

Decision and reasons for decision

In the matter regarding seven internal review applications made under section 153 of the *Liquor Control Reform Act 1998* as to a decision of a delegate to grant an application for a packaged liquor licence for the premises known as Dan Murphy's, Daylesford

Commission:	Mr John Larkins, Acting Chair Mr James O'Halloran, Deputy Chair Ms Susan Timbs, Commissioner
Appearances:	Mr Jason Kane, Counsel for the Hepburn Shire Council, Internal Review Applicant Cr Jennifer Bray, Internal Review Applicant Ms Lynda Poke, Internal Review Applicant Mr Mark Dickenson, Internal Review Applicant Ms Michelle Stephenson, Internal Review Applicant Mr David Moore, Internal Review Applicant Ms Sarah Porritt, Counsel for the Licensee, instructed by Mr Murray Kellock of King & Wood Mallesons Mr Benedict Coxon, Counsel Assisting the Commission
Date of Hearing:	3-6, 9-12 October; 15, 21-22, 27-28 November 2023; 29-30 January 2024
Date of Decision:	14 August 2024
Date of Reasons:	14 August 2024
Decision:	The Commission has determined to set aside the decision of the Delegate and refuse the application
Signed:	



John Larkins, Acting Chair

Background

Original Application

1. On 11 July 2022, Endeavour Group Limited (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998* (Vic) (**LCR Act**) for a packaged liquor licence (**Licence**) for proposed premises located at 63 Central Springs Road, Daylesford (**Premises**) trading as Dan Murphy's (**Original Application**).
2. The red line plan lodged by the Licensee indicates a trading area of 626.66 square metres.
3. The Licensee initially sought the following trading hours:

<i>Sunday:</i>	<i>Between 10am and 11pm</i>
<i>ANZAC Day:</i>	<i>Between 12noon and 11pm</i>
<i>On any other day other than</i>	
<i>Good Friday and Christmas Day:</i>	<i>Between 9am and 11pm</i>
4. The Licensee has since indicated that it would accept a condition on its Licence in relation to the hours of trade in the following terms:

<i>On any other day other than Sunday Good Friday or ANZAC Day or Christmas day –</i>	<i>Between 9am and 9pm.</i>
<i>On Sunday –</i>	<i>Between 10am and 8pm</i>
<i>ANZAC Day –</i>	<i>Between 12 noon and 8pm on Sunday and 9pm on any other day.¹</i>
5. In accordance with section 33 of the LCR Act,² a copy of the Original Application was served on the Chief Commissioner of Police and the Hepburn Shire Council (**Council**) on 13 July 2022. On 26 July 2022, Victoria Police advised that it did not object to the Original Application.
6. On 12 August 2022, the Chief Executive Officer of the Council advised that the Council objected to the Original Application. There were 204 objections lodged to the Original Application.
7. The Licensee responded to these objections by way of written submissions prepared by King & Wood Mallesons and dated 18 October 2022. The submissions were accompanied by several documents, including a document entitled “Proposed Dan

¹ Outline of Submissions on Behalf of the Licensee dated 15 January 2024 (**Licensee January Submissions**) at [306].

² All references to legislation are references to the LCR Act unless stated otherwise.

Murphy's Daylesford: Response to submissions", prepared by Deep End Services and dated 18 October 2022.

Original Decision

8. On 9 December 2022, a delegate of the Commission (**Delegate**) determined to grant the Original Application (**Original Decision**). The Delegate reasoned that, in determining if the risks of amenity detriment, nuisance and anti-social behaviour, domestic/family violence, and the misuse and abuse of alcohol by members of the community are likely to come to fruition, it is relevant to consider whether there is application-specific or site-specific evidence to support the likelihood of such outcomes occurring. In the Delegate's view, the objections had not adequately substantiated the claims made regarding these risks. In the absence of substantial evidence, the Delegate was unable to place much weight to the claims made, and therefore could not be satisfied that there was a likelihood that the inferred risks would materialise from the grant of the liquor Licence.

