Civil and Administrative Tribunal

New South Wales

Case Name:	Ice Box Liquor Pty Ltd v Independent Liquor & Gaming Authority
Medium Neutral Citation:	[2024] NSWCATAD 180
Hearing Date(s):	13 – 14, 17 April, 7 – 8 August 2023
Date of Orders:	28 June 2024
Decision Date:	28 June 2024
Jurisdiction:	Administrative and Equal Opportunity Division
Before:	J Gatland, Senior Member
Decision:	(1) The Authority's decision is set aside. (2) The Authority is to issue Ice Box Liquor Pty Ltd with a packaged liquor licence subject to the conditions specified in its application in respect of premises at 136 Queen Street, Woollahra, New South Wales, and subject to the further conditions that customer collections will not be allowed to occur in Peaker Lane and that the Applicant will not make trolleys available for customers in its store.
Catchwords:	LICENSING — Liquor licensing — Application to the Authority — Licence sought – packaged liquor licence
Legislation Cited:	Administrative Decisions Review Act 1997 (NSW) Civil and Administrative Tribunal Act 2013 (NSW) Gaming and Liquor Administration Act 2007 (NSW) Liquor Act 2007 (NSW), ss 3, 48
Cases Cited:	Adamson v Independent Liquor and Gaming Authority [2022] NSWCATAD 394 ALDI v Foods v Independent Liquor and Gaming Authority [2019] NSWCATAD 43 Auld v Independent Liquor and Gaming Authority [2018] NSWCATAD 25

	Bun v Independent Liquor and Gaming Authority [2020] NSWCATAD 60 Ice Box Liquor Pty Ltd v Independent Liquor & Gaming Authority [2022] NSWCATAD 358 Kallin Pty Ltd v Independent Liquor and Gaming Authority [2019] NSWCATAD 36 Minister for Aboriginal Affairs v Peko Wallsend Ltd [1986] HCA 40; (1986) 162 CLR 24 Smith v Independent Liquor and Gaming Authority [2018] NSWCATAD 224 North Coast Property Holdings Pty Limited v Independent Liquor and Gaming Authority [2024] NSWCATAD 98
Texts Cited:	Callinan, S and Livingston, M “Drinking trends by age and over time baby boomers and older drinkers” Foundation for Alcohol Research and Education Centre Canberra, (2018) Donnelly, N, et al “The effect of liquor licence concentrations in local areas on rates of assault in New South Wales” Crime and Justice Bulletin, (December 2014) No 181 Independent Liquor and Gaming Authority GL4010 - Guideline 6, Consideration of Social Impact under s 48(5) of the Liquor Act 2007, 13 October 2021 Liang, W. and Chikritzhs, T. “Revealing the link between licenced outlets and violence: Counting venues versus measuring alcohol availability” Drug and Alcohol Review (September 2011) Vol 30, 524 Livingston, M. “Alcohol outlet density and harm: comparing the impacts on violence and chronic harms.” Drug Alcohol Review (Sept 2011), Vol 30, 515 Livingston, M. “The ecology of domestic violence: the role of alcohol outlet density” Geospatial Health 5(1) (2010), 139 Livingston, M. “A longitudinal analysis of alcohol density and domestic violence” (2011) Addiction Vol 106, 919 Livingston, M. “A longitudinal analysis of alcohol outlet density and assault” Alcohol Clinical and Experimental Research, vol 32, No 6 (2008) 1074 Livingston, M., et al. Community impact of liquor licences; an Evidence Check rapid review brokered by the Sax Institute for the NSW Ministry of Health, (2015) Scott, D. et al., “Alcohol Accessibility and Family

	Violence-related Ambulance Attendances", Journal of Interpersonal Violence (2022) Vol 37 13
Category:	Principal judgment
Parties:	Ice Box Liquor Pty Ltd (Applicant) Independent Liquor & Gaming Authority (First Respondent) Narraport Woollahra Holdings Pty Ltd (Second Respondent) Souffle Pty Ltd (Third Respondent)
Representation:	Counsel: C Ireland (Applicant) J Emmett SC / H Grace (Second and Third Respondents) Solicitors: Hatzis Cusak (Applicant) Crown Solicitor (First Respondent) Back Schwartz Vaughan (Second and Third Respondents)
File Number(s):	2022/00190816
Publication Restriction:	Nil

REASONS FOR DECISION

Introduction

1 Ice Box Liquor Pty Ltd, the Applicant in these proceedings, seeks a review of a decision by the Independent Liquor and Gaming Authority (Authority), which refused to grant a packaged liquor licence for premises at 136 Queen Street, Woollahra in New South Wales (Premises). Currently, the Premises are used by a small retail outlet selling fruit, vegetables, and cut flowers.

2 The Applicant applied to the Authority for a packaged liquor licence on 12 July 2021. The extent of an authorisation arising under a packaged liquor licence is set out in the *Liquor Act* (NSW), s 29.

3 The Authority's decision was notified to the Applicant on 16 February 2022. In summary, the Authority, having regard to the relevant provisions of the *Liquor Act,* was not satisfied that the overall social impact of the licence, if granted,

would not be detrimental to the well-being of the local and broader community. At the hearing, it maintained that position.

4 The second respondent, Narraport Woollahra Holdings Pty Ltd, runs two liquor outlets known as the Woollahra Hotel and a packaged liquor outlet called Moncur Cellars. The third respondent, Souffle Pty Ltd, runs another packaged liquor outlet known as Jim's Cellars. Both the second and third respondents object to the grant of a packaged liquor licence to the Applicant; together, they applied and were joined in the proceedings for the reasons set out in *Ice Box Liquor Pty Ltd v Independent Liquor & Gaming Authority* [2022] NSWCATAD 358 pursuant to the *Civil and Administrative Tribunal Act 2013* (NSW), s 44.

5 The second and third respondents refer to their packaged liquor outlet businesses as the Existing Bottle Shops (a terminology adopted, with respect, in these reasons). There is no controversy about the existence of the existing bottle shops as commercial competitors of the putative business of the Applicant in these proceedings. While the fact that they are commercial competitors was relevant to questions of standing and interest, and aside from questions of density, the position of the second and third respondents with regard to the Applicant is of no material relevance. At the hearing, the second and third respondents were entitled and did address the considerations that are relevant to the Tribunal's determination of the statutory test.

Issue

6 The issue to be determined in this case is whether, having regard to the evidence before it, the Tribunal is satisfied that the overall social impact of a packaged liquor licence issued to the Applicant will not be detrimental to the well-being of the local or broader community.

7 For the reasons that follow, I have determined that the overall social impact of a packaged liquor licence issued to the Applicant will not be detrimental to the well-being of the local or the broader community. The effect of that conclusion is that the Authority's decision to refuse the package liquor licence to the Applicant should be set aside, with the result being that the Applicant should be provided with a packaged liquor licence subject to the conditions nominated in its application.

Law

Jurisdiction and Onus

8 The Authority's decision to refuse the Applicant's application for a packaged liquor licence is amenable to review by this Tribunal under the *Gaming and Liquor Administration Act 2007* (NSW) (Administration Act), s13A and the *Administrative Decisions Review Act 1997* (NSW), ss 7 and 9.

9 The Tribunal is to determine the application by deciding the correct and preferable decision having regard to the material before it, including any factual material and the applicable law; *Administrative Decisions Review Act*, s 63.

10 In proceedings such as this, neither party bears a legal burden of proof*; Smith v Independent Liquor and Gaming Authority* [2018] NSWCATAD 224 at [25]. But the Applicant bears a practical or evidentiary burden in proceedings such as these to ensure there is sufficient evidence before the Tribunal to reach the requisite level of satisfaction required to be reached pursuant to particular provisions of the enabling statute; *Auld v Independent Liquor and Gaming Authority* [2018] NSWCATAD 25 at [50]; *ALDI v Foods v Independent Liquor and Gaming Authority* [2019] NSWCATAD 43 at [88].

The principal legislative provisions

11 The *Liquor Act 2007* (NSW), s 3 sets out the legislative objects and the matters to which regard must be had when securing the objects; that section provides:

> **3 Objects of Act**
>
> (1) The objects of this Act are as follows—
>
> (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
>
> (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
>
> (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
>
> (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following —

> (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
>
> (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
>
> (c) the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life,
>
> (d) the need to support employment and other opportunities in the—
>
> (i) live music industry, and
>
> (ii) arts, tourism, community and cultural sectors.

12 The objects of the *Liquor Act* are reflected in the community impact provisions under the *Liquor Act*, s 48 and, most notably, subsection 48(5), which is the principal legislative provision to be considered in this case. That section provides:

> (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to—
>
> (a) the community impact statement provided with the application, and
>
> (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and
>
> (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
>
> that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

13 A "relevant application" includes, among other matters, an application for a packaged liquor licence: *Liquor Act,* s 48(2)(a).

14 As the Tribunal in *Bun v Independent Liquor and Gaming Authority* [2020] NSWCATAD 60 at [73] observed:

> … the Tribunal must be *actually satisfied* that the overall social impact of the proposal *will not* be detrimental.

15 The term "overall social impact" was considered extensively in *Kallin Pty Ltd v Independent Liquor and Gaming Authority* [2019] NSWCATAD 36 where, at [20], the Tribunal stated:

> As suggested in *Macedon Ranges Shire Council*, the meaning of "overall social impact" will be influenced by the subject matter and purpose of the

> *Liquor Act*. Clearly the Act is concerned with the minimisation of harm associated with misuse and abuse of liquor (including violence and other anti-social behaviour), as well as ensuring that the sale, supply and consumption of liquor contributes to, and does not detract from "the amenity of community life" (s 3(2)). Therefore in my view, these factors, where relevant, will inform the meaning of "overall social impact". The Act also refers to other social impacts such as the balanced development of the liquor industry and of related industries such as the live music, entertainment, tourism and hospitality industries.

16 When considering the overall social impact, the Tribunal is required to take into account both positive and negative aspects: *Smith v Independent Liquor and Gaming Authority* [2018] NSWCATAD 224 at [30].

17 Accordingly, the Tribunal on review must not grant an application for a liquor licence unless it is satisfied that the overall social impact of the licence will not be detrimental to the well-being of the local or broader community: *Liquor Act*, s 48(5) having regard to the material set out in the subparagraphs to that section.

Additional Material

Guideline 6

18 The Authority, as required under the *Liquor Act*, s 57, has issued guidelines, one of which, *GL4010 - Guideline 6, Consideration of Social Impact under s 48(5) of the Liquor Act 2007,* which is dated 13 October 2021 (Guideline 6), was directly relevant to the subject matter of these proceedings.

19 Pursuant and subject to the limitations stated in the *Administrative Decisions Review Act*, s 64(4), the Tribunal may have regard to Guideline 6. The relevant parts of Guideline 6 are paragraphs 25 – 49, and, where relevant, the Tribunal has had regard to that material.

20 In particular, I have adopted the definitional aspects of "local community" and "broader community" set out in Guideline 6 such that I consider the local community to comprise the suburb of Woollahra (Suburb) and the "broader community" to be the local government area of Woollahra (LGA) being an area of sufficient breadth though without imposing on myself any artificial limitations. I note that the proper construction of the term "local or broader community" in the chaussure to the *Liquor Act*, s 48(5) is disjunctive.

Evidence

The Authority's Evidence

Section 58 Bundle

21 At the hearing, the Authority tendered a bundle of documents it had previously filed under the *Administrative Decisions Review Act*, s 58 (s 58 Bundle). That bundle, which extended to over 770 pages, included a copy of Guideline 6 and otherwise comprised material relevant to the review of the decision.

22 The s 58 Bundle included the following material:

(1) The Applicant's completed application form and associated documentation, including a community impact statement dated 7 June 2021 and updated Alcohol Plan of Management dated November 2021; the licence application seeks authorisation to sell liquor from a shop on Queen Street at Woollahra between 10:00 AM and 9:00 PM Monday to Saturday and between 10:00 AM and 8:00 PM on Sundays;

(2) Compliance record search for the Applicant, showing no incidents;

(3) A notice of determination of a development application dated 4 February 2021. On that document, Woollahra Council recorded that:

(a) the development application was unsatisfactory against the following criteria:

(i) Social impacts and outlet density of licenced premises;

(ii) NSW Police response, including that the application had not demonstrated that the social impacts have been minimised or can be controlled "due to the over-supply of liquor outlets in Woollahra"; and

(iii) Non-compliance with Chapter F3 of the Woollahra DCP 2015, meaning that it has not adequately demonstrated that the impact on the amenity of nearby and adjacent residences has been addressed, nor has it addressed the "existing and likely cumulative social impacts" and that it has not demonstrated that it has formulated appropriate management practices to minimise anti-social behaviour on surrounding residential premises.

(b) The development application was found to be satisfactory with regard to:

(i) Parking and truck deliveries;

(ii) Heritage, including with regard to the renovation of the shopfront; and

(iii) Building works.

(4) A complying development certificate issued by Woollahra Council;

(5) Summary of key statistical data about the Woollahra area;

(6) Photographs of the location aerial photographs of the area which show the proximity of the site to the Existing Bottle Shops and other licenced premises;

(7) Documents concerning the packaged liquor licence held by the Coles Group under its Vintage Cellars brand in respect of a site across the road from the Premises. It is apparent from that material that the licence was referred to by the second and third respondents as the Dormant Liquor Licence; however, respectfully, I will refer to this as the Vintage Cellars Licence in these reasons.

(8) The minutes of a meeting of the Board of the Authority that took place on 16 February 2022 in which the Board, contrary to the recommendation of Authority staff, refused the Applicant's liquor licence subject to conditions on its opening hours. In its conclusion remarks refusing the liquor licence, the Authority's Chairperson stated that:

> [H]aving considered the positive and negative social impacts that are likely to flow from granting the Licence, serious concerns in relation to outlet clustering and the social impact of approving the Applicant remain particularly in light of the objections received.
>
> The Authority is not satisfied that the above matters mitigate the risks sufficiently such that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities. Rather the Authority is satisfied that the additional liquor licence would not facilitate the balanced development, in the public interest, of the liquor industry.

