only provided with limited evidence as to alcohol pricing in the relevant area. As was the case in *Kordister*, it is not sufficient for the Commission to base a determination on general principles or assumptions as to possible behaviour – it should at least be connected to the application in question, in this case a new Dan Murphy's in Cranbourne East, and founded on relevant evidence.

303. For completeness, the Commission also notes that it does not consider the Morrison research clearly distinguishes between “big-box” outlets and other chain outlets, which was the basis of the Council's submission. Finally, it is mindful of the position put by Dr Livingston that, in light of falling per capita alcohol consumption, the impact of increasing availability may have differential effects at an individual level in the relevant area.²¹¹ By implication, this may also be relevant to the likelihood and nature of alcohol-related harms, especially given Dr Livingston's evidence that the effect of availability “*particularly affects the drinking of people who are vulnerable to harm*”.²¹²
304. Both Council and Victoria Police submitted that a conservative, precautionary approach is warranted in this particular set of circumstances. The Commission does not concur. Rather, the Commission is satisfied that the evidence before it, including the experience of the Licensee, has not led to the identification of an appreciable risk of harm which would warrant such an approach.
305. Having considered all the evidence presented during the course of this inquiry, the Commission has concluded that overall this application would not be conducive to or encourage the misuse or abuse of alcohol in the specific circumstances of this Licence Application, including the demonstrated track-record of the Licensee for operating packaged liquor outlets in a responsible manner and in accordance with its obligations under the LCR Act. In forming this view, the Commission has assessed whether or not this ground had been satisfied having regard to the objects of the LCR Act, and also having regard to the Cumulative Impact Guidelines.²¹³ The

²¹⁰ See T1, p-27, lines 27-33.

²¹¹ See T1, p-28, line 45 to p-29, line 8.

²¹² See T1, p-28, line 47 to p-29, line 3.

²¹³ And to the extent relevant, the Packaged Liquor Guidelines (see paragraph 41).



Commission consequently does not find that grounds exist for refusal of the application pursuant to section 44(2)(b)(ii) of the LCR Act.

306. The Commission notes that in forming its view, it adopted the definition of “conducive to or encourage” as discussed in paragraphs 75 to 78. To the extent that the definition posited by Council differs from that adopted by the Commission, based on such a definition the Commission also does not consider that the grant of the Licence Application would be conducive to or encourage the misuse or abuse of alcohol.

Would the granting of the Licence Application detract from or be detrimental to the amenity of the area in which the premises to which the Licence Application relates are situated?

307. Evidence was led by each of the parties with respect to amenity issues. Generally, the Commission has had regard to the evidence provided with respect to the context of this Licence Application which has been set out in paragraphs 104 to 112. In addition, with respect to evidence from witnesses called by Victoria Police, the Commission has had regard to the evidence summarised in paragraphs 221 to 244 that relates to amenity issues, and in particular the evidence of Sergeant Dayton. In addition, the Commission has had regard to the following evidence with respect to amenity issues:

Ms Kliger (BKA Report)

308. In the BKA Report, Ms Kliger’s assessment involved consideration of the likely impact of “three key factors” associated with the Premises, namely:
- a) licence and premises type; that is, an off-premises packaged liquor licence operating as a stand-alone bulk goods retail liquor shop;
 - b) the location of the Premises having regard to the demographic and socio-economic context of Cranbourne East and Casey more broadly, and Victoria Police crime data; and
 - c) the type of retailer; that is, a liquor store operated by the Licensee trading as a Dan Murphy’s.

309. Insofar as this assessment addressed issues of the amenity, the BKA Report described amenity issues that may arise from alcohol-related crime and disorder, including anti-social behaviour and impacts on a sense of safety and security for local communities.

Dr Livingston

310. Dr Livingston did not provide any evidence with respect to amenity issues that was specific to the area surrounding the Premises. However, in his witness statement at pp.6-7, he did make reference to a study which “found that respondents who lived closer to packaged liquor outlets



were more likely to report amenity problems related to alcohol".²¹⁴ According to this study, these effects were heavily mediated by characteristics of residents, so that once age, education, socio-economic disadvantage and drinking behaviour were controlled for, the relationship between bottle shop proximity and amenity issues was only significant for property damage.