Applications for internal review

9. Between 5 and 9 January 2023, the Commission received applications for internal review from Ms Krystyna Szokolai, Ms Gina Butera, Mr Mark Dickenson, Cr Jennifer Bray, Hepburn Shire Council, Ms Irene Holub and Ms Lynda Poke (**Internal Review Applications**).
10. The application for internal review lodged by Ms Butera was said to represent the following objectors: Ms Cheryl Bittman, Ms Michelle Stephenson, Ms Robyn Rogers, Ms Helen Greenwood, Mr Andy Greenwood, Ms Sam Anderson, Ms Margie Thomas, Mr David Moore, Ms Kate McCrae, Ms Trish Kevin, Ms Lisa Brophy and Ms Sue Wright. Three of those persons – Ms Rogers, Mr Greenwood and Ms McCrae – had not in fact lodged objections to the Original Application and were therefore not treated as Internal Review Applicants. In these reasons, all of the persons identified in the previous paragraph and those listed in this paragraph who had objected to the Original Application, are referred to collectively as **Internal Review Applicants**. A number of other persons (most of whom had objected to the Original Application) who had not lodged internal review applications, but who wished to be heard at the hearing, were designated as **Interested Persons**.

11. On 18 January 2023, the Commission invited objectors to indicate or confirm their positions of “Objection” or “No Objection” to the Internal Review Applications by 27 January 2023. Between 18 and 27 January 2023, the Commission received 63 responses maintaining objections to the Original Application.

The Commission’s internal review power

12. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and each of the Internal Review Applicants is an eligible person to apply for a review of that decision. The Internal Review Applications were made pursuant to section 153.
13. Pursuant to section 157(1), the task for the Commission with respect to the Internal Review Applications is to make a decision that:
 - (a) affirms or varies the Original Decision; or
 - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.³
14. In effect, the Commission on review stands in the shoes of the original decision-maker and makes a fresh decision with respect to the Original Application. In this case, the Commission must decide whether:
 - (a) the Original Application should be granted and, if so, whether any conditions should be imposed;⁴ or
 - (b) the Original Application should be refused.⁵

Determination of a contested application

15. Under the LCR Act, an application for the grant of a licence may be “contested” or “uncontested”. The Original Application was contested, with more than 200 objections received under Division 5 of Part 2 within the relevant period.⁶

³ Section 157(2) to (5) contains further provisions as to the manner in which the Commission must or may undertake a review.

⁴ LCR Act, sections 44, 49 and 157.

⁵ LCR Act, sections 44 and 157.

⁶ LCR Act, section 3(1) (definition of “contested application”).

16. Under section 47(2), the Commission may refuse to grant a contested application on any of the grounds set out in section 44(2). Section 44(2) empowers the Commission to refuse to grant the Internal Review Applications on various grounds, including that the granting of the application would detract from or be detrimental to the “amenity” of the area in which the premises to which the application relates are situated,⁷ and that the granting of the application would be conducive to or encourage “harm”.⁸
17. Section 3(1) defines “amenity” by reference to section 3A:

3A What is amenity?

(1) For the purposes of this Act, the amenity of an area is the quality that the area has of being pleasant and agreeable.

(2) Factors that may be taken into account in determining whether the grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an area include—

* * * * *

(d) the possibility of nuisance or vandalism;

(e) the harmony and coherence of the environment;

(f) any other prescribed matters.

(3) Nothing in subsection (2) is intended to limit the definition of amenity.

18. Section 3AA is also relevant to the definition of amenity:

3AA Evidence constituting detraction from or detriment to amenity of area

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

(a) violent behaviour;

(b) drunkenness;

(c) vandalism;

(d) using profane, indecent or obscene language;

(e) using threatening, abusive or insulting language;

(f) behaving in a riotous, indecent, offensive or insulting manner;

(g) disorderly behaviour;

(h) causing nuisance;

(i) noise disturbance to occupiers of other premises;

(j) obstructing a footpath, street or road;

⁷ LCR Act, section 44(2)(b)(i).