23 The Authority also relied on Harm Minimisation and Community Impact Reports, which were provided in updated form throughout the hearing of this matter. The final updated report, dated 19 July 2023, was tendered as an exhibit. That report showed that:

(1) In 2021, there were five packaged liquor outlet licences in the suburb and 49 in the LGA.

(2) The five packaged liquor outlet licences included a licence held by the Coles Group for a site that is no longer capable of being used as a liquor shop and an online store called Frootbat Australia.

(3) The density rate of packaged liquor outlet licences per 100,000 population, arising from those figures, was 69.55 for the Suburb and 91.60 for the LGA, compared with a rate of 39.02 for all of NSW.

(4) The incident rate of alcohol-attributable to hospitalisations for the LGA was 768.5 compared with 527.0 for all of NSW. However, the rate of deaths attributable to alcohol was lower in the Woollahra LGA compared with the rest of NSW.

(5) The two-year trend for incidents of domestic assaults related to alcohol was stable in both the Suburb and LGA, and the rates of that offence were significantly lower than the rest of NSW at the LGA level with an increase in these types of offences at the suburb level in the year up to March 2022.

(6) Rates for non-domestic alcohol-related assaults, malicious property damage offences and incidents of disorderly or offensive conduct at the suburb and LGA levels were significantly below the rest of NSW.

Senior Constable Franks

24 Additionally, the Authority called Senior Constable Franks to give evidence about the NSW Police Force's objection to the licence. His affidavit evidence was to the effect that the proposed store created conditions conducive to harm materialising. Those harms included:

(1) The sale of alcohol to minors or the sale to adults on behalf of minors; this was said to be due to the congested foot traffic and the opportunities that created. I see no real basis for that suggestion and reject it.

(2) The location is near Centennial Park and other hotels and could be a source of “pre-loading” before concerts and events. In that regard, the evidence was that there are several more conveniently located outlets than the proposed site for such activity. Accordingly, I place no weight on that evidence.

(3) The proximity of the proposed store, so close to other liquor outlets might allow service of alcohol to patrons who have been refused service elsewhere. Having regard to the time of day when refusal of service and anti-social behaviour takes place, being later in the evenings and having regard to the proposed bottle shop’s hours, I do not consider this to be a matter of serious concern.

25 In cross-examination, counsel for the Applicant asked Senior Constable Franks about the police response as part of the application process for the Vintage Cellars Licence in 2014. In respect of that application, the police had not made any similar grounds of objection to a much larger packaged liquor outlet proposed to be located almost directly opposite the Applicant’s site; the only conditions sought to be imposed by police for that proposal being the installation of a CCTV camera system and adherence to a plan of management.

26 Senior Constable Franks, in the context of being asked questions about the lack of any incidents reported relating to the Existing Bottle Shops, also accepted that police would expect to receive reports of assaults and other

criminal incidents adjacent to licenced premises such as hotels, bars and nightclubs rather than packaged liquor stores.

27 When asked about the ten incidents of domestic violence-related assaults recorded in the BOSCAR statistics for the year ended December 2022, Senior Constable Franks conceded that none of those incidents were linked by the NSW Police Force to either of the Existing Bottle Shops and that there was no basis to suggest that any of these incidents were related to the sale of packaged liquor or any liquor outlet.

28 Senior Constable Franks was also able to confirm for the Tribunal his observations of the opening hours of the butcher, takeaway chicken shop and restaurant. He told the Tribunal that, after the lifting of COVID-19 restrictions, these shops traded into the evening, the last of which the restaurant traded, at least on some evenings until 9:00 PM.

29 Senior Constable Franks lastly explained that the reason that NSW Police had not objected to the licence at an earlier time was due to workloads; therefore, the lack of opposition was administratively inadvertent.

Evidence relied on by the Applicant

30 In addition to evidence from various lay and expert witnesses, the Applicant tendered the following documentary evidence:

(1) Bureau of Crime Statistics and Research (BOSCAR) data for alcohol-related crimes from January 2013 to December 2022. The BOSCAR statistics showed that;

(a) Incidents of alcohol-related domestic assault are higher than the average for New South Wales;

(b) The suburb records a low rate of incidence for every other criminal offence, including alcohol-related assaults, when compared to the rest of New South Wales.

(c) The hot-spot maps prepared by BOSCAR using its data set show the Premises are located in a low-density area for assault and domestic assault and is a medium-density hot-spot for the offence of malicious damage to property.

(d) The LGA has higher densities of offences including non-domestic assault, particularly at weekends.

(2) The more recent statistics recorded a fall in alcohol-related domestic violence. Though, as the second and third respondents submit, it would be unwise to consider such a limited range of data in terms of trend.

(3) The Socio-Economic Indexes for Areas (SEIFA) which is a statistical index created by the Australian Bureau of Statistics and indicates the relative advantage and disadvantage of a community at various levels of aggregation. The suburb of Woollahra is in the second lowest percentile for socio-economic disadvantage, and the Woollahra LGA is in the lowest percentile. By comparison, Sydney is in the 56th percentile, and the whole of the State of New South Wales is in the 45th percentile of disadvantage. It is beyond doubt that the suburb and LGA of Woollahra are areas of high relative socio-economic advantage. This does not mean, of course, that there are not poor or vulnerable persons in those areas.

(4) 2021 Census for the suburb of Woollahra and the Woollahra LGA, which as Sarah George, the expert social planner qualified by the Applicant in these proceedings, notes, the census data shows that:

(a) the Woollahra LGA displays robust socio-economic and demographic characteristics, and the representation of groups at higher risk of alcohol-related harms is not high. Specifically, there is a low representation of vulnerable communities, the unemployed and people on low incomes; and

(b) Residents of the Suburb are more likely to be female, middle-aged, university-educated, employed full-time, working in high-paying jobs and residing in their own homes that are either fully owned or mortgaged.

31 At the hearing, the Applicant read affidavits from several witnesses who were made available for cross-examination. The Applicant also relied on documents that were tendered.

David Owens

32 David Owens is the manager or director of the Applicant. At the hearing, the Applicant read two affidavits from Mr Owens, and he was cross-examined by counsel for the second and third respondents.

33 In addition to deposing about matters which may be in favour of the application for a packaged liquor licence, Mr Owens's first affidavit, in fact, annexed two earlier affidavits he had made relevant to these proceedings and which are also included in the s 58 Bundle. The two earlier affidavits were both made on 16 December 2021. In the first of the December 2021 affidavits, Mr Ownes deposes to the proposed business model or sales offerings of the Applicant's store, if opened.

34 By the second affidavit, Mr Owens states his reasons for the Applicant purchasing the property, his observation of traffic and pedestrian activity near the property, as well as addressing various matters concerning a petition the Applicant obtained and the reasons for submitting a complying development consent. As to the opinions provided by Mr Owens, I have taken these as a descriptive account of his reasons, as a director of the Applicant, for the commercial decision to purchase the site in the first place rather than as evidence proving as fact the matters he opines about; in particular I have treated in this way Mr Owens' assessment of what are the type of retailers proximate to the site and the position of a liquor store near other food retailers. Mr Owens also deposes, in his second affidavit, that the Applicant's previously submitted development application had been refused by the council two days after it was lodged. However, it would appear from the notice refusing development consent contained in the s 58 Bundle that the development application was lodged on 16 October 2020 and refused on 4 February 2021.

35 Mr Owens' evidence in cross-examination concerned questions of amenity, planning, marketing, and the range of products to be offered. Mr Owens accepted that the area in which the proposed liquor shop was located was "not thirsty", which I took him to mean that he accepted that there were many opportunities to purchase and consume liquor. As the second and third respondents submit, the statutory criteria do not call for a needs-based assessment, but it may reduce the Applicant's argument that there is a positive impact in having another bottle shop open up in an area where that is already abundant with liquor supply outlets.

36 Mr Owens' credit was the subject of some attack by the second and third respondents. He was questioned about why the application form sent to the Authority stated that there were no issues raised by local councils or other consent authorities when, earlier, the Applicant's development application had been rejected by the council on amenity grounds, and the NSW Police Force had registered a strong objection that had been included in the reasons provided for the rejection of that development application. Mr Owens could not adequately account for why the response was made in those terms. On the basis of his answers in cross-examination, the second and third respondents

invited the Tribunal to find that Mr Owens had not been honest in his answers concerning this matter. While Mr Owens' responses were not sufficient, I do not find that Mr Owens was trying to be dishonest or evasive in his answers. A more innocent explanation was apparent from his evidence as a whole: he seemed to have considered the opposition of the council and the NSW Police to a development application as being something quite different from opposition concerning a packaged liquor licence. Even had I concluded Mr Owens was being dishonest with regard to this topic, that would not lead me to reject his evidence on every topic; there was simply no basis for me to do so, and, indeed, the second and third respondents in submissions relied on other aspects of his evidence to make good other aspects of their submissions concerning amenity near the location of the proposed liquor shop.

37 It was an uncontroversial fact that the Applicant had made a development application to redevelop the site for a bottle shop and that this application had been rejected by Woollahra Council. The details of that rejection are set out at paragraph 22(3)(a) above. It was also uncontroversial that sometime later, the Applicant submitted what is commonly known as a complying development which allowed the site to be used as a bottle shop without being subject to an approvals process undertaken by Woollahra Council. To the extent that the respondents suggest the Applicant had been underhanded in this approach, I reject such a suggestion. The fact that the Applicant was able to avail itself of an outcome under the planning laws and regulations that it could not obtain through another process is neither underhanded nor is it particularly relevant to the question before the Tribunal. The relevant fact is that the Applicant has planning consent to be able to operate a bottle shop at the site, subject to being granted an appropriate liquor licence.

38 Mr Owens was also cross-examined about the terms of a summons that had been issued by this Tribunal at the request of the Applicant to the NSW Police Force for records of crime relevant to the Existing Bottle Shops. The summons returned no documents, i.e. there were no COPS reports of incidents associated with the Existing Bottle Shops. However, the second and third respondents also submitted that Mr Owens or the Applicant had deliberately ensured, by the terms of the summons, that the summons would not include

COPS records regarding other packaged liquor premises in the area. Mr Owens denied this, and there does not seem to be any basis, aside from the terms of the summons, on which that submission could be made. A reasonable and less conspiratorial explanation for the terms of the summons may have been that the Existing Bottle Shops are the most proximate and, therefore, most relevant to the Tribunal's consideration. In any event, I reject the submission made by the second and third respondents that this was a deliberate strategy on the part of the Applicant. I also reject the submission that the Tribunal was left with only a selective view of the police records associated with packaged liquor sales in the area. However, I do accept that the absence of any COPS records obtained under the summons does not allow me to infer that an additional liquor outlet in the same area will not cause incidents to occur.

Adam Purcell

39 Adam Purcell provided two reports and a supplemental affidavit in these proceedings:

(1) The first report, dated 31 October 2021, was included in the s 58 Bundle and provided Mr Purcell's observations and analysis of the Premises and the surrounding area in October 2021. Mr Purcell's first set of observations took place between 4 and 7 PM on Friday, 29 October 2021 and between 9 and 11 AM on Saturday, 30 October 2021.

(2) The second report, dated 22 December 2022, was annexed to Mr Purcell's affidavit of 23 December 2022 and provided his further observations of the Premises and the surrounding area over three attendances on Saturday, 3 December 2022, between 10:00 AM and noon, on Friday, 9 December 2022, between 4:00 and 6:00 PM, and on Thursday, 22 December 2022, between 3:30 and 6:30 PM.

(3) His reports address issues of social need, convenience, parking availability, and impulsive liquor purchases.

(4) His supplemental affidavit addresses the report of Professor Ryan, Senior Constable Franks and Mr Coady, a town planner qualified by the second and third respondents, about children seeing alcohol served or consumed in Queen Street.

40 The second and third respondents were critical of Mr Purcell's evidence on the following fronts:

(1) Mr Purcell professes opinions that he is not qualified as an expert to provide. I accept that criticism and have outlined how I propose to deal with those aspects of Mr Purcell's evidence below;

(2) He left out crime statistical data, which he considered to be an aberration, instead of addressing it, and his conclusions were inconsistent with the BOSCAR data available. With regard to this, the Tribunal prefers the actual BOSCAR evidence before it without commentary from Mr Purcell in any event;

(3) Mr Purcell's so-called local knowledge is obsolete. I do not agree entirely with that submission. I accept that Mr Purcell is an experienced former police officer with knowledge of and experience in enforcing licencing laws. In this case, his experience in the Rose Bay local area command is also relevant. Though the second and third respondents called this experience "obsolete", I do not accept that this is necessarily the case. Additionally, at the date of the hearing, Mr Purcell was the then President of the Eastern Suburbs Liquor Accord. I consider that local knowledge gained as a serving police officer in the community is not so easily displaced – a matter that applies with equal force to Senior Constable Franks' evidence.

41 Though phrased as an expert report, for the reasons I set out in *Adamson v Independent Liquor and Gaming Authority* [2022] NSWCATAD 394 at [13]-[15] and [17], I do not consider that Mr Purcell's opinions should be given weight in the manner of expert opinion. However, as with my consideration of Mr Purcell's evidence in *Adamson* at [19]-[24], the Tribunal was assisted by Mr Purcell's observations of his attendance at the Premises and its environs. I give limited weight to his opinions on licensing and no weight at all to the opinions he expresses on the basis that he is an expert about local amenity that are beyond even those areas of expertise he professed having.

42 Mr Purcell attended each of the existing venues and gave evidence of his observations concerning the ability of consumers to purchase packaged liquor. He observed the venues, the parking access and the street activity. Mr Purcell's observations of these things are all matters upon which the Tribunal may rely.