Ms Homewood

311. In the Urbis SIA, Ms Homewood identified a range of social benefits and impacts which she concluded are likely to result from the grant of the Licence Application. An assessment was provided of the duration, extent, ability for populations to adapt, social outcomes, management measures and residual impact should these measures be implemented.
312. Ms Homewood concluded in the Urbis SIA that *"the research and analysis detailed therein suggest that the proposed packaged liquor licence is unlikely to detract or be detrimental to the existing amenity of the area."* She stated further that *"it is more likely that, as part of the wider development proposal, the packaged liquor licence will contribute to improve amenity..."*. In arriving at this final position, Ms Homewood noted:
- a) the location of the Premises is consistent with the amenity criteria set out in section 3A of the LCR Act. The site is part of a neighbourhood activity centre and will operate as part of a larger retail offering at the site;
 - b) adequate car parking will be supplied as part of the wider proposal and the site is connected to a good network of primary and secondary arterial roads. Noise levels will be consistent with retail activity in a designated shopping precinct and the intended use will be consistent with the vibrant amenity likely to be consistent with a retail centre;
 - c) the site and proposed use are consistent with the desired amenity of the location and the proposed operating hours are less than the ordinary trading hours permissible for a packaged liquor licence under section 11 of the LCR Act;²¹⁵
 - d) approval of the Dan Murphy's store, as part of a mixed use and retail development, will offer the area a focal point and neighbourhood destination to meet the needs of the local community; and

²¹⁴ Factors measured in this study were (a) Kept awake at night or disturbed because of someone's drinking; (b) Felt unsafe in any other public place because of someone's drinking; (c) Gone out of your way to avoid drunk people; (d) Been annoyed by people vomiting, urinating or littering when they have been drinking; and (e) Had your house, car or property damaged because of someone's drinking.

²¹⁵ Pursuant to section 16(1) of the LCR Act, it is a condition of every licence ... that the use of the licensed premises does not contravene the planning scheme that applies to the licensed premises under the *Planning and Environment Act 1987* (Vic). As was noted in *Kordister* at [30] per Warren CJ and Osborn JA, *"compliance with any relevant code of conduct and with conditions in any relevant planning scheme might also bear upon the management and regulation of relevant amenity impacts."*



- e) the proposed site is 1.5 kilometres from the cluster of packaged liquor licences that exist in Cranbourne Town Centre. This distance would mitigate against an additional licence at the Premises negatively impacting upon the existing amenity of Cranbourne Town Centre.

313. In the course of her oral evidence, Ms Homewood said that from her experience of how Dan Murphy's stores are operated, together with the neighbourhood centre, and proposed hours of operation, there was nothing that would have a significant negative impact on amenity.

Mr Weston

314. Mr Weston stated that he did not support the objection by the Council and Victoria Police that the grant of the Licence would be detrimental to the amenity of the area.
315. Mr Weston opined in his report that *"the outlet and its environs would not become a place where people congregate to consume alcohol. As a result, the area in and around where the proposed licensed premises are to be situated would not be negatively affected by alcohol-related amenity impacts as a direct result of the physical presence of the outlet."*
316. He stated further in his report that *"the proposal would be located within a neighbouring shopping centre, which would include a supermarket. Inclusion of a packaged liquor outlet within the centre would enable those completing their routine grocery shopping to also purchase packaged liquor at the centre, with obvious benefits in terms of convenience"*.

Discussion

317. Each of the parties also made submissions in relation to amenity.
318. The Council submitted that the Licence should not be granted because it would detract from or be detrimental to the amenity of the area. Council noted the inclusive definition of amenity of the area in section 3A, and submitted that this concept allows for consideration of private as well as public amenity, that is, the amenity (including safety) of one's home. The Commission refers to and adopts its earlier discussion on this issue at paragraph 85 above.
319. Council also submitted that the Commission should take a broad approach to the amenity impact of a packaged liquor licence on the basis that:
- a) the consumption of alcohol purchased from packaged liquor outlets can occur in a wide and diverse range of settings (such as homes, parks, private parties etc.); and
 - b) the impacts of such consumption can be widely dispersed.
320. Similarly, Victoria Police submitted that the Commission should refuse the Licence Application because the grant of the Licence Application would significantly detract from the amenity of community life in and around the area in which the Premises are to be situated.