⁸ LCR Act, section 44(2)(b)(ii).

(k) *littering.*

19. Section 3(1) defines “harm” as follows:

harm means harm arising from the misuse and abuse of alcohol, including—

- (a) *harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) *family violence; and*
- (c) *anti-social behaviour, including behaviour that causes personal injury or property damage.*

20. The same provision separately defines “family violence” as having the same meaning as in the *Family Violence Protection Act 2008* (Vic). Section 5 of that Act defines “family violence” as follows:

(1) *For the purposes of this Act, **family violence** is—*

(a) *behaviour by a person towards a family member of that person if that behaviour—*

- (i) *is physically or sexually abusive; or*
- (ii) *is emotionally or psychologically abusive; or*
- (iii) *is economically abusive; or*
- (iv) *is threatening; or*
- (v) *is coercive; or*
- (vi) *in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or*

(b) *behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).*

(2) *Without limiting subsection (1), family violence includes the following behaviour—*

- (a) *assaulting or causing personal injury to a family member or threatening to do so;*
- (b) *sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;*
- (c) *intentionally damaging a family member’s property, or threatening to do so;*
- (d) *unlawfully depriving a family member of the family member’s liberty, or threatening to do so;*
- (e) *causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.*

(3) *To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.*

Exercising the internal review power

21. Section 172D(3) of the LCR Act requires the Commission, when performing functions or duties or exercising powers, to have regard to the objects of the LCR Act.

22. The objects of the LCR Act are set out in section 4(1) as follows:

The objects of this Act are—

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

23. Section 4(2) further provides that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation.⁹

24. As the Commission stated in *Woolworths Limited at Dan Murphy's Cranbourne East premises (Liquor-internal review)* [2016] VCGLR 7:

... while the grounds outlined under section 44(2) provide relevant criteria for consideration, specifying as they do bases upon which a refusal to grant an application may be made, the ultimate determination of the application is made pursuant to section 47(1) with reference to the objects of the LCR Act.¹⁰

25. Section 172U(3)(b) of the LCR Act also requires the Commission, when performing functions or exercising powers under the LCR Act, to have regard to any decision-making guidelines issued by the Minister under section 172U(4). A decision-making guideline that was in effect immediately before 1 July 2022 in relation to the regulation

⁹ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325; (2012) 39 VR 92, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

¹⁰ *Woolworths Limited at Dan Murphy's Cranbourne East premises (Liquor-internal review)* [2016] VCGLR 7 at [64] (footnotes omitted).

of liquor remains in effect on and after that day as if it had been issued under section 172U(4).¹¹

26. A guideline that is applicable here was issued on 7 June 2012 by the then Minister under the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic)*,¹² entitled “Assessment of the Cumulative Impact of Licensed Premises”. This guideline relevantly states that it is the policy of the Victorian Government that the Commission may assess the contribution of a new licensed premises to the cumulative impact¹³ of a concentration of licensed premises in an area. The Commission has had regard to that guideline, and is conscious that it may assess the contribution of the Premises, were the Licence to be granted, to the cumulative impact of a concentration of licensed premises in the area. In light of the evidence before it, the Commission has not, however, decided to refuse to grant the Licence on the basis of cumulative impact of a concentration of licensed premises in the area.

Conduct of an inquiry

27. Section 47(3)(a) and (b) respectively provide that the Commission, before granting or refusing a contested application, may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate. Under section 47(3)(c), the Commission also must give the Internal Review Applicants and each objector a reasonable opportunity to be heard.
28. Section 172W(3) relevantly provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit, and is bound by the rules of natural justice.
29. The Commission held a hearing in this matter on 3-6, 9-12 October; 15, 21-22, 27-28 November 2023; and 29-30 January 2024. The parties submitted initial written submissions in May and June 2023. On 15 September 2023, the Commission invited the parties to submit relevant information as to various matters and submissions as to

¹¹ LCR Act, Schedule 8, clause 5.