43 Mr Purcel's observations included that:

(1) There was no convenient way to purchase packaged liquor if one were shopping at any of the food shops located directly on the strip where the Applicant's liquor shop is proposed.

(2) The position of the proposed site has access to numerous 30-minute parking spots that Mr Purcell observed had a high turnover at the times

of his observations on Friday early evening and Saturday mornings. Mr Purcell observed that the parking near Moncur Cellars was either subject to a 2-hour limit or had “no stopping” signs. In his first report, Mr Purcell observed that parking outside Jim’s Cellars (which is located on Ocean Street) was subject to timed clearway lane restrictions between 3:30 and 6:30 PM on weekdays. In his second report, Mr Purcell observed that the area outside Jim's Cellars was a no parking zone between and later subject to a no parking zone between 3:30 and 6:30 PM on weekdays.

(3) While there are several outlets that have packaged liquor licences, the number of physical venues offering takeaway liquor for purchase is less than the number of licences might suggest. Mr Purcell’s evidence was that he attempted to purchase takeaway liquor from the Woollahra Hotel, the Phoenix Hotel, the Centennial Hotel and the Light Brigade Hotel and was unable to do so. Mr Cooney, the owner and licensee of the Phoenix Hotel, says in his affidavit that his venue is permitted to, and regularly does, sell packaged liquor, though he concedes that the sale of packaged liquor is not the primary focus of his business. In the case of Woollahra Hotel, which is owned by the second respondent, he was directed to go around to the bottle shop around the corner (presumably Moncur Cellars). Mr Purcell also observed that when he attended Moncur Cellars on a Friday afternoon/early evening, there was a queue. He also observed that Jim’s Cellars was not open on Saturday morning at 10:45 AM.

44 I give no weight to Mr Purcell’s comments concerning the type of stock on offer by the Existing Bottle Shops. The fact is that alcohol was available to be purchased within the trading times of those outlets; the type of product on offer is not especially relevant when considering the matters to which the Tribunal must have regard.

45 I give no weight to Mr Purcell’s opinions concerning crime in the area or his analysis of crime hotspots for domestic and non-domestic assaults in particular. These are matters outside his area of expertise and are not observations of fact.

Anton Reisch

46 The Applicant relied on the evidence of Anton Reisch, who is a traffic and transport planning consultant. With regard to his experience and qualifications, Mr Reisch is appropriately qualified and experienced to provide the opinions set out in his report on the subject of traffic and transport planning. He was qualified by the Applicant to respond, among other things, to matters in Mr Coady’s reports that had been served on the Applicant by the second and third

respondents. Mr Reisch prepared a report that was annexed to his affidavit, and he was also cross-examined by counsel for the second and third respondents. His report addressed:

(1) the use of the rear access to the proposed liquor store in Peaker Lane for deliveries and customer pick-up;

(2) whether there would be an increase in the intensity of demand for parking near the proposed store with specific reference to Queen Street;

(3) whether the proposed store would lead to unacceptable increases in pedestrian use on the footpath near the proposed store;

(4) whether the proposed store would increase general convenience to customers or enhance the local retail precinct's ability to provide one-stop shopping.

47 Mr Reisch referred to the material upon which his conclusions were based as including other evidence tendered by the Applicant, including material from Mr Purcell and Mr Owens, the traffic surveys undertaken by a firm called Austraffic (who were commissioned by the Applicant's solicitors), his observations of the vicinity and his review of the material in Mr Coady's report. His conclusions, in summary, were that:

(1) While there was no doubt that Peaker Lane is narrow and a single vehicle could prevent other cars or trucks from passing, the deliveries to the rear of the proposed store in Peaker Lane would be "essentially identical" to those in place for the current shop operating at the site and that there was no evidence that the change to a liquor store would create greater demands on the use of Peaker Lane for deliveries;

(2) Parking demand on Queen Street and adjacent areas would not be significantly more than the demand created by the current store, nor would the characteristics of that demand be materially different;

(3) The proposed liquor shop would have to have one-third more customers than the existing shop to generate sufficient demand for one additional car space.

(4) There is no evidence available to suggest that there would be greater pedestrian traffic generated by the liquor shop above the present levels of pedestrian traffic entering the current shop (and by inference, Mr Coady's opinion on this point is not soundly based). Further, Mr Reisch opined that the removal of flower buckets placed out on the footpath by the operator of the current store would increase the available area of the footpath, representing a substantial improvement in pedestrian amenities outside the proposed store.

48 Mr Reisch said he would not support any of the following measures that had been inherently supported by Mr Coady:

(1) Restrictions on the use of Peaker Lane, including banning set down for delivery or customer vehicles where a vehicle is unable to pass a parked vehicle.

(2) Banning parking in any local lanes where the potential exists for a vehicle to meet another vehicle travelling in the other direction.

(3) Remove benches, tables, take-away counters, and counter seating on footpaths to improve pedestrian amenity.

49 Mr Reisch comments that no part of the Council's reasons for the rejection of the development application concerned traffic access or parking. He noted specifically that Council had commented that parking and truck deliveries were considered to be satisfactory and that Council expected the intended use of the premises as a liquor store to be similar to the existing shops along Queen Street.

50 A primary criticism of Mr Reisch's report was that he visited the area once, for an hour. Further, his report was criticised because Mr Reisch did not have any information concerning the current practice of deliveries for the existing use of the site. Instead, he had assumed that the Council, when assessing the development application, had regard to this issue and was satisfied. I do not accept that criticism. The site area is quite contained, and an expert of Mr Reisch's skill and experience is capable of being able to garner the necessary observations and measurements if required to assist the Tribunal without lengthy or repeated inspections. Mr Reisch was also able to draw on the observations of Mr Purcell and Mr Coady and the traffic survey that had been commissioned separately.

51 Mr Reisch's conclusions are logically drawn; the site is currently used as a retail shop with customers and deliveries. It is true that a liquor store and a store that sells mainly fruit and vegetables are different businesses; they may attract different customers and have different peaks of trading. However, there was no evidence before the Tribunal to describe how or what those differences were. The submissions of the second and third respondents suggested that deliveries made by a liquor store would be extensive and that customers of a liquor store would require greater use of car pick-up since the items were bulkier. I cannot accept that as the case in all circumstances: a bottle of wine is, no doubt, lighter or less bully than some items from a greengrocer (for

example, melons and other cucurbits, potatoes, oranges, flowers), and while I can readily accept that liquor can be purchased in bulk quantities, so too, from general experience, can items from a fruit and vegetable store.

52 In cross-examination, Mr Reisch accepted that his observations of loading and unloading were not statistically significant and that he would have conducted further surveys of Peaker Lane if time had permitted – a matter that he already recorded in his report. However, I do not consider these concessions detracted from his evidence having regard to his experience and training.

Stuart McDonald

53 Mr McDonald is a town planner qualified by the Applicant. He provided an expert report dated 22 December 2022 that was annexed to an affidavit of the same date. Mr McDonald provided a further report dated 3 March 2023 that was annexed to a second affidavit also made on 3 March 2023.

54 Mr McDonald gave concurrent oral evidence with Mr Coady, the town planning expert qualified by the second and third respondents for these proceedings.

55 In his first report, Mr McDonald referred to visiting the location of the proposed liquor outlet several times, though he identified only two occasions on which he attended the area with particularity. Mr McDonald comments on the amenity, conformity with planning controls and local environmental plans and the size of the proposed store. Mr McDonald noted that the proposed store could not be objectionable on those bases.

56 Mr McDonald also stated in his first report that the scale of the outlet is a relevant consideration for the Authority under Guideline 6, though scale cannot, in my respectful opinion, relate only to the size of the premises but the intensity and extent of the business likely to be conducted there. However the size of the premises may tend to indicate the scale or intensity of the operation. It is relevant to note, as Mr McDonald states, that the proposed outlet would occupy a space of 61 sqm (though there was some debate about whether this was the actual size or only the trading area size) but that, by comparison, Vintage Cellars had been granted a packaged liquor licence to operate and outlet almost directly across the street from the proposed site in premises covering 215 sqm (i.e. more than three times the area).

57 A significant amount of Mr McDonald's first report was unhelpful in that it made a direct comparison with the Existing Bottle Shops with regard to pricing, range, parking, children walking past those shops, and the market for alcohol. This gave rise to some extensive cross-examination of Mr McDonald which also did not greatly assist the Tribunal either. The Existing Bottle Shops are not the subject of these proceedings. The fact that those outlets may have less than adequate parking, or that children can observe liquor for sale from their shop windows, or that they offer heavily discounted liquor to the local area are not matters that are relevant to the Tribunal in this case. The relevant question here is whether or not a packaged liquor licence if granted for the proposed bottle shop, will be detrimental to the well-being of the local or broader community. The conduct of the Existing Bottle Shops, even if it were reckless or detrimental (and I expressly make no finding on that subject), could only have marginal contextual irrelevance to the question at hand.

58 Mr McDonald opines in his first report about matters that are outside the expertise of a town planner; for example, he provides an opinion on whether the proposed liquor outlet will operate in an established market or create a new market of different customers. Mr McDonald is not qualified as an economist, and I do give his opinion significance on this subject. No expert evidence from an economist specialising in retail liquor gave evidence to the Tribunal.

59 In his second report, Mr McDonald responds to matters raised in Mr Coady's report. Mr McDonald prepared a land use survey of Queen Street between the intersection with Victoria Avenue to the west and Ocean Street to the east, as well as cross-streets intersecting Queen Street in that area, including Moncur, Spicer, Holdsworth and Alton Streets, and Dorhouer Lane. This area includes the area zoned as a mixed-use zone B4 by Woollahra Council's Local Environmental Plan 2014, in which the site of the proposed liquor outlet is located, as well as the Woollahra Hotel and Moncur Cellars but not Jim's Cellars. From his survey, Mr McDonald concluded that the area within those bounds was a neighbourhood centre which included a wide variety of retail shops selling fresh and takeaway food, restaurants and cafes, homewares, as well as services such as a pharmacy, doctors, hairdresser, a Pilates studio and dry-cleaners. Mr McDonald, responding to Mr Coady's report then states his

opinion that the proposed liquor outlet will not lead to the clustering of packaged liquor stores and instead, these outlets are spatially and visually separated.

60 Mr McDonald's second report also addresses Mr Coady's conclusion about the exposure of children to the sale of alcohol. I accept and prefer Mr McDonald's conclusions over Mr Coady's report in this regard. I do so because there is simply no basis to allege that school-aged children who walk past a properly managed liquor shop – or a properly managed hotel, for that matter – are placed in harm's way. The site of the proposed store is near a cooked chicken shop and a store that sells treats or toys that children typically look out for. It is a universal observation that school-aged children (and younger) are more likely to be interested in toys, hot chips and ice creams than the products typically sold in a liquor shop. That focus was apparent from the posture of the children depicted in Mr Coady's photographs. From the observations provided by Mr Purcell and Mr McDonald and Mr Coady, it is also apparent that most younger children walk past all sorts of shops in this particular neighbourhood while accompanied by a responsible adult who supervises them and might even provide appropriate framing of their experience.

61 Mr McDonald's second report also considers the use of Peaker Lane for deliveries. In a similar vein to Mr Reisch, Mr McDonald opined that:

> The existing shop and all 9 shops that rely on Peaker Lane, are in the same situation. Uses such as the butcher, fishmonger and food premises would have daily deliveries and regular waste collections. Any retail use of the site would be reliant upon and maintain the current arrangements. The proposal to use the site as a bottle shop doesn't change this and does not introduce new or unacceptable circumstances, which are shown to be acceptable to the Council.
>
> If one were to strictly apply the approach taken … in the Coady Report, then where would never be acceptable circumstances for any use on the site, or for that matter any of the 9 uses relying on the lane. As I have indicated above, the circumstances relating to the site and Peaker Lane currently exist and the proposed bottle shop will not unacceptably change things, as accepted by the Council in their assessment report.

62 Mr McDonald also comments and provides his opinion on the question of parking. His opinion, that there will not be increased traffic or parking congestion in the area because of the change of use of the site to a bottle shop, is consistent with Mr Reisch's findings and is based on the traffic study

performed by Austraffic. I accept Mr McDonald's opinion expressed in his second report that:

> … the Council has already considered this issue of parking and found that use to be satisfactory in this regard. The Austraffic traffic study confirmed the high availability and turnover of kerbside parking spaces in proximity to the site. Based on my experience, I have found parking to be readily available in the location.

63 Mr McDonald's opinions concerning the use of Peaker Lane for deliveries are based on his observations of the site and on his experience as a planner. I accept those opinions and respectfully agree with them. Mr Reisch's observations are equally supported and cogent. Accordingly, I find that on the question of amenity and particular the issue of delivery to Peaker Lane and traffic congestion, the proposed licence would not reduce or diminish the amenity of the area.

Susan Stancombe

64 Ms Stancombe read an affidavit which attached a report she had prepared of qualitative market research that she had undertaken using focus groups drawn from a sample of people living in the Woollahra local government area who purchase liquor and who are regular visitors to Queen Street Woollahra. She was also cross-examined by counsel for the second and third respondents.

65 Ms Stancombe's report concluded that neither of the Existing Bottle Shops were particularly convenient and that the retail precinct of Queen Street was a nice, upmarket area. Those findings do not advance the matter very far. It is obvious that a bottle shop placed immediately next to food and other stores where it is proposed the new store will be located is convenient and that that must be a valuable attribute to the community. It is also without doubt, having regard to the socioeconomic statistics of the area, that the neighbourhood shopping precinct is likely to be an appealing area to visit.

66 The second and third respondents are strident in their criticisms of Ms Stancombe's report. They submit that the report is "a pseudo-scientific attempt to dress up a series of uniformed subjective opinions as objective evidence about community expectations". Further, as the second and third respondents point out, the research conducted by Ms Stancombe involved responses from

only 23 people and that the manner in which those people were selected further reduced the chance of a representative sample.