321. Victoria Police made this submission on the following basis:

- a) first, the negative effects of the increased availability of alcohol will detrimentally affect the amenity of the area in which the proposed licensed premises are to be situated; and
- b) secondly, the positive effects on amenity contended for by the Licensee do little to balance out the negative effects.

322. Victoria Police submitted that the evidence relating to the high levels of alcohol-related crime and antisocial behaviour experienced in Casey outlined above in relation to 'misuse or abuse of alcohol' was also relevant to the question of amenity, as was the high demand for police resources in the area, and the impact that adverse amenity effects have on increasing demand for these resources.

323. Alcohol-related violence and antisocial behaviour diminish the community sense of safety. It was submitted that the local community already has concerns about safety and public order in relation to alcohol within the municipality.

324. Victoria Police also submitted that the meaning of amenity includes incidents of disorderly behaviour within the home. During the course of closing submissions it was stated that:

"Amenity impacts I think are most keenly felt at home, and if people cannot feel safe in their homes or in their own local area, then that's a significant consideration to bear in mind that's not precluded by any of the authorities recited with respect to amenity or on the face of the act, so it's a legitimate matter that the Commission can take into account".

325. Relatedly, Victoria Police submitted:²¹⁶

"In a locality which experiences high levels of alcohol-related behaviour (including family violence), the Chief Commissioner submits that it can be inferred that the negative effect of additional availability of alcohol will be more significant, and will detrimentally affect the amenity of the relevant area.

In particular, alcohol-related violence and anti-social behaviour diminishes the community's sense of safety. In a community that already has concerns about safety and public order in relation to alcohol at the proposed site, the Chief Commissioner submits that this effect on amenity is particularly significant."

326. In contrast, the Licensee submitted that there would be no adverse impacts to amenity surrounding the Premises as a consequence of granting the Licence Application. Rather, it submitted that the grant of the Licence will result in an enhanced neighbourhood retail focal point that would develop as consumers sought to enjoy:

- a) an extensive range of products and services and therefore increased choice;
- b) the benefits of increased competition in the local market; and

²¹⁶ See First Victoria Police Review Submission at [79]-[80].



c) the availability and continuity of supply.

327. As outlined earlier, the amenity of an area can be broadly described as being the quality that the area has of being pleasant and agreeable. Factors to be considered in that regard are guided by sections 3A and 3AA of the LCR Act (see paragraphs 49 and 50).
328. Concepts of amenity are further discussed at paragraphs 79 to 91 including submissions regarding violence in the home. As indicated in that discussion, the Commission considers issues associated with family violence as more appropriately the subject of consideration in the context of misuse or abuse of alcohol and in its overall assessment of whether the Licence Application will further the objects of the LCR Act, as compared with the context of amenity.
329. Sergeant Dayton advised the Commission that areas where people drink elsewhere than licensed premises are difficult for Victoria Police to manage and that private parties are a particular problem in the Cranbourne area. Typical issues of concern include noise complaints, gate crashers, anti-social behaviour outside the premises, drink driving and property damage.
330. Ms Kliger described amenity issues that may arise from alcohol-related crime and disorder, including anti-social behaviour, in respect of a sense of safety and security for local communities, while Dr Livingston made reference to a study that indicated a relationship between bottle shop proximity and property damage.
331. Ms Homewood submitted that this Licence Application is unlikely to detract from the existing amenity of the area and is more likely, as part of the wider development on the site, to contribute to improved amenity. Ms Homewood noted in particular that the location of the premises is as part of a neighbourhood activity centre and packaged liquor sales will form part of the larger retail offering at the site. Ms Homewood further submitted that adequate car parking will be available with a good network of primary and secondary arterial roads, noise levels will be consistent with a shopping precinct and the intended use will be consistent with the vibrant amenity of a retail centre.
332. Similarly Mr Weston submitted that the outlet and its environs would not become a place where people congregate to consume alcohol with associated amenity concerns and that including packaged liquor in the retail mix would have community benefits in terms of convenience.
333. The Commission accepts that alcohol-related anti-social behaviour in public areas can be connected with the availability of liquor and that there is evidence of such behaviour in Cranbourne East. The Commission further accepts that such behaviour can be detrimental to the amenity of the area. However, the Commission notes that the Cranbourne area is already well serviced for both on-premises and packaged liquor availability including late night packaged