¹² This Act was renamed the *Victorian Gambling and Casino Control Commission Act 2011 (Vic)* by the *Casino and Gambling Legislation Amendment Act 2021 (Vic)* with effect from 1 January 2022.

¹³ The guideline states that “**Cumulative Impact** refers to the impacts arising from a concentration of licensed premises in a defined area. Evidence has identified that cumulative impact is associated with a range of positive and negative effects, depending on the physical and environmental setting, the mix of premises, and their operating conditions.”

matters arising from recent amendments to the LCR Act. The Commission also indicated that it would be assisted by hearing from persons to be involved in the day-to-day operations of the proposed store, and in the supervision, management and control of the proposed store. The parties submitted information and submissions in response to the Commission's invitation on 25 and 26 September 2023. Subsequent to the close of evidence, the parties submitted final written submissions in January 2024, which were followed by final oral submissions in the same month.

Harm minimisation – the primary regulatory object

30. The Victorian Court of Appeal addressed the concept of “harm minimisation” in section 4 of the LCR Act in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325; (2012) 39 VR 92 with reference to earlier authority. Warren CJ and Osborn JA endorsed the explanation of the ordinary meaning of the concept of harm minimisation adopted by the judge below:

*harm minimisation is a concept which has been central to the National Drug Strategic Plan (1993–1997) which guided the development and implementation of alcohol and drug policies across Australia through the 1990s. The concept was defined as an approach that aims to reduce the adverse health, social and economic consequences of alcohol and other drugs by minimising or limiting the harms and hazards of drug use for both the community and the individual without necessarily eliminating use ... The approach includes preventing anticipated harm and reducing actual harm.*¹⁴

31. However, their Honours held that “the general concept of harm minimisation does not mean that every application for a liquor licence should be refused”.¹⁵ Their Honours endorsed the observation of Ipp J of the Supreme Court of Western Australia in considering the harm minimisation object in liquor licensing legislation in that State, that the relevant object is “to ‘minimize’ harm or ill-health, not to prevent harm or ill-health absolutely”.¹⁶ Their Honours elaborated:

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

¹⁴ *Kordister* [2012] VSCA 325; (2012) 39 VR 92 at [12], citing *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207; (2011) 34 VAR 293 at [119], in turn citing *Re Avery & Director of Liquor Licensing* [2001] VCAT 2455; (2001) 17 VAR 405 at [38]. See also at [110] (Tate JA).

¹⁵ *Kordister* [2012] VSCA 325; (2012) 39 VR 92 at [14].

¹⁶ *Kordister* [2012] VSCA 325; (2012) 39 VR 92 at [15], referring to *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258; (2000) 22 WAR 510 at 515.

... Ultimately, the tribunal was required to balance each of the objects and arrive at an appropriate synthesis in the particular circumstances of the case by the way of a discretionary judgment.¹⁷

32. Their Honours also adopted part of the reasoning of the judge below in emphasising the importance of harm minimisation to the scheme of the LCR Act:

Section 4(2) emphasises that in making the relevant discretionary judgment the decision-maker must have due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol. For the reasons explained by Tate JA, we accept that the text, context and purpose of s 4(2) lead to the conclusion that harm minimisation is a fundamental principle of the Act and can properly be regarded as “the primary regulatory object and therefore the primary consideration in liquor licensing decisions”, as the judge concluded.¹⁸