67 Ms Stancombe's academic qualifications, which comprise an incomplete bachelor's degree in behavioural science, an advanced diploma in gestalt therapy and she is also a qualified professional researcher – an accreditation awarded by The Research Society, Australia, did not assure the Tribunal that she is an expert in a recognised field of specialist knowledge. While Ms Stancombe has 20 years of experience as a market researcher, it is not apparent that market research, or as the Applicant in closing submissions called it "qualitative research" is really a field of specialised knowledge. Ms Stancombe presented as a reasonable and thoughtful witness and I can readily comprehend that her work may well be of great value commercially, but it is of little utility in proceedings such as this.

68 For the reasons given above, I do not give Ms Stancombe's opinions arising from the focus group any weight, and I am not assisted by the observations she provides arising from her focus group work.

Sarah George

69 Ms George is a social planner. She holds a Bachelor of Arts majoring in psychology and sociology and TAFE qualifications in teaching and workplace training and assessment. She has relevant professional experience, having drafted approval policies for local government on alcohol-free zones and having prepared numerous social impact assessment assessments and social impact statements for various government agencies and applicants for licences. She also worked for several years in a town planning consultancy.

70 Ms George provided an expert report and gave concurrent expert evidence with Professor Ryan, a social planning expert qualified to give evidence by the second and third respondents. Both social planning experts referred to the research literature in their reports, and that material was made available to the Tribunal in addition to the expert reports.

71 Professor Ryan and Ms George agreed that the literature provided an adequate basis to inform the Tribunal's decision. However, they disagreed as to how the literature should be applied to the assessment of the proposed

liquor licence. Specifically, while she did not dispute the evidence and research relied upon and referenced by Professor Ryan, Ms George differed in her interpretation of that material.

72 That difference led to her conclusion that the proposed liquor outlet would not result in unreasonable detriment to the local or broader community. Ms George's reasons for this were, as set out in her report:

> ● The populations of the local and broader communities display socio-economic and demographic characteristics that are robust and that are likely to be protective against alcohol-related harm including a well-educated population, employed and in high paying occupations.
>
> ● The local and broader communities do not have strong representations of groups typically considered to be at heightened risk of alcohol-related harms including people who identify as Aboriginal and/or Torres Strait Islander, the unemployed, and people in low paying occupations.
>
> ● The proposal relates to a small, packaged liquor outlet located within a local shopping strip where no alcohol is to be consumed on the premises, trading within standard house of trade.
>
> ● The subject site is located within an area that records low rates and densities of crime, including alcohol-related crime despite the existing outlet density calculations being above the rate referred to in the … research. As such, it is reasonable to assume that the grant of the subject application is similarly unlikely to result in any adverse impacts in respect of alcohol-related crime.

73 In her review of the relevant literature, Ms George summarised the following state of the research contained in the published literature as follows:

(1) Assessing the potential impact of social harm requires consideration of the interrelationships between various socio-economic factors;

(2) Incidents of alcohol-related crime and violence are more likely to occur between 9 PM and 3 AM on weekends and are more likely in places where licensed premises close at the same time. This accords strongly with the evidence of Ms Elsing and other local residents about anti-social behaviour that occurs in and around residences in Woollahra. Accordingly, this is not a relevant consideration for packaged liquor outlets. Indeed, packaged liquor outlets are not commonly associated with criminal incidents when compared with on-licence premises.

(3) Alcohol consumption, particularly binge or long-term high-risk drinking is linked to health concerns and disease.

(4) The evidence concerning the relationship between alcohol consumption and domestic violence is not clear; alcohol misuse is often a trigger for offending but incidents of domestic violence also occur in the absence of alcohol.

(5) Management of licenced premises, including implementing harm minimisation and responsible service of alcohol practices, plays a significant role in minimising harms associated with alcohol use.

74 Ms George also addresses the question of whether, when assessing the density of liquor outlets, the Vintage Cellars Licence should be included. Professor Ryan considers that dormant licences should be included on the basis of the possibility that dormancy may end. Ms George opines that it is not necessary to include the Vintage Cellars Licence since, at the present time, alcohol is not being offered from that outlet. The inclusion of the Vintage Cellars Licence does not materially increase the density of liquor outlets in the area in absolute terms. But in relative terms, as the Authority noted in its submission to the Board, if that licence is excluded then the density of packaged liquor outlets in the suburb drops below the average for both Major Cities in NSW and the State average.

75 Though it is not clear when, or indeed if, the Coles Group will seek to make use of its liquor licence, the evidence was that it intended to do so sometime in the future. The Tribunal's first instance decision in *Auld* considered a situation where premises to which a licence was attached had closed down, and there was no evidence that it would be enlivened (other than by transfer to a new site). Here, the Vintage Cellars licence, having been granted, has never been used and the site in respect of which it was granted has been converted to a different use. This, in my respectful opinion, is a relevant consideration on the ultimate issue but not a relevant question on the issue of outlet density.

76 Accordingly, on balance, I prefer to adopt Professor Ryan's approach on this topic and have included the Vintage Cellars Licence when considering density. Further, I note that while the Authority's submission that the outlet density statistics maintained by it include dormant liquor licences and, therefore, to omit the Vintage Cellars Licence may mean that a meaningful comparison of outlet density would be obscured if the Tribunal were to calculate density on a different basis from the Authority's data, the Authority's submission to the Board actually leaves the question open to whether or not to exclude the Vintage Cellar's licence from consideration.

77 There is also an online packaged liquor retailer, based in the Woollahra LGA, known as Frootbat that does not have a physical store presence in the suburb or the LGA; instead, as I understand the evidence, customers order alcohol online for delivery by this. There was no evidence concerning the scale of that business or the extent to which their customer base was located in the suburb or the LGA. Professor Ryan noted other online stores also delivered to the area including BWS. To a layperson, the harms that the online outlets could induce might seem to be different from physical stores, including the proposed outlet and the Vintage Cellars Licence, in that neither offer takeaway liquor or walk-in liquor sales; as such they are irrelevant to my consideration of things such as street amenity, retail balance and development. However, as set out elsewhere in these reasons, the research indicates that the volume of sales, rather than the density of outlets, is a significant predictor of rates of violence in a community. Accordingly, I have considered these outlets with regard to the issue of licence density, and I also consider them to be marginally relevant to the question of industry development.

78 Both Professor Ryan and Ms George refer to the research undertaken by Briscoe & Donnelly in 2001, though this was not included in the bundle of research papers provided to the Tribunal for consideration since it was uncontroversial that that research found that most alcohol-related crime occurs on licenced hotel premises. I accept that evidence; however, the harms that are the subject of Professor Ryan's report concern domestic violence offences in particular, as well as high-risk drinking outside of a hotel environment.

Published research on the harms arising from alcohol use and the increased density of liquor outlets

79 To assist the Tribunal and to provide context for the expert opinions of Professor Ryan and Ms George, the parties provided the Tribunal with a set of relevant academic research articles. The second and third respondents also provided additional written submissions concerning the expert evidence on alcohol-related harm that were provided to the Tribunal on 8 August 2023 and was of great assistance. The key points of the research published in those articles may be summarised as follows:

80 In N Donnelly, P Menendez and N Mahoney "The effect of liquor licence concentrations in local areas on rates of assault in New South Wales" *Crime and Justice Bulletin No 181,* December 2014, (Donnelly 2014) the authors drew on a number of relevant data sets concerning both domestic violence and non-domestic violence related assaults. The authors found, at the local government level, a strong correlation between the number of hotel licences and assault rates and a similar, though weaker, correlation between packaged liquor licences and rates of assault. The upturn of the risk occurs most steeply for packaged liquor licences when the concentration exceeds 0.75 per 1000 population. The correlation data in that research, somewhat unhelpfully, set the socio-economic status of the population at median levels and also set the density of other outlets at median levels. This makes the applicability of the findings limited where, as here, the community is in the highest percentiles of socio-economic advantage and there is a relatively high number of all types of liquor licences. The authors nonetheless concluded that:

> For hotels, the DV assault rate was found to increase sharply once the concentration reached 2.0 per 1000 residents. For packaged liquor, there was a sharp increase in DV assault rates once licence concentrations exceeded 0.75 per 1000 residents. The effect of an increase in concentration levels was much more pronounced for hotels than it was for packaged liquor, with the highest hotel concentration levels predicting much higher DV assault rates than the highest concentration levels of packaged liquor licences.

81 A Melbourne-based researcher undertook a longitudinal review of outlook density correlated with domestic violence rates considering 186 postcodes in the greater Melbourne area: M Livingston "A longitudinal analysis of alcohol density and domestic violence" (2011) *Addiction* Vol 106, pp 919-925 (Livingston 2011.1). Contrary to the approach taken by the Tribunal in this case, the author did not include any outlets that were not actually operational. According to the methodology, the domestic violence rates included call-outs by police where the attending officers considered an offence had been committed, irrespective of whether charges were laid. The author notes that police reports are not entirely reliable on at least two fronts: first, there are higher reporting rates in some areas compared to others and second, other research suggests that only about 36% of female victims of physical domestic violence actually report incidents to the police. That research concluded there was a small but significant positive effect with the overall increase in the

density of outlets of all kinds. When each type of outlet was reviewed, the author concluded that:

> The most substantial effect was found for packaged liquor outlets, with an increase of one packaged liquor outlet per 1000 [residents] related to an increase of 1.36 in the domestic violence rate. To provide some context, these effect sizes represent 5.9% [general outlet, e.g. hotels], 2.3% [on-premise outlet, e.g. restaurants] and 28.6% [packed liquor, e.g. bottle shops and small grocery stores], respectively, from the overall mean of the domestic violence rate (4.76 of 1000 residents).
>
> When all three outlet categories were entered into the same model, only packaged outlets remained significant with an increase of 0.66 incidents of domestic violence per 1000 residents for each additional packaged outlet.

82 Livingston 2011.1 contradicted the earlier findings of the same researcher that the density of packaged liquor outlets was not associated with rates of domestic violence: M Livingston "The ecology of domestic violence: the role of alcohol outlet density" *Geospatial Health* 5(1) 2010, pp 139-149.

83 In the Evidence Check (as defined at 88 below), the authors (including M Livingston) reveal that at least by 2015, Livingston 2011.1 was the only longitudinal study of its kind from Australia and that two other longitudinal studies from the US as well as other studies using different models to look at the effect of off-premises outlet density on intimate partner violence provided a "mixed view, with some studies identifying off-premise outlets as the most important licence type [as a determinative of domestic violence] while others find that bar density is more important". The authors of the Evidence Check also refer to the limited control of variables in this study as a weakness which requires the results to be approached with some caution.

84 One difficulty acknowledged by the Livingston 2011.1 research was the use of a mean SEIFA score of 1032.55 (with a standard deviation of 78.30, which is significant). Accordingly, while justified as a conservative model, the research is not readily applicable to the present situation where the SEIFA index score is substantially greater at both suburb and LGA levels.

85 In later research conducted on a similar data set, though with somewhat greater effort to identify all incidents of domestic violence, it was found that the socio-economic disadvantage had a significant and negative effect consistent across the majority of models used in that study: D Scott et al, "Alcohol

Accessibility and Family Violence-related Ambulance Attendances" *Journal of Interpersonal Violence* 2022 Vol 37 (13-14) (Scott 2022). While the authors in Scott 2022 controlled for socio-economic disadvantage, the standard deviation was very broad, meaning that the mean SEIFA index score applied was only 1000. Thus, while the authors controlled for socio-economic disadvantage, they did not account for any protective effects of high levels of socio-economic advantage which Ms George provides evidence about.

86 The authors of Scott 2022 concluded that:

> In the context of the present study, increased alcohol outlet density may impact on a community's social disorder, particularly with respect to on-premise and late-night licences where more people are drawn to the neighbourhood to drink alcohol.
>
> [referring to Livingston 2011] … Our study not only confirmed the role of off-premises alcohol outlets but also demonstrated the importance of on-premises licences. …
>
> The evidence suggests that the role of access to alcohol outlets in family violence is complex and may involve a combination of several factors.
>
> Although the available evidence about the strength of association between type of alcohol outlet and violence is not consistent […], this study revealed that access to on-premises outlets had the strongest association with family violence.

87 In a 2011 cross-section study of liquor outlets in Perth, the researchers found that a relevant distinction was between large off-site packaged liquor stores and name neighbourhood bottle shops: W Liang and T Chikritzhs "Revealing the link between licenced outlets and violence: Counting venues versus measuring alcohol availability" *Drug and Alcohol Review* (September 2011) Vol 30, pp 524-535 (Liang & Chikritzhs 2011). It was Professor Ryan's evidence that this finding had been superseded by later research, though it is unclear what research has superseded this finding. The Liang & Chikritzhs 2011 study also suggested that the volume of sales, and not the number of outlets, is more likely to be the cause of additional harm. The authors of the Evidence Check (as defined at 88 below) also noted that that finding was supported by a high-quality longitudinal research that demonstrated, again, that the volume of liquor sold and not the density of packaged liquor outlets was more predictive of increased rates of violence.

88 Risky or heavy drinking was considered in M Livingston “Alcohol outlet density and harm: comparing the impacts on violence and chronic harms.”, *Drug Alcohol Review* (September 2011), Vol 30, pp 515 -523 (Livingston 2011.2). Livingston 2011.2 looked at hospitalisations over a 14-year period and outlet density at a postcode level and concluded that the density of alcohol consumption at venues where the main activity was drinking (meaning pubs and hotels) was positively associated with rates of hospitalisations for injuries arising from assaults. With regard to packaged liquor outlets, Livingston 2011.2 concluded that the density of off-premises licences was related to the rate of alcohol use disorders – or chronic alcohol-related harms. The study found that a 10% increase in packaged liquor licences would result in an increase in assault-related hospitalisations of 0.6%. A similar increase in the number of packaged liquor licences in a suburb would have the effect of increasing chronic alcohol-related hospitalisations by 1.9%. The author identified several major limitations of the study, including the inability of the model to take into account the varying size, turnover and trading hours of packaged liquor outlets and the inability to assess changes in demographic profiles. Accordingly, the author stated that the results “provide only a broad picture of the relationship between alcohol outlets, violence and chronic disease. Further, as with Livingston 2011.1, the median SEIFA index applied was well below that of the suburb or local government area of Woollahra.