liquor sales, and does not consider that the grant of this Licence Application would exacerbate adverse amenity impacts.

334. The Commission notes particularly that the hours of operation of the proposed business are more aligned to shopping centre hours than the ordinary trading hours of other packaged liquor and late night off-premises licences that already exist within the relevant area. Further, the Commission has had regard to the Licensee's demonstrated experience and approach with respect to the responsible service of alcohol.
335. The Commission also accepts the evidence of Ms Homewood that the grant of the Licence Application would have a range of positive amenity effects. It is mindful, however, that some of these benefits are also associated with the establishment of the Centre more generally, and should not be associated solely with the establishment of a Dan Murphy's store.
336. The Commission does not consider that the grant of the Licence Application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated. In forming this view, the Commission has had regard to the objects of the LCR Act and the Cumulative Impact Guidelines.²¹⁷ As such, it finds that grounds do not exist for refusal of the Licence Application pursuant to section 44(2)(b)(i) of the LCR Act.

Having regard to the objects of the LCR Act and any relevant Ministerial decision-making guidelines, does the Commission consider it appropriate to exercise its discretion to grant or refuse the Licence Application?

337. While the Commission has determined that it does not consider that either of the grounds set out in section 44(2)(b)(i) and (ii) have been satisfied, the ultimate task before the Commission is to exercise its discretion having regard to the objects of the Act to determine whether to grant or refuse the Licence Application. In so doing, it is necessary for the Commission to consider all of the evidence having regard to each of the objects.²¹⁸ Further, with respect to the harm minimisation object, it is necessary for the Commission to consider each of four elements set out in section 4(1)(a)(i)-(iv), noting however that this object is inclusively defined and hence the concept of harm minimisation arising from the misuse and abuse of alcohol is not limited by those factors. In undertaking this task, the Commission refers to the materials set out in paragraphs 154 to 336 above.

²¹⁷ And to the extent relevant, the Packaged Liquor Guidelines (see paragraph 41).

²¹⁸ The Commission notes that the object relating to sexually explicit entertainment is not relevant to this Licence Application.



Harm minimisation

338. The primary object which the Commission is required to have regard to is harm minimisation and the risks associated with the misuse and abuse of alcohol. In considering whether this object is met, the LCR Act sets out four elements relevant to the Commission's considerations:
- a) providing adequate controls over the supply and consumption of liquor; and
 - b) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
 - c) restricting the supply of certain other alcoholic products; and
 - d) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.
339. For all parties, the object of harm minimisation underpinned submissions with respect to both misuse or abuse of alcohol and amenity, and as such the evidence and submissions presented in relation to both these grounds are relevant to the Commission's considerations of its discretion in this Licence Application. For the purposes of brevity, it is not intended that this evidence or submissions be repeated – rather to note that they were assessed by the Commission having regard to the harm minimisation object, including each of the elements outlined above, in assessing whether the grant or refusal of the Licence Application would be consistent with that object.