33. The relevant passage of Tate JA’s reasons was as follows:

In my view, the singling out of the object of harm minimisation in the context of an explicit statement of how the Act must be interpreted and applied, in s 4(2), reveals that harm minimisation is a fundamental principle of the Act and reinforces its importance as a value which informs and guides the whole of the Act. Combined with the legislative history that I have described, including the extrinsic materials set out, in my opinion the judge was correct to conclude that the object of harm minimisation is “the primary regulatory object and therefore the primary consideration in liquor licensing decisions”. This is not to say, and the judge did not so suggest, that it is to be taken into account, or given such weight, to the exclusion of the other objects.¹⁹

34. Warren CJ and Osborn JA also endorsed the proposition, emerging from the reasoning of Judge Bowman in **Nardi** v Director of Liquor Licensing [2005] VCAT 323, that

because the concept of harm minimisation is itself anticipatory there may be cases in which a conservative approach should be adopted. In this context, a conservative approach may mean a precautionary approach leading to the conclusion that if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified.²⁰

35. In **Nardi**, Judge Bowman had said:

[t]here may indeed be circumstances in which a cautious conservative approach to the granting of a licence should be adopted. However, this does not mean that applications should be virtually automatically rejected upon the creation of the slightest doubt or misgiving. As I have stated earlier, and as was stated in Black’s case, the logical extension of an argument such as this would be that no new licenses [sic] would be granted, in order to minimise harm. The proper foundations should exist so as to justify a decision, fairly and properly made, to refuse an application for a licence. In my opinion, such foundation is missing in the present case. It may be that, at some future date, more research and material is available in relation to this issue of density of outlets in relation

¹⁷ Kordister [2012] VSCA 325; (2012) 39 VR 92 at [17]-[18].

¹⁸ Kordister [2012] VSCA 325; (2012) 39 VR 92 at [19], citing *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207; (2011) 34 VAR 293 at [173].

¹⁹ Kordister [2012] VSCA 325; (2012) 39 VR 92 at [188], citing *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207; (2011) 34 VAR 293 at [173]; *Lodhi v The Queen* [2007] NSWCCA 360; (2007) 179 A Crim R 470 at [19]-[39].

²⁰ Kordister [2012] VSCA 325; (2012) 39 VR 92 at [34], endorsing *Nardi* [2005] VCAT 323 at [51].

to socially disadvantaged areas, but I am not satisfied that the material put before me in this case warrants the refusal of the application.²¹

36. In *Hansen v Director of Liquor Licensing (Occupational and Business Regulation)* [2006] VCAT 2544, Senior Member Davis indicated that possible harm must not be fanciful, and the risk must be more than trivial:

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

...

*I accept what was said by the Full Court of Western Australia in *Executive Director of Health v Lily [Creek] (Ipp Owen Miller JJ)* (unreported 12 September [2]000) at paragraph 28 where it is stated:*

*The potential for harm or ill health is to be taken into account irrespective of whether the prospect of harm or ill health is a **possibility** or a **probability**. (emphasis added)*

*However, in my view, what their Honours were referring to was something that was real, rather than fanciful or imaginary. In this case, where there is unlikely to be any increase in the sale of alcohol in the centre, in my view, it is difficult to say that the increased risk of harm by the granting of this licence can be anything but fanciful. However, as a matter of caution, in accordance with what was stated by the Court in *Lily [Creek]* I take the risk into account when making my decision, but that cautious approach means I consider that risk or take it into account, it does not necessarily mean a refusal of the licence.²²*

37. In *Re **Black** and Liquor Licensing Victoria*, Kellam J and Member Angell, in the context of considering underage drinking, emphasised the importance of considering the “particular local, social, demographic and geographic circumstances”.²³
38. In *Nardi*, Judge Bowman summarised expert evidence presented to his Honour that was said to warrant a conservative approach in that case:

Increased density of outlets leads to increased consumption of alcohol. Increased consumption leads to increased problems and abuse. Increased density of packaged liquor outlets sends the wrong message and makes packaged liquor more readily available to underage drinkers. A conservative approach is warranted, as the area in question is already well served by a number of licensed premises and the conservative approach is particularly recommended when the additional licence would be located adjacent to a neighbourhood of low socio-economic status, and one that is already exposed to alcohol-related problems, including violence.²⁴

39. Judge Bowman rejected this approach:

²¹ *Nardi* [2005] VCAT 323 at [51(viii)].