89 Risky or heavy drinking was also considered, among other matters, in M Livingston, C Wilkinson and R Room *Community impact of liquor licences; an Evidence Check rapid review* brokered by the Sax Institute for the NSW Ministry of Health*,* 2015 (Evidence Check). That report was prepared for the NSW Ministry of Health. Both Professor Ryan and Ms George agree with the finding in that review that the cross-sectional research concerning the effect of outlet density and high-risk drinking behaviours was inconsistent and of low quality.

90 The other conclusions in the Evidence Check, to the extent that they are not mentioned elsewhere, were that:

(1) there is good evidence that the alcohol density is associated with violence but that this is more strongly associated with on-site premises whereas

(2) the effects from packaged liquor outlets can be “mediated entirely” by the volume of alcohol sold through packaged liquor outlets, three identified high-quality Australian studies (both cross-sectional and longitudinal) have shown a stronger association between large chain packaged liquor outlets and rates of violence including domestic violence, when compared with smaller bottle shops.

(3) Changes (presumably increases) in the density of liquor outlets are associated with both acute and longer-term health problems.

(4) Research on the effect of density on traffic incidents and youth drinking has produced mixed findings.

(5) The research on the effect of the increased density of liquor outlets generally on child maltreatment, sexual health, and self-harm is suggestive but not conclusive.

91 In S Callinan and M Livingston “Drinking trends by age and over time baby boomers and older drinkers” Foundation for Alcohol Research and Education Centre Canberra, 2018 (Callinan & Livingston), the authors, undertaking a longitudinal study, comment on the phenomenon that drinking in the overall population is accounted for by younger people drinking substantially less but older people (particularly those born between 1946 and 1964) were increasing their consumption or rather failing to decrease their consumption of alcohol. Callinan & Livingston found little evidence that older people were failing to decrease their consumption at the same rate as other age cohorts and that evidence of risky drinking in older cohorts was limited to one data source, and the authors expected consumption in that age cohort to decline. The authors did find that there was significant harm experienced from alcohol consumption in that age cohort, that most older drinkers consume alcohol at home, and that price increases may be protective of the risks facing that group.

92 In M Livingston “A longitudinal analysis of alcohol outlet density and assault” *Alcohol Clinical and Experimental Research*, Vol 32, No 6 (2008) pp 17074 – 1079, (Livingston 2008), clustering of packaged liquor outlets in a suburban community was associated with an increase in the amount of violence. The effect of each increase in additional liquor outlets on the number of assaults was small, but the sharp increase in the number of outlets overall, however, gave rise to a substantial increase in the number of assaults. The author notes

a major shortcoming of this study was the lack of longitudinal control data, including socio-demographic characteristics of the areas under study.

93 The National Drug Strategy Household Survey 2019 showed that single-occasion risk (monthly) drinking for people aged 60-69 was increasing; from 12.8% in 2001 to 17.4% in 2019. By contrast, the risk for people aged 18-24 was still substantially greater but had decreased from 57% in 2001 to 41% in 2019. This survey also suggested that the proportion of people exceeding the lifetime risk guidelines remained stable for older age groups over time but was declining for younger age groups.

Evidence tendered by the second and third respondents

Correspondence from the Coles Group

94 Through an affidavit from Mr Schwartz, the solicitor for the second and third respondents, the Tribunal was informed of correspondence with the Coles Group concerning the Vintage Cellar's Licence.

95 Mr Schwartz's email seeking an update on the intentions of the Coles Group with respect to the Vintage Cellars Licence stated in part:

> There was quite a bit of "comment" by the applicant in their material that was put before the ILGA (which we now have been provided with) no real surprises. As expected they place great emphasis on the fact that the licence has been dormant for several years on the site that your were going to occupy to operate Vintage Cellars licence, which as you are probably aware, is now an office space an no longer has consent for a liquor store.
>
> As you may recall, in the past your organisation has indicated its commitment to finding something in the local area.
>
> The issue really is what weight should be given to the fact that you have a dormant licence and its ability to be "reactivated" in the future and relevantly where.

96 Mr Schartz received the following replies from representatives of the Coles Group:

(1) On 28 November 2022, Ms Stewart, the Retail Leasing Manager, Liquor for Coles Group advised:

> This licence will be used for a future Coles development in Woollahra where we intend to have a liquor co located with our Supermarket.

(2) On 2 December 2022, Mr O'Meara, Legal Counsel, Head of Licensing, Risk and Compliance at Coles Group also responded and wrote:

> As Michelle [Ms Stewart] has indicated, we intend to continue to hold this dormant licence.

(3) Somewhat surprisingly, it appears that Mr Schwartz had provided to the solicitors for Coles Group, who is not a party to the proceedings, with a copy of the entire s 58 Bundle. On 10 February 2023, Mr Martin, solicitor for Coles Group then stated:

> I am instructed my client's position has not changed since those emails [being the emails dated December 2021 which are in the s 58 Bundle.

97 While the Coles Group appears to intend to 'deploy' the Vintage Cellars Licence sometime 'soon'; it was also apparent that the development application for the construction of an appropriate building at the location had lapsed, and instead, premises described as offices for 6 full-time staff, that would preclude the operation of a packaged liquor outlet, at that location had been constructed and a final occupation certificate issued in May 2019. There was no evidence concerning what the time scale would be or whether the Coles Group would have to make some further application with the Authority to use the licence that had been granted to it over a now-unavailable site nearly a decade ago.

98 The evidence also showed that Woollahra Council had given development consent to the Coles Group and that the NSW Police Force had made no objection to the development of a 215 sqm bottle shop owned and operated by a large retail chain. As the Applicant points out, the development consent for the Vintage Cellars outlet was three and a half times the size of the bottle shop proposed to be operated by the Applicant.

Views of the Local Health District

99 A letter from Dr Marianne Gale, the Director of Population and Community Health with the South Eastern Sydney Local Health District (SESLHD) was also annexed to Mr Schartz's affidavit. In that letter, Dr Gale refers to the Authority's statistics concerning the LGA (but not, as Professor Ryan sets out, the statistics for the SESLHD) and then states:

> Whilst it is difficult to attribute health outcomes to any one venue, it is likely that additional outlets will further contribute to negative alcohol related health and well-being outcomes in the local community.

100 Dr Gale's opinion is sincerely stated, but it appears that her comments are generally stated and to be taken as a general observation only. Dr Gale refers, for example, to outlets generally when commenting on possible negative

impacts and expressly notes that it would be difficult to attribute such outcomes to any particular venue. Accordingly, Dr Gale's letter merely supports the general proposition and concern originally held by the Authority's board – but not the Authority's staff – about the potential for harm with the increasing number of outlets.

The QSWWA and Local Residents

101 The second and third respondents read two affidavits of Giles Edmonds, who is the president of the Queen Street and West Woollahra Association (QSWWA), described by counsel for the second and third respondents as a "local residents and business group". The QSWWA has over 200 members, including the second respondent. While the third respondent was not a member of the QSWWA, Mr Edmonds informed the Tribunal in cross-examination that both it and the second respondent had supported various community events hosted by the QSWWA, for example, by providing alcohol served at carols each year as the third respondent in years past.

102 Mr Edmonds's major concern, on behalf of the QSWWA, is the potential for increased anti-social activity, which would negatively impact local residents. This anti-social activity appears to include eating on public benches and consuming alcohol with that food as well anti-social behaviour from intoxicated persons who, it must be imagined, have purchased liquor in Queen Street Woollahra and immediately consumed the liquor and have then become drunk in public.

103 Mr Edmonds told the Tribunal that QSWWA had retained a neutral position when the Applicant first submitted its development application in 2021 to the Council and that his association did not wish to play a role in curating what businesses operated in Queen Street. However, the most recent application caused Mr Edmonds to send an email to the QSWWA members inviting them to write in opposition or support of the proposed new bottle shop. It is fair to say those who responded to Mr Giles, all of whom had their names and identifying details redacted, tended strongly in opposition to the Applicant's licence, though there were some supporters and others who were neutral or non-responsive. In most cases of opposition, the reasoning for the opposition

(or support) was brief and unilluminating. The evidence assists the Tribunal in understanding that there is community opposition to the proposal by several members of the QSWWA. However, the responses do not represent the majority or even a truly substantial proportion of that group, let alone the community. Further, I consider that it is possible that, having regard to the lengthy relationship and, in the second respondent's case, membership of the QSWWA, the opposition from members of that association is somewhat influenced in favour of the second and third respondents' positions.

104 The second and third respondents also read an affidavit from Luise Elsing. Ms Elsing has been a resident of the local area since at least 2004 and has been a councillor of Woollahra Municipal Council since 2012. Ms Elsing gave evidence that "this proposal will cause increased excessive noise, especially at night". While excessive noise is undoubtedly troublesome, it is not clear that that is an inevitable consequence of another packaged liquor outlet. Ms Elsing also described her personal experience of having people urinating in her driveway, making excessive noise while drunk, leaving rubbish in the street and in Peaker Lane as well as there being the vexing and disturbing matter of police activity connected with the anti-social behaviours she describes. The account given by Ms Elsing is deeply unfortunate and it is understandable that she would wish to avoid these negative impacts. However, many of the problems Ms Elsing gave evidence about appear to relate principally to late-night anti-social behaviour, which is more likely related, according to the police evidence and the research, to the density of hotel licences rather than packaged liquor outlets and would be unlikely to occur with regard to a packaged liquor outlet with the trading hours proposed by the Applicant in this case which will require the Premises to close by 9:00 PM Monday to Saturday and by 8:00 PM on Sundays.

105 Ms Elsing also deposed that Queen Street was not an alcohol-free zone, and in cross-examination, she stated it would be a "disaster" if it were to be zoned in that manner as such zoning connotes known social problems; yet Ms Elsing's evidence, consistent with other residents, was that she experienced anti-social behaviour and property damage in the area which might have been assisted by the introduction of such zoning.

106 Ms Elsing's oral evidence was not satisfactory. Ms Elsing is the councillor for the municipal ward in which the Applicant seeks to operate and occupied that position when the development connected with the Vintage Cellars Licence was approved. However, when cross-examined concerning her role as a councillor about the Council's approval of the development application for the Vintage Cellars site, Ms Elsing refused to answer questions in any detail. Her response, in global terms, was that each decision was considered on a case-by-case basis on its merits. Ms Elsing's evidence on that topic was glib and unhelpful to the Tribunal, as had there been an adequate explanation for the different approaches adopted by Council between the Applicant's proposal and that of the Coles Group for a store three and half times the size, then the Tribunal would have been greatly assisted to have known what that was – particularly having regard to the grounds of objection voiced by the Council to the Authority to the present application.

107 In addition to Mr Edmonds and Ms Elsing, five other residents also gave evidence on affidavit but were not required for cross-examination. Each gave evidence that they considered there was already more than enough alcohol available in the community, and most also expressed concerns about traffic and parking congestion. These witnesses were:

(1) Mr Goulburn, who lives a three-minute walk from the proposed site, gave evidence of his experience of being disturbed by anti-social behaviour related to alcohol misuse in the area. He stated he often found this nuisance behaviour to exist in his community and expressed his concern that the proposed shop would increase the risk due to increased access to alcohol.

(2) Ms Grieve, who is a local resident and also a Councillor, visits the shopping area she refers to as Woollahra Village regularly. Ms Grieve states she is concerned the proposed outlet will increase anti-social behaviour, property damage, littering, and driving offences, including drunk driving, motor vehicle accidents and alcohol-related violence. While I am certain these concerns are sincerely held, it is unclear the mechanism by which these negative impacts are said to arise from the proposed liquor shop. I note further that Ms Grieve's perceptions of crime and anti-social behaviour are not reflected in the crime statistics tendered by the Authority, as noted above in paragraph 23 above.

(3) Mr Haigh, who resides near the proposed site. It was his evidence that he was concerned about property damage, noise disturbances and anti-social behaviour, which he believed would increase if the proposed

bottle shop were approved. It appears from his evidence that Mr Haigh already suffers the effects of these antisocial behaviours, which is extremely unfortunate. However, I am not satisfied that with the opening of a proposed store, those negative impacts will increase or intensify.

(4) Ms Jonathan, who is a local resident and the President of the Woollahra Public School P&C, gave evidence of her concerns that a bottle shop at the proposed site, next to the chargrill chicken shop, would encourage people to sit on the street benches and consume food and liquor there. Ms Jonathan was also concerned about the potential to encourage more social problems, crime and anti-social behaviour. Ms Jonathan's concerns were reasonably and rationally stated, however, from a practical perspective, the busy street with heavy foot traffic and people queuing for takeaway meals, the apparent "high-end character of the street", and the bare benches do not lend themselves readily or comfortably to the consumption of food alcohol together. The concern over crime and anti-social behaviour was also reasonable, and I have considered it in the context of the expert evidence and literature. Ms Jonathan's concerns regarding the proximity of the proposed site to a toy store and an ice cream shop are not persuasive for reasons expressed elsewhere concerning those venues.

(5) Ms Officer, who is a long-term resident of Woollahra, gave evidence in a similar vein to Ms Elsing in which she reported experiencing being woken at night, particularly on weekends, "by young people drinking on the street, screaming, fighting, etc" and that she frequently has to see the aftermath of the evening anti-social behaviour, observing vomit on the footpaths and bottles and cans dropped in the street". Once again, it would appear that Ms Officer's very unfortunate experiences arise from conduct that takes place long after the closing time of the proposed bottle shop, and as such, I have concluded that it would be unlikely to exacerbate that already undesirable situation.