Facilitate the development of a diversity of licensed facilities reflecting community expectations

340. The second object to be considered by the Commission is that of facilitating the development of licensed facilities reflecting community expectations.
341. Council submitted that this object would not be fulfilled by the granting of the Licence Application. The Council advised that currently there are four approved packaged liquor licences in the Casey Central major activity centre, being Liquorland (174 m²), BWS (216 m²), Aldi (22 m²) and Cellarbrations (145 m²). However, the Council in this case specifically opposed a large, freestanding, chain-operated packaged liquor store in a vulnerable area. The Council stated that Casey already possesses the highest number of large-format packaged liquor outlets and packaged liquor retail floor space in the south-east region, which houses a fifth of Melbourne's population; and a higher proportion of packaged liquor licences of total licensed premises. The approval of 'yet another' large-format packaged liquor outlet alongside a growth area and in proximity to an existing community would not, it was submitted, "*facilitate the development of a diversity of licensed facilities reflecting community expectations*".



342. Similarly, Victoria Police submitted that local residents already have access to a wide range of packaged liquor outlets within the Cranbourne Town Centre and two large packaged liquor outlets within a 5 kilometre radius of the proposed site.
343. In contrast, the Licensee submitted that the community is experiencing explosive population growth, and that the approval of the Licence Application will provide convenient access to packaged liquor for local residents and provide diversity in the size of packaged liquor outlets in the relevant area, as well as a diversity of product range available to patrons. The Licensee also submitted that not one resident has objected to the Licence Application, which it stated strongly suggests that the residents of Cranbourne East want the Licence Application to be granted. Evidence was also provided by Ms Homewood that the current density of licensed premises in Casey was low. Further, the grant of the Licence Application would provide local employment opportunities, including both senior roles and casual employment for students and younger people, which she considered were consistent with community expectations.²¹⁹

Contribute to the responsible development of the liquor, licensed hospitality and live music industries

344. The third object to which regard must be given is the contribution to the responsible development of the liquor, licensed hospitality and live music industries.
345. There were limited submissions made by the parties specifically in relation to this object. Nevertheless, the Licensee did argue that it has a strong history of responsible service of alcohol, which is supported by its training materials, buying policies and specific RSA practices. The Licensee also pointed to the proposed limited trading hours, which are less than those prescribed for packaged liquor licences under the LCR Act.

Balancing of objects

346. In assessing this Licence Application against these objects, the Commission has had regard to all of the evidence it considered with respect to both the question of whether granting the Licence Application would be conducive to or encourage the misuse or abuse of alcohol, and the question of whether granting the Licence Application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated.²²⁰
347. Having regard to each of these objects, and in particular the object of harm minimisation as the primary object, in light of the general and locality evidence before it and having regard to the

²¹⁹ See T3, p-13, lines 31-36.

²²⁰ Conversely the Commission's assessment of the grounds were also made in light of these objects, and the evidence relevant to them.



relevant decision-making guidelines, the Commission considers that it should exercise its discretion to grant the Licence Application.

DECISION

348. The Commission has assessed this Licence Application based on the legislative framework set out in paragraphs 26 to 100 and in particular having regard to the principles set down by the Court of Appeal of the Supreme Court of Victoria in *Kordister*.
349. The Commission notes that to the extent that:
- a) the decision in *Kordister* means reference need not be made to the grounds set out in section 44(2);²²¹ or
 - b) the list of grounds set out in section 44(2) are exhaustive,
- its decision would be the same.
350. Further, having reviewed the evidence presented, including the plans for the Premises, the Commission is satisfied that the requirements of sections 22, 24 and 26B do not preclude the grant of this Licence Application.
351. Having regard to the above, the Commission has determined to affirm the decision of the Delegate and grant the Licence Application.
352. The grant is conditional on the completion of building works in accordance with the plans lodged with the Licence Application within 12 months of the date of this decision. The licence will be subject to the standard licence conditions for a packaged liquor licence. The trading hours will be as described in the planning permit for the Premises. A nominee is required to be applied for and approved for the licence.

The preceding 352 paragraphs are a true copy of the Reasons for Decision of Dr Bruce Cohen, Chair, Mr Ross Kennedy, Deputy Chair, and Ms Deirdre O'Donnell, Commissioner.

²²¹ See *Kordister* at [25]-[26] per Warren CJ and Osborn JA; cf Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207 at [103]-[104].