²² *Hansen v Director of Liquor Licensing (Occupational and Business Regulation)* [2006] VCAT 2544 at [51], [53-54] (emphasis in original).

²³ [2000] VCAT 459; (2000) 17 VAR 17 at [32].

²⁴ *Nardi* [2005] VCAT 323 at [18].

the real problem with [t]his evidence as a principal supporting plank of the Nardi's case seems to me to be that, to succeed, it basically must establish that increased availability leads to increased consumption which leads to increased harm. If this proposition is correct, and were taken to its logical conclusion, no further licences should be granted in this state because so to do would be conducive to or encourage the misuse or abuse of alcohol.²⁵

40. In *Kordister*, Warren CJ and Osborn JA, addressed both *Black* and *Nardi*:

We agree with the judge that the tribunal misread the effect of prior tribunal decisions. ... The prior decisions of the tribunal did not state that in applying the concept of harm minimisation it is always necessary to determine by site-specific evidence whether a licensee was or would be individually responsible for harm arising from the misuse or abuse of alcohol. Nor did those decisions reject the relevance of general evidence relating to risky drinking and associated problems of harm to the community.

In particular, in Black and Cooke v Liquor Licensing Victoria, Kellam J and Angell M held, when considering an application for a packaged liquor licence at a supermarket, that it was necessary to determine whether the licence would be contrary to the object of harm minimisation in the sense of whether "the object of harm minimisation stands out as being poorly served by reason of particular local, social, demographic and geographic circumstances". That approach involved evaluation of general evidence led before the tribunal concerning the nature of potential alcohol misuse and its possible social impacts and its application to the local context.

Likewise, in Nardi v Director of Liquor Licensing, ... Judge Bowman again had to consider an application for a packaged liquor licence at a supermarket. His Honour heard general evidence relating to the consequences of probable increased consumption of alcohol and alcohol abuse. He was not persuaded that this general evidence should be determinative in that case and held that it should be evaluated in the light of evidence as to the relevant local context. The tribunal in the present case was however wrong to find: "His Honour made it clear that the expert evidence in relation to harm minimisation needs to be treated with considerable caution". In turn the tribunal was wrong to adopt this approach.²⁶

41. Similarly, Tate JA explained:

Both Black and Cooke and Nardi make plain that while a decision-maker should take into account any general evidence adduced about the use and misuse of alcohol, a significant factor in determining how important the general evidence of harm minimisation is to a particular application is whether the general evidence has a connection with, or is reinforced by, the particular local, social, demographic and geographic circumstances of the relevant premises: the "locality evidence". In my opinion, it is the determination of whether the object of harm minimisation is "poorly served by reason of particular local, social, demographic and geographic circumstances" that provides a proper factual foundation for deciding whether, in the circumstances of the case, the object of harm minimisation will be advanced. By reference to such locality evidence a decision-maker can avoid the object of harm minimisation resulting in an invariably negative answer to the issuing of further licences and an invariably positive answer to any application for reduction of trading hours. As these consequences of "proving too much" were clearly

²⁵ *Nardi* [2005] VCAT 323 at [19].

²⁶ *Kordister* [2012] VSCA 325; (2012) 39 VR 92 at [51]-[53], citing *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207; (2011) 34 VAR 293 at [117], [118]; *Black* [2000] VCAT 459; (2000) 17 VAR 17; *Nardi* [2005] VCAT 323; *Kordister Pty Ltd v Director of Liquor Licensing (Occupational and Business Regulation)* [2010] VCAT 277 at [54].

not what was intended under the Act, as acknowledged in Black and Cooke, and in Nardi, and by the judge, site-specific locality evidence is of considerable importance.²⁷

42. Despite some legislative amendments that have been made since the decision of the Court of Appeal in *Kordister*, the Commission does not consider that any amendments have had any substantial impact on the applicability of the principles outlined above. The Commission approaches its task on the basis of these principles.

Transitional provisions

43. The Licensee submitted that certain amendments made to the LCR Act in 2022 did not apply to the Original Application.²⁸ Most of these amendments related to the requirement under section 28(1)(ac) that an application for a licence that applies to a large packaged liquor outlet include a community impact assessment. The Licensee relied on clause 13 of Schedule 6 to the LCR Act:

*An application for a licence that applies to a large packaged liquor outlet that was made but not finally determined before the commencement of section 27AA and the amendment of sections 28, 29 and 44 by the **Liquor Control Reform Amendment Act 2021** (as applicable) is to be determined in accordance with Division 4 of Part 2 as in force immediately before that commencement as if section 27AA had not been enacted and those amendments had not been made.*

44. As the trading area of the Premises would be 626.66 square metres, the Premises would not be a “large packaged liquor outlet” as defined by section 27AA.²⁹ Clause 13 of Schedule 6 to the LCR Act therefore does not apply to the Original Application.
45. One of the amendments identified by the Licensee as not applicable to the Original Application was the substitution in section 44(2)(b)(ii) of “harm” for “the misuse and abuse of alcohol”. Counsel Assisting submitted that this amendment did apply to the Original Application, as it is consistent with the text, context and purpose of clause 13 of Schedule 6 to read its reference to section 44 as referring only to the potential ground

²⁷ *Kordister* [2012] VSCA 325, (2012) 39 VR 92 at [191], citing *Black* [2000] VCAT 459; (2000) 17 VAR 17 at [14]; *Nardi* [2005] VCAT 323 at [19].

²⁸ Outline of Submissions on Behalf of the Permit Applicant dated 21 June 2023 (**Licensee June Submissions**) at [20]-[23]; Outline of Further Submissions on Behalf of the Licensee dated 26 September 2023 (**Licensee September Submissions**) at [9]-[11].

²⁹ Section 27AA defines a large packaged liquor outlet as a packaged liquor outlet with a floor space greater than 750 square metres.

of refusal in section 44(2)(d), not to the amendment of section 44(2)(b)(ii).³⁰ The Licensee appeared to accept this as correct in its final written submissions.³¹

Material before the Commission

46. The Commission has considered all the materials before the Delegate. The Commission has also considered the materials described in the appendix to these reasons.
47. The Commissioners viewed the site of the proposed Premises on 21 March and 13 December 2023.
48. It is useful to record at this juncture a number of features of Daylesford and of the Original Application, based on the evidence and the Commission's site views:
 - (a) As recorded by the 2021 census, Daylesford has a population of 2781 and the Hepburn Shire, within which Daylesford is located, has a population of 16,604;
 - (b) Daylesford is a popular tourist destination, with large influxes of visitors particularly at weekends;
 - (c) The two existing specialist packaged liquor outlets in Daylesford have limited floor spaces of 150 and 230 square metres (totalling approximately 380 square metres) and are located on or near the main street, namely Vincent Street;³²
 - (d) The Premises would have a floor space of 626.66 square metres, nearly three times the size of the larger of the two existing specialist packaged liquor outlets (with the effect that the total floor space of specialist packaged liquor outlets in Daylesford would more than double if the Premises were to open); and
 - (e) The Premises would be located on the periphery of the commercial area of the town.
49. Further evidence as to particular characteristics of Daylesford, and the site and context of the proposed Premises, is set out where relevant below in the Commission's reasons.

³⁰ Submissions of Counsel Assisting the Commission dated 13 December 2023 at [13]-[19].

³¹ Outline of Submissions on Behalf of the Licensee dated 15 January 2024 (**Licensee January Submissions**) at [6]-[8].

³² The Commission here is referring to Foxy's Liquor/Cellarbrations at 55 Vincent Street, and Liquorland at 32 Albert Street. A third packaged liquor outlet, Blake Family Grocers at 1 Howe Street, may be described as a gourmet mini supermarket with only a limited supply of alcohol for sale.

Evidence

50. A number of persons submitted witness statements, not all of whom gave evidence at the hearing. The Commission placed less weight on the statements of persons who did not give oral evidence, and whose evidence was therefore not tested at the hearing. The relevant persons are Ms Bridie De Vecchi, Mr Daniel J McDiarmid, Mr Edwin Beacham, Ms Philippa Burne, Mr Simon O'Keefe and Ms Vanesa Hernandez Rodriguez.
51. The Commission records its gratitude to the Internal Review Applicants and Interested Persons who gave evidence (and to the witnesses called by one of the Internal Review Applicants), none of whom were legally represented. All invested significant time in assisting the Commission, and much of the evidence was useful.

Internal Review Applicants

52. With the exception of the Council, each of the Internal Review Applicants who appeared at the hearing gave evidence, and one called witnesses. Cr Jennifer Bray, Mr David Moore, Mr Mark Dickenson, and Ms Michelle Stephenson each gave evidence. Ms Lynda Poke also gave evidence, as well as calling witnesses: Prof Hal Swerissen, Dr Gregory Stewart, Ms Andrea Furness, and Dr Shelley Bowen.

Cr Jennifer Bray

53. Ms Jennifer Bray is an English and performing arts teacher who has lived at Hepburn Springs since 2005.³³ She has taught at local schools in the Hepburn Shire for three years, and for 14 years has run a youth performing arts program for local children aged 4-18 years in which 90 local children are currently enrolled.³⁴ Her two children attended Daylesford Preschool, Daylesford Primary School and the secondary Daylesford College and are now teenagers.³⁵ She was a member of the Daylesford College School Council for three years.³⁶
54. She was elected as a Councillor for Hepburn Shire in 2020.³⁷ At the hearing, she represented herself as an individual community member, not as a Councillor, but she

³³ Hearing transcript, page 486, lines 1 to 3.

³⁴ Hearing transcript, page 486, lines 5 to 8.

³⁵ Hearing transcript, page 486, lines 13 to 15.

³⁶ Hearing transcript, page 486, lines 15 to 16.

³⁷ Hearing transcript, page 486, line 18.

said that her role as Councillor had given her valuable insights into the unique situation of Hepburn Shire's local government, services, budgets, and constraints.³⁸

Prof Hal Swerissen

55. Prof Hal Swerissen was called as a witness by Ms Poke. He is an Emeritus Professor in Public Health at La Trobe University.³⁹ He previously held the position of Pro Vice-Chancellor (Regional) and Executive Dean of Health Sciences at La Trobe University, and was the Head of the School of Public Health.⁴⁰ He was also the foundation director of the Australian Institute for Primary Care.⁴¹ In those roles, he was involved in a number of research studies and evaluation studies on alcohol and drug policy.⁴² Prof Swerissen is also a resident of Daylesford, splitting his time between there and Melbourne.⁴³ He has lived on and off in Daylesford for 25 years.⁴⁴ He is the Chair of the Daylesford Neighbourhood Centre and the Daylesford District Community News Association.⁴⁵

Dr Gregory Stewart

56. Dr Gregory Stewart was called as a witness by Ms Poke. He is a General Practitioner (GP) who has been a resident of the Daylesford area since 1989.⁴⁶ He practised as a GP obstetrician in Daylesford for about 20 years, first as a visiting medical officer at Daylesford Hospital, then as an owner at Springs Medical.⁴⁷ He retired from the latter in 2021 and now does locum GP work in small country towns in Victoria.⁴⁸ Among his qualifications is a Graduate Certificate in Addiction Studies