William Cooney

108 The second and third respondents refer, in their written submissions, to Mr Cooney as a local resident. In fact, Mr Cooney is the licensee and owner of the Phoenix Hotel, and he resides quite a distance from the Suburb and the LGA. Mr Cooney gives his views on the issue of footpath and traffic congestion and outlet density. His views are naturally influenced by his own commercial considerations in the same manner as the accounts of Mr Campbell and Mr Georgas. His evidence, as far as it is relevant is referred to in these reasons elsewhere.

Alister Campbell

109 A statutory declaration from Alister Campbell, who is the executive director for the Second Respondent. Mr Campbell was cross-examined on the third day of

the hearing. Mr Campbell's statutory declaration is principally concerned with the canvassers or marketers engaged by the Applicant to obtain names on its petition. His concern is that petitioners providing their names to the Applicant's marketers were given false information. I do not accept that evidence, I regard it as a mere assertion from a competitor of the Applicant. Mr Campbell also expressed concern about children who walk past the proposed site and the concentration of children in public seating near it. I discuss the exposure of children to harm elsewhere. In summary, though I have no doubt that Mr Campbell was sincere in having such a concern, I do not consider this to be a "serious concern" of the magnitude he expressed.

Theodoras Georgas

110 Two affidavits from Theodoras Georgas, a director of the Third Respondent and the manager of the Jim's Cellars store in Woollahra. In his first affidavit, Mr Georgas gives largely self-serving evidence concerning the harm minimisation measures taken by Jim's Cellars – including the range offered at that store; and he attacks various aspects of the Applicant's existing business (including fit-out, range and pricing) and the stance the Applicant has taken in opposing packaged liquor licence applications in respect of its other sites. He concludes that he considers the location of the Premises "totally inappropriate", and it would be detrimental to the well-being of the local and broader community. None of that material is particularly edifying or helpful to the consideration at hand and must be seen through the lens of Mr Georgas' position as a direct competitor of the Applicant's proposed business.

111 By his second affidavit, Mr Georgas attempted to introduce a supplemented petition. I declined to admit that material on the basis of fairness.

John Coady

112 A report by John Coady, a traffic engineer and town planner. Mr Coady gave his evidence concurrently with Mr McDonald, the town planner qualified by the Applicant. In his report, Mr Coady opined on licence density and social and amenity impacts of the proposed outlet and responded to asserted facts in the Applicant's evidence on those matters also. Mr Coady says that, in his opinion,

none of the benefits asserted by the Applicant arise. As noted above, Mr Coady gave oral evidence concurrently with Mr McDonald.

113 With regard to likely disbenefits of the Application, Mr Coady, in addition to summarising other material such as the petitions, police objection and Woollahra Council's refusal, says that:

(1) With regard to licence density, there are already three packaged liquor outlets in the local community, including the Vintage Cellars Licence and an increase in such outlets, if the Applicant were granted a licence, would create a "density dilemma" for the local community.

(2) With regard to social impact:

(a) Young children will be exposed to experiencing "prolonged exposure to the sale of alcohol" because of benches and seating proximate to the Premises, and that this represents a "serious social impact potential" of the application; and

(b) If granted, the new licence would increase the potential for people to consume alcohol outside the shops on Queens Street. This would occur by combining a bottle shop at the Premises, fixed seating, and takeaway food outlets.

(3) With regard to impacts on the amenity of the local community, Mr Coady considers that:

(a) There is inadequate space in Peaker Lane to allow it to be used for customer pick-ups;

(b) The inadequate space in Peaker Lane will mean that deliveries to the Premises will block the entire lane for the duration of each delivery;

(c) There will be increased on-street parking congestion in Queen Street; and

(d) There will be increased congestion on the footpath on that part of Queen Street near the Premises, which, in Mr Coady's opinion, is already the most intensively used part of that street.

114 Mr Coady was highly critical of the fact that the Applicant sought a complying development approval after being refused development consent. He states this is a loophole, though he acknowledged that this was an entirely legal and available course for the Applicant to take. His point, it would seem, is that by not being involved in a development application requiring council consent, the assessment of suitability for a range of matters, including parking and the use of Peaker Lane, has been removed from the process and left, effectively to consideration by the Authority. To some extent, that is true, in particular with

regard to consideration of the social impacts of the proposed outlet, though the consideration ought to be by reference to the objects of the *Liquor Act* only.

115 I do not accept Mr Coady's conclusions regarding parking and deliveries in Peaker Lane. His report does not sufficiently take account of the fact that Peaker Lane was established as part of an early subdivision of the area and has serviced the delivery requirements not only of the Premises as they are currently used and the other eight retailers who have access to that lane as well as the residences opposite the shops. Mr Coady attempts to suggest that the delivery of liquor is in some way more onerous than the delivery of fresh fruit, vegetables and flowers; those items are perishable, and their delivery is time-critical. Deliveries of perishable items such as fruit, vegetables and flowers is also likely to coincide with the daily delivery of meat, fish and other perishable items. As Mr McDonald states, those outlets also have a need to have waste collection undertaken regularly. The most that can be said about alcoholic beverage delivery is that it may be bulky and fragile and that there will be non-putrescible container waste to be removed. If anything, the proposed use of the Premises will allow for more staged and staggered deliveries, and the cycle of delivery may also be less frequent.

116 I reject Mr Coady's conclusion concerning excessive parking congestion; I prefer Mr Reisch's assessment since he takes into account the fact that allowance should be made for parking needs arising from the Premises in their current form and his views are more squarely based on the traffic surveys data.

117 I note too that with regard to the Applicant's development application, which was refused by Woollahra Council, the council, in fact, found the question of parking and deliveries to be satisfactory.

118 I agree with Mr Coady's opinion concerning customer collections taking place in Peaker Lane. There are obvious hazards that could arise from customers being able to collect their purchases in Peaker Lane, and the presence of drivers who are not professional delivery drivers in that lane is undesirable. In cross-examination, Mr Coady conceded that if customer parking were not permitted in Peaker Lane, then his concerns over that matter would be assuaged. The Applicant, in closing oral submissions agreed that it would

submit to a condition that customer pick-ups would not be allowed to occur in Peaker Lane. I accept that submission and, as below, I have made orders accordingly.

119 For reasons stated elsewhere, I reject the contention that children will be placed in harm's way because of the operation of a packaged liquor outlet at the Premises.

120 On the question of outlet density, Mr Coady opined that even if the Vintage Cellars Licence were excluded (which I have not done), then the Tribunal should consider packaged liquor licences at locations such as Double Bay, Edgecliff, Bondi Junction and Paddington as these were shopping areas where members of the local community were likely to shop weekly. That evidence does not take the matter very far; it is apparent that the current situation is that alcohol can be sourced from a range of physical and online outlets; the question to be determined here is whether an additional outlet will cause detriment to the well-being of the local or broader community. I do not consider that Mr Coady's evidence assists me in determining the relevant question on this point.

121 I reject Mr Coady's assessment that people will be further induced to consume alcohol while eating takeaway food on the public benches in Queen Street. The community culture and nature of the area, the fact that it is a busy thoroughfare and the use of benches rather than chairs and tables mitigate against lengthy or elaborate consumption of food and drink. There was no evidence about the likely order in which customers intending to purchase alcohol and takeaway food in the area would do this, but it would seem more likely that alcohol would be purchased ahead of hot food and then be taken elsewhere, for example, to a home, for consumption. Right now, alcohol could be purchased, albeit at a distance from the Existing Bottle Shops, brought to Queen Street and consumed with food purchased there. There was no evidence of this occurring, and the absence of appropriate zoning suggests there is currently no issue. It is not clear how the introduction of a small bottle shop on the Premises would change the current situation other than, as all parties have submitted, making it more convenient for customers who intend to purchase liquor to do so.

Roberta Ryan

122 Two reports from Professor Roberta Ryan, who is an experienced social and strategic planner and an academic currently at the University of Newcastle. She is a qualified social worker and social policy and planning researcher. Professor Ryan's first report is dated 16 February 2023 and her second report, which included updated opinions in light of new BOSCAR data, was dated 23 March 2023.

123 Professor Ryan's academic and specialist expertise is broad; it includes expert advice on the social impact of changed land and development in settings as disparate as mines, affordable housing, schools, large-format retail centres, as well as licenced clubs, on-premises and packaged liquor licences. Having regard to her breadth of experience, Professor Ryan's expertise does not overshadow that of Ms George, who, I consider, has more targeted experience in liquor licencing and inner-city development from the social planning perspective. There was, in any event, significant agreement between Professor Ryan and Ms George; while their conclusions differed, they were on the same spectrum**.**

124 In her first report, Professor Ryan was based, among other things, on statistical evidence for the area and academic research and made the following observations, findings and conclusions:

(1) In reviewing the health data for the Woollahra LGA and SESLHD, Professor Ryan noted that the rate of alcohol problems and presentations to emergency departments in the SESLHD was higher than the NSW average and that the rates of short and long-term risks of drinking alcohol were higher throughout the SESLHD compared to all local health districts.

(2) The number of people who reported consuming alcohol daily in the SESLHD was lower than the average across all local health districts. However, the SESLHD had higher levels of people who had consumed alcohol weekly and fewer non-drinkers or less-than-weekly drinkers than the average across other local health districts. Of course, the SESLHD is a broader area than the LGA or the Suburb, however I do find the statistics relevant for consideration.

(3) That if the proposed liquor licence were granted, this would mean that the number of packaged liquor outlets in the suburb of Woollahra would be twice that of the State average and that, for the local government area of Woollahra, the density would be one and half times that of the

State average. As noted above, I have accepted that Professor Ryan appropriately includes the Vintage Cellars Licence in this analysis. Professor Ryan also emphasised that it was the cumulative impact of an additional outlet was significant in this case.

(4) The rate of alcohol-attributable hospitalisations in the suburb was 768.5 per 100,000 head of population, compared with the rate of 527 per 100,000 in the State. Professor Ryan states that the older population in Woollahra may indicate vulnerability to alcohol-related harm, including being at risk of higher alcohol consumption and, in turn, negative alcohol-related health impacts. In that regard, I note Ms George's evidence that alcohol-related hospitalisations typically occur in older age groups and the higher than State average rate in Woollahra is more attributable to the older age profile of its residents than high-risk or unrestrained alcohol consumption.

(5) The proposed site of the bottle shop is in a medium-density hot spot for incidents of malicious damage and a hot spot for incidents of domestic assault. In that regard, Professor Ryan opined that "if the existing licence is granted, there is a risk that the liquor sold from the premises would exacerbate [existing levels of crime]. Over time, this could contribute to an increase in alcohol-related crime and other social and amenity issues". Professor Ryan's opinion here is couched in qualified terms; having regard to the tendential nature of the analysis, I consider those qualifying terms entirely appropriate. This is particularly so given the updated Harm Minimisation and Community Impact Report of late July 2023 that was tended by the Authority after Professor Ryan had prepared her second report which showed that the location was no longer a hot spot for any offending.

(6) Relative socio-economic advantage is not as protective as may be intuitively considered having regard to the fact that high socio-economic communities tend to consume more alcohol.

(7) The area is well served, in terms of liquor supply, not only by physical stores but also by online delivery services, including BWS Liquor.

(8) The present ratio of packaged liquor licences to population is already at 0.8973 per 1000 residents. That level is already "dangerous". The Applicant's licence would increase the ratio to 0.916 per 1000 residents, and though Professor Ryan acknowledges the complexity of causation association with the rate of domestic violence assault, she opines that this outlet would exacerbate those rates. Professor Ryan nonetheless opines that if the licence was granted to the Applicant, this would give rise to an unreasonable risk of harm to elements of the local and broader community including the potential for increased domestic violence assault rates.

(9) While there were generally lower rates of reported domestic violence in affluent communities, there was a high level of reported domestic assaults in the Woollahra LGA at all time periods when compared with the rest of the State and the variability of the reported incidents is more likely connected with the notorious underreporting of those offences.

(10) Having regard to the literature, the Woollahra LGA would likely experience an increase in assault hospitalisations and long- and short-term risks of alcohol consumption.

(11) The local and broader community of Woollahra are characterised by a higher vulnerability to alcohol-related harm having regard to the relationship between high socio-economic advantage and hospitalisations; Professor Ryan concludes, therefore, that a single addition packaged liquor outlet "will be a detriment to the local and broader communities" In that it will result in higher rates of alcohol consumption, alcohol-attributable hospitalisations and long-term risk of alcohol consumption.

125 Professor Ryan was not an advocate for the cause of the parties who briefed her to provide an opinion and her views were given on the basis, squarely, of her opinion and research. As I noted above, Professor Ryan and Ms George agreed on the effect of the published data, save for the question of hospitalisations, and, on that point, I accept and prefer Ms George's evidence because it is more correct in terms of identifying the causation of hospitalisations.

Consideration

Views of the Community

126 Obtaining the views of the local or broader community is a difficult task, and recourse to petitions can be a fraught and unreliable exercise: see, for example, the Tribunal's observations in *Adamson* at [30]-[35] and *North Coast Property Holdings Pty Limited v Independent Liquor and Gaming Authority* [2024] NSWCATAD 98 at [35]-[36]. Unsurprisingly, in this case, the various and conflicting petitions and other community evidence point in different and often opposite directions.

127 Since the Applicant does not have the advantage of already operating, if it does not have sufficient support from customers in the local and broader community of Woollahra, it risks ultimately failing in its venture. But that is a matter which cannot be established at this time.

128 The Applicant resorted to obtaining a petition using paid marketing staff and also obtained a report from Ms Stancombe using focus group interviews of 23 people. For the reasons set out above, I accept, as far it goes, that on the particular days that the markers were in attendance, that there were at least

208 people visiting Queen Street who were in favour of the proposed bottle shop. Also, for the reasons set out in paragraph 65 above, Ms Stancombe's evidence did not assist the Tribunal. Additionally, the local fishmonger, who operates on the same block as the proposed liquor store, has provided a written letter in support of the application.

129 The second and third respondents prepared petitions from customers attending their stores. The Existing Bottle Shops' petitions garnered 110 signatures (noting a later petition was not admitted into evidence). They also had some support from the local residents, the licensee of the Phoenix Hotel and the QSWWA, though some of its members supported the second and third respondents' cause with some angst – one described the group's cooperation with the second and third respondents as a Faustian bargain. The evidence provided of opposition from members of the QSWWA and other residents is set out above.

130 The second and third respondents also provide maps and charts setting out the locations, by suburb, of supporters and objectors to the Applicant's proposed licence. That material suggested the majority of the 199 supporters were found to have come from the suburb of Woollahra and other suburbs comprising the vicinity of the Eastern Suburbs. The material also suggested the objectors came from roughly the same places, though with a greater proportion being found within the suburb. I regard the source of the support and objection as relatively neutral in this case.

131 Overall, I do not find the evidence of community support or opposition to be particularly persuasive or reflective of community views. The material captures the views of some members of the community, but by no means all or even a majority. Accordingly, I am unable to make any finding with respect to this issue, though I do not consider that this has a negative impact on the Applicant's position; rather, the position is neutral.

132 Professor Ryan opines that the Community Strategic Plan Woollahra 2032 is a good indicator of community expectations, needs and aspirations. If that were the case, such a plan would have to have countenanced the Vintage Cellars Licence as part of the mix. It is clear that the Vintage Cellars Licence if it is to

be used at all, will be located elsewhere. Professor Ryan does not account for how that licence, compared to a smaller-scale operation as proposed by the Applicant, would have met the aspirations or community expectations of the strategic plan. It would seem obvious that a small store, nestled between existing and complimentary retailers, would be in greater conformity with the strategic plan than the Vintage Cellars Licence proposal – and yet that was, apparently, wholly approved by Woollahra Council some years ago.

133 The second and third respondents, referring in particular to Ms Elsing's evidence, contend that the institutional opposition to the Applicant's proposed use of the Premises has been largely ignored. I reject that submission and have taken the reasons for the rejection of the Applicant's development application into account in these reasons. As I note elsewhere, however, I consider the fact that the Vintage Cellars Licence was approved and had been dormant for a decade as being relevant to questions of amenity and community expectations. Ms Elsing expressly declined the opportunity to comment on the reasons why that application was granted, and the Applicant's development application was rejected and the respective differences.

Factors in favour of granting the packed liquor licence

134 The Authority, by its written submissions, states that granting the Applicant a packaged liquor licence would have at least some positive social impacts on the well-being of the local and broader communities, being increased consumer convenience and choice and additional local employment opportunities. In their written submissions, the second and third respondents identify these considerations, though say that only increased convenience is a benefit to which "little, if any" weight should be given, that increased choice, increased employment and a decrease in the need for special trips are all neutral considerations; in any event, those respondents submit, none of the neutral considerations should be given no weight whatsoever.

135 The fact that there are a smaller number of factors in favour of granting the licence than there are factors against (if demonstrated) is a natural consequence of the nature of these types of applications. The factors in favour of granting a licence will, in almost all circumstances, be limited in number.

Greater convenience

136 Increased convenience is the only factor that all parties agree is a benefit of the proposed liquor outlet. It is manifestly true that the central location of the proposed premises relative to the neighbourhood and other retailers and services, as well as relatively convenient, high-turnover access to car parks, make convenience a significant factor in favour of the Applicant's proposal for a packaged liquor licence. It is readily capable of being inferred that consumers who live or work in the local community and who are shopping at the butcher, fishmonger, delicatessen, cooked chicken shop or takeaway restaurant would find being able to make purchases from a bottle shop in the same area convenient and desirable. Accordingly, I afford this factor significant weight.

Decreased need for special trips to purchase liquor

137 Related to the question of convenience is the Applicant's contention that the location of the proposed bottle shop will reduce the need for the community to make special trips to purchase liquor from packaged outlets. Having regard to the availability of liquor to purchase in the area generally, I do not consider this to be a significant factor and I ascribe little weight to it above the other considerations of convenience.

138 I note further the Authority's submission that the lack of need to make a special trip to purchase alcohol may also increase impulsive purchasing, as observed by Senior Constable Franks.

Increased consumer choice and competition

139 There has been much evidence to attempt to modify the equivalency of various outlets in the area. The Applicant says its proposed bottle shop will be a third outlet in direct competition with the Existing Bottle Shops. The second and third respondents have sought to expand the competitive base to include liquor outlets from just outside the local government area, online packaged liquor licences and takeaway alcohol available from the four hotels in the area.

140 I accept Mr Purcell's evidence that takeaway liquor from the four hotels is not practical. I also accept that it is difficult to assess the impact of online delivery retailers on the community.

141 A question of some significance to the Tribunal was whether the proposed liquor outlet was likely to cannibalise the customer base of the existing liquor outlets in the area (or, more kindly, increase the choice available to those consumers) or whether it was more likely to entice people who would not otherwise drink to purchase liquor and those who already drink to purchase even more liquor. Obviously, if the liquor store were to simply entice more people to drink alcohol or entice current (including problem and vulnerable) drinkers to drink in greater amounts, then that would be a matter that would be considered detrimental to the community. So, too, however, is it relevant to consider whether an additional liquor outlet contributes to an excess of outlets, which necessarily detracts from the amenity of the community and the orderly development of the liquor industry.

142 As I noted above, I do not give weight to Mr McDonald's opinion on this question as I do not consider the matter within his field of expertise.

143 In giving expert evidence from a social planning perspective, Professor Ryan and Ms George do not approach the subject on the basis of new markets or competition; their research and opinions are concerned with the bare correlation between the number of outlets in an area and increased harm. I have preferred that evidence as it is less subjective, but it does not assist the Tribunal when considering whether the community would receive benefit because of increased choice and competition.

144 The second and third respondents submit that this consideration is of no advantage because the evidence suggests the Applicant will be charging more for products already available in the area. This submission is at odds with their original submission to the Authority made in 2021 and contained in the s 58 Bundle in which they alleged that the Applicant was "focused on high volumes of entry-level wine and spirits" and that younger people would be particularly vulnerable to price discounting. I have found Mr Purcell's survey of the items in each of the Existing Bottle Shops and Mr Owen's evidence was more accurate on this topic, and I find that it is more likely than not that the Applicant will provide a range of alcoholic drinks that differs to some extent from that which of offered by either of the Existing Bottle Shops though there was necessarily

insufficient evidence regarding price since the Applicant has not operated the store. Though it is not for the Tribunal to speculate on the motives of parties, the fact that the second and third respondents were not content to leave the Authority to justify its decision suggests that they might consider that the new outlet has the potential to draw custom away from the Existing Bottle Shops whether that be because of convenience, product choice or price competition – any competitive threat could have enlivened the interest of the second and third respondent, and justifiably so.

145 In terms of increased competition, I note that the Vintage Cellars Licence is dormant, and the site has been redeveloped in a way that would not allow for a liquor outlet to operate on the specified premises. That has been the situation now for at least the last five years. Nonetheless, it is clear that the Authority considered it appropriate to authorise a packaged liquor store in roughly the same location as the current store but more than three times the size. Such a store would have undoubtedly increased competition and consumer choice. Other than to suggest that it did not have all the knowledge it now has, the Authority, in its submissions, gave no account of why that liquor licence was approved and what was different about that proposal that it received approval, whereas the current licence application did not. This was unsatisfactory.

146 Having regard to the totality of the evidence concerning increased consumer choice and greater competition, I am satisfied that this is a factor in favour of granting the Applicant a packaged liquor licence, and I give that factor significant weight taking into account the needs and aspirations of the community for improved choice and price competition and considering the orderly development of the liquor industry.

Increased local employment opportunities

147 I accept Mr Owens's evidence that the proposed store would provide employment for about eight to ten staff, including casual employees. As the Applicant submits, one of the objects of the *Liquor Act* is to support employment and other opportunities. While many of the residents of this area are middle-aged and in highly paid employment, the area is not without its young people who may be greatly assisted in commencing their working lives

close to home, in particular, if those young people working on a part-time or casual basis while pursuing further study.

148 Conversely, this is an area close to the city and other inner suburbs, so employment opportunities cannot be said to be in short supply. As the Authority points out in submissions, unemployment in the area is significantly below the State average. Nor would it be possible to say that, save for about two staff, there are career opportunities available.

149 The number of employment opportunities created by the proposed store is modest. While this also of the likely small-scale of the operation proposed, I do give some weight to the creation of employment opportunities as a factor in favour of granting the Applicant a packaged liquor licence.

Factors against granting the packaged liquor licence

150 The second and third respondents say that all the 13 factors they assert as being detrimental should be given "significant" weight. The tenor of that submission, unfortunately, lacks nuance in a manner that does not assist the task at hand; the Tribunal is invited, for example, to attribute significant weight to matters of great importance, such as the asserted increase in rates of domestic violence while it also urged to give identical weight to comparatively more trivial matters such as decreased diversity of shopping outlets on the street.

151 Alcohol-related harm may be experienced either directly, as a result of the risky consumption of alcohol, or indirectly, by people exposed to others who have engaged in the consumption of alcohol, which can be manifested, among other things, in assaults and damage to private property. These matters are considered further below.

Increased licence density

152 The second and third respondents identify this factor on the basis that the increased density of liquor outlets will increase the risk of alcohol-related harms. Having regard to the focus in the published research, that is a fair comment, but for the fact that the respondents then identify each of those harms (arising from the increase in density) separately. As noted above, the published research presented by the parties at the hearing is not conclusive,

and none of the research takes into account sufficiently the protective socio-economic factors associated with the particular community in which the packaged liquor licence is sought. As the submissions also note, the weight to be given to each relevant consideration is a matter for the Tribunal: *Minister for Aboriginal Affairs v Peko Wallsend Ltd* [1986] HCA 40; (1980) 162 CLR 24, 41 per Mason J.

153 Accordingly, I find that if the Applicant were successful, the density of liquor outlets in Woollahra (both the suburb and local government area) would increase. As I noted above, I have preferred to include the Vintage Cellars Licence in consideration of density. In relative terms, the inclusion of Vintage Cellars Licence causes the density of packaged liquor licences to be over the State average. But an increase of one outlet is not a substantial increase in absolute terms when the number of outlets in the area where liquor can be purchased is already higher than the State average.

154 Moreover, as the research makes clear, the size and scale of the supply of liquor in an area is likely more significant when considering the harms that might arise than the mere number of outlets per se. In this case, the proposed bottle shop is a modest size, it will not be open late at night, and it will not be offering home delivery (unlike at least one of the other Existing Bottle Shops); therefore, it is safe to infer that the scale of its operation is less likely to be harmful than a large bottle shop that operates a significant scale and turnover and is open for business for long periods into the night.

155 I will consider each of the particular harms arising as a result of separately giving little weight to the simple incidence of increased licence density in the area.

Increased risk of alcohol-related crime

156 As I noted above, the Applicant summons all COPS records concerning crime associated with the Existing Bottle Shops, and nothing was returned. However, I accept that the absence of any COPS records obtained under the summons does not allow me to infer that an additional liquor outlet in the same area will not cause incidents to occur.

157 I accept the submission of the second and third respondents that I should consider what the impact of a further liquor licence will be on the incidence of crime in the Suburb and the LGA and not simply have regard to the fact that, as they concede, the incidence of reported crime in the area is relatively low. Nonetheless, the current incidence of crime is one of the matters that is relevant to the assessment of what the impact of a further licence may be, together with consideration of the socio-economic profile of the area and the published research on outlet density and crime rates.

158 It was uncontroversial that, save for domestic violence assaults, the Suburb is an area that is not materially affected by criminal activity. The density of a range of offences and particular offences associated with the misuse of alcohol is low. The location of the Premises will be in a low-density area for alcohol-related crime. As Ms George opines, this demonstrates the protective effect of the high levels of socio-economic advantage in an area already replete with liquor outlets both on-premises and packaged.

159 I accept the Applicant's submissions couched by reference to Mr Purcell's evidence (whose opinion, as noted above, I have rejected on the subject), but which was, in fact, reliant on the BOSCAR statistics that:

(1) In relation to alcohol-related non-domestic related assaults, the Woollahra local government area features the suburbs of Paddington and Double Bay, in which there are several late-night venues that attract younger and more high-risk patrons, whereas the suburb of Woollahra has a very low rate of alcohol-related non-domestic assaults; and

(2) The hotspots for vehicle theft surround the transport and commercial hubs of Edgecliff and Bondi Junction and the associated railway stations.

160 Accordingly, while I give this consideration significant weight, I am satisfied that the grant of a packaged liquor licence to the Applicant would not increase the risk of alcohol-related crime (non-domestic violence) in the local or broader community.

Increased risk of domestic violence

161 This is a very serious consideration, having regard to the evidence, based on recognised research, that the incidence of domestic violence is widely under-reported. In summary, the second and third respondents submit that another

packaged liquor licence would exacerbate the rate of domestic violence in the community. I agree that this is a risk and that I should give significant weight to this matter.

162 The BOSCAR crime statistics show that the rate of alcohol-related domestic assaults in the previous 12 months was 148 incidents per 100,000 head of population; this is materially below the State average of 409 incidents per 100,000 head of population.

163 While there is some high-quality research that suggests a correlation between an increased number of packaged liquor outlets and increased rates of domestic violence, including assaults that are not the subject of criminal charges, Professor Ryan's evidence was that the relationship between increased outlet density and increased rates of domestic violence was very stable and that, once an area had reached a "saturation" of liquor outlets then that feature was present irrespective of protective effects of socio-economic status. Professor Ryan's opinion differs from Ms George's on how this might affect the present application. While I do not accept the concept of outlet saturation in these proceedings as anything more than an adjectival reference (though it is, indeed, a term first found in the written submission of the first and second respondents made to the Authority in 2021 and the Authority's recommendation to the Board), I prefer Professor Ryan's opinion on balance concerning on this point; having regard to the fact that domestic violence is manifestly under-reported and maybe even more significantly under-reported in communities where the increased socio-economic status of the residents may intensify feelings of shame some victims arising from having such abuse perpetrated on them.

164 Further, I note Ms George's evidence that alcohol consumption has been considered by anti-domestic violence advocacy groups as being used as an excuse for perpetrators of these kinds of offences and that there is no clear evidence of any fixed relationship between alcohol use and domestic violence. This would appear to be borne out by the fact that the domestic violence offences rate in the Suburb is lower than in the rest of New South Wales, but,

at least in 2022 (but not in the later year), alcohol-related domestic violence offences were above the State average.

165 However, having reviewed the published literature, I have concluded, consistent with Ms George's evidence, that the balance of research more strongly supports the proposition that it is the size and amount of liquor sold, rather than the number of outlets, has a greater causal relationship with an increase in the rate of domestic violence. In that regard, the Applicant's proposal is for a shop that is part of a small chain of stores trading under the Georges Cellars brand that have been effectively owned by a single-family operation (compared with a large retailer) and which is, regardless of the controversy over the calculated area, significantly smaller than the store that was approved by the Authority under the Vintage Cellars Licence in an almost identical location.

166 Accordingly, and giving this consideration significant weight, I am satisfied that the packaged liquor licence, as proposed for the Premises, is unlikely to increase the risk of domestic violence offences in the Suburb or the LGA.

Increased risk of assaults

167 There is some evidence, and an abundance of research presented to the Tribunal by the parties (and summarised above), that increased risk of non-domestic violence-related assaults is correlated with hotel licences and not packaged liquor licences.

168 The rates of non-domestic-violence-alcohol-related assaults in the Woollahra LGA are lower than the rest of NSW, and the rate of these types of incidents has remained stable according to the statistics provided by the Authority.

169 Accordingly, I am satisfied that there would not be an increased risk of assaults arising from, or attributable to, the grant of a packaged liquor licence to the Applicant to operate a bottle shop on the Premises.

Increased risk of alcohol-attributable hospitalisation

170 The statistics show that the number of alcohol-attributable hospitalisations in Woollahra LGA is higher than the rate for the whole of NSW.

171 Overall, while I accept that the risks Professor Ryan and Ms George identify exist, I do not consider that the risks identified by either social planner expert on this question were unacceptably increased by granting a packaged liquor licence to the Applicant. This is particularly so with regard to the protective nature of the high-socio-economic status of the Suburb and the LGA and also having regard to the small scale of the outlet proposed to be operated at the Premises.

172 Consequently, while this is a material consideration, I am satisfied that there will not be an increased risk of hospitalisations attributable to alcohol as a result of granting the Applicant a packaged liquor licence in respect of the Premises.

Increased risk of short-term and long-term health impacts

173 As noted above, Professor Ryan states that the rates of short and long-term risks of drinking alcohol were higher throughout the SESLHD compared to all local health districts.

174 As Ms George notes, short-term harms are more likely to be associated with young people engaging in behaviours such as binge drinking. It is apparent that in areas where hotels and nightclubs abound, there is a significant risk of short-term harm. That is not particularly relevant here with regard to the Suburb or the kind of liquor licence being sought and the trading hours proposed, though I accept that, in general terms, it is possible for people of any age to be injured while drunk or suffer from alcohol poisoning, and that over time there may be a cumulative effect leading to longer-term harm.

175 As to the long-term health impacts, Professor Ryan concludes that another licence in the area will be detrimental by increasing those risks since the population is more affluent and older and that areas with those characteristics tend to have populations that exceed the Alcohol Guidelines published by the National Health and Medical Research Council to which Professor Ryan refers in her first report. The long-term health conditions that are set out in the Alcohol Guidelines are unsurprising and include cancer, heart disease, liver damage and mental illness.

176 With regard to this consideration (as opposed to the question of density), I am prepared to take into account the fact that the Council was willing to grant the Vintage Cellars Licence, which would have involved a much larger-scale store. The absence of any use of the Vintage Cellars Licence is relevant when considering whether an additional packaged liquor licence would be detrimental to the short-term and long-term health of the local and broader community. The absence of that licence being used is, in my view, protective and assists the Applicant's position in this limited way.

177 As noted above in paragraph 89 above, the research on the relationship between outlet density and high-risk drinking behaviours was inconsistent and of low quality.

178 I have also had regard and prefer Ms George's opinion that the robust socio-economic characteristics of the Suburb and the LGA are protective of the many harms that undoubtedly arise because people are allowed to consume alcohol. I am satisfied that, though there are risks associated with any amount of consumption of alcohol, the question to be posed is whether those risks are acceptable and not detrimental to the overall well-being of the local or broader community.

179 The second and third respondents submit that this is a significant consideration and that they have established that there will be an increased risk of short-term and long-term health impacts if the packaged liquor licence is granted to the Applicant. The second and third respondents submit that even if the additional licence created a small increase in the chance that someone may die from alcohol poisoning, that is still a significant impact. While I do not think that a small increase in the chance of death is a significant impact, I do agree that this is an important issue and had I been satisfied that the packaged licence increased the risk of those harms, then I would have given that consideration considerable weight.

180 However, for the reasons that I have set out above, and having regard to the expert opinions of Professor Ryan and Ms George and the published research on harms, both short-term and long-term, I am satisfied that the proposed

packaged liquor licence would not present an unacceptable increase in the risk of short- and long-term health impacts in the community.

Increased risk of consumption of alcohol in public

181 The evidence concerning the consumption of alcohol in public was divergent. The resident's evidence suggested that this was already occurring in a manner that was uncontrolled. However, it was also apparent that the local council had not considered it necessary to zone the area as an alcohol free zone which suggests that the problem of public consumption of alcohol may not be quite as significant as some residents perceive it.

182 I reject Mr Coady's assessment and that of some other witnesses called by the second and third respondents that people will be further induced to consume alcohol while eating takeaway food on the public benches in Queen Street. The community culture and nature of the area, the fact that it is a busy thoroughfare and the use of benches rather than chairs and tables mitigate against lengthy or elaborate consumption of food and drink.

183 There was no evidence about the likely order in which customers intending to purchase alcohol and takeaway food in the area would do this, but it would seem more likely that alcohol would be purchased ahead of hot food and then be taken elsewhere, for example to a home, for consumption. As noted elsewhere in these reasons, as the situation currently stands, alcohol can be purchased, albeit at a distance, from the Existing Bottle Shops and brought to Queen Street and consumed with food purchased there. There was no evidence of this occurring, and the absence of appropriate zoning suggests there is currently no issue.

184 It is not clear how the introduction of a small bottle shop on the Premises would change the current situation other than, as all parties have submitted, making it more convenient for customers who intend to purchase liquor to do so. The assertions in the evidence concerning impulsive purchases were not, in my opinion, persuasive.

185 Accordingly, I do not consider that there will be an increased risk of consumption of more alcohol as a result of the grant of a packaged liquor licence to the Applicant with regard to the Premises.

Decreased amenity

186 The second and third respondents submit that decreased amenity in the context of these proceedings relates to noise, pollution (of unspecified nature) and disorderly conduct. The evidence concerning noise and disorderly conduct was generalised and appeared mainly to centre on concerns about noise disturbances and anti-social behaviour related to public drinking. These are problems that typically occur later in the evening.

187 In circumstances where the proposed liquor outlet is to operate in standard trading hours, including closing no later than 9:00 PM most evenings and earlier on Sundays, I do not consider that there will be any further decrease to the amenity of the Suburb or the LGA arising from those matters. Moreover, the convenience to local consumers of the Premises may be regarded as increasing the amenity of the immediate vicinity. Accordingly, I am satisfied that the proposed packaged liquor licence will not materially detract from the amenity of the area.

Decreased diversity of shops in the Woollahra Village

188 The proposed change of use of the Premises from a fruit and vegetable shop to a packed liquor outlet will not necessarily reduce the diversity of shops in the area referred to as the Woollahra Village. Fresh and cooked food, restaurants and cafes, some grocery and other stores are all still present. Conversely, the parties accepted that the inclusion of a small-scale packaged increased customer convenience to consumers and the community.

189 To the extent that the proposed packaged liquor licence decreases the diversity of shops in Woollahra Village, I give that consideration limited weight overall.

Inconsistent with the character of the Woollahra Village

190 The Suburb and LGA do not appear to be areas that are particularly censorious or abstemious about the purchase or consumption of liquor. Consequently, I do not consider that a small-scale packaged liquor is inconsistent with the character of the area, with regard to the kind of shops it will be located near – including takeaway and fresh food shops. On the contrary, the inclusion of

such a shop on the Premises appears entirely consistent with the other businesses and convenient for shoppers.

191 Mr Campbell and Mr Georgas made comments on the cheap fit-out of other stores owned by the Applicant. There is no evidence that the Applicant intends to install an undesirable storefront on the Premises. It would be surprising for an experienced liquor retailer who has undertaken extensive market research of the area, as is the case here, not to appreciate how important presentation may be to entice customers into a store.

192 I do not consider whether the proposal is consistent or inconsistent with the character of Woollahra Village to be a particularly significant question for the purposes of my determination. Though I am not satisfied that the Premises will be inconsistent with the character of that area, I give the matter limited weight in any event.

Increased traffic and pedestrian congestion

193 It was generally accepted that the footpath near the Premises is a busy area. The fact that it is busy is not necessarily a negativing factor; an area filled with customers and residents going about their daily lives creates an appealing picture of community life.

194 The expert evidence relied on by the second and third respondents does not take into account the fact that the current store must also bring customers by car and foot to it. Moreover, I accept, as a rather obvious conclusion Mr Reisch's opinion that the removal of the flower buckets from the pavement outside the Premises will increase the amount of room passers-by will have. The intrusive nature of the flower buckets on the pathway outside the Premises currently, as depicted in the photographs taken by Mr Coady, was quite marked. Save for the issue of trolleys, I prefer the Applicant's evidence with regard to increased traffic and pedestrian congestion, and I have concluded that, if granted, it would be unlikely that problems with traffic, parking and pedestrian congestion will not be significantly or detrimentally exacerbated.

195 However, it is readily understandable that if the Applicant were to have trolleys on the Premises, those trolleys would inevitably make their way onto the street and that these would create unwanted congestion. In closing submissions the

Applicant proposed to submit to a condition that it would not have trolleys available for customers in its store. I accept that submission and will impose that condition as part of my orders.

196 Having regard to the Applicant's concession, I am satisfied that it is unlikely there will be significant negative impacts on the well-being of the local community as it pertains to increased traffic and pedestrian congestion.

Decreased parking

197 There was no doubt that the residents were concerned that parking, already at a premium in the area, would be further strained by a new packaged liquor outlet at the Premises. This was a matter of significance in considering the social impact of the proposed licence.

198 I accept Mr Reisch's uncontested evidence that the proposed liquor shop would need to attract one-third more customers than the existing shop to generate sufficient demand for one additional car space. There is no evidence that the proposed bottle shop will attract any additional customers, but if it did, there would have to be a very substantial increase to have any material impact on parking in the area.

199 I accept Mr Purcell and Mr Reisch's observations that the high turnover of parking near the Premises is a positive feature. I also regard the fact that if customers elected to make purchases from the Premises in preference to the Existing Bottle Shops (which do have particularly suitable parking), this would contribute to increased order and safety in the area.

200 Accordingly, and with regard to the issue of the risk of decreased parking, I am satisfied that the amenity of the area will not be negatively impacted by the grant of a packaged liquor licence for the Premises.

Inadequate arrangements for deliveries and customer collections

201 The second and third respondents submit that had the Applicant, by applying for complying development, been able to side-step the development consent requirements that would have ensured adequate planning was in place for the use of Peaker Lane. They submit, based on Mr Coady's report, that Peaker Lane will be blocked by vehicles delivering goods to the proposed store and by

customer vehicles receiving orders. This, they say, would increase the risk of vehicle accidents and pedestrians/vehicle accidents – an obvious disbenefit. This criticism is further based on the submission that the Plan of Management dated November 2021 submitted by the Applicant to the Authority is inadequate as to how customer collections and deliveries will be managed.

202 It is manifestly apparent that Peaker Lane, which was created more than one hundred years ago, is a narrow service lane. It is obvious that vehicles entering Peaker Lane, for whatever reason, will block the lane while they are present. I prefer Mr Reisch's evidence concerning the use and the continued use of Peaker Lane by each of the nine store holders whose shops back onto that lane. There is, in my view, sufficient evidence to conclude that the site is an inconvenient one, but that situation is unchanged from the original use of the shop as a greengrocer. Consequently, I do not consider that the Applicant has made inadequate arrangements for deliveries with regard to the nature of the stock to be sold at the store (being non-perishable and capable of being containerised or palletised), which will facilitate orderly deliveries in any event.

203 At the conclusion of the hearing, it remained unclear the extent to which customer collections at the rear of the store would be practical. To that end, the Applicant offered to have imposed on it a condition that customer collections were not to occur in Peaker Lane. This was a sensible condition, and I will include it in final orders. That condition, in my view, eliminates the potential for negative impacts in that regard.

Conclusion and Orders

204 Having regard to the totality of the evidence, I am satisfied, on balance, that the overall social impact of granting the Applicant a packaged liquor licence will not be detrimental to the well-being of the local or broader community.

205 Accordingly, I make the following orders:

(1) The Authority's decision is set aside.

(2) The Authority is to issue Ice Box Liquor Pty Ltd with a packaged liquor licence subject to the conditions specified in its application in respect of premises at 136 Queen Street, Woollahra, New South Wales, and subject to the further conditions that customer collections will not be

allowed to occur in Peaker Lane and that the Applicant will not make trolleys available for customers in its store.

****

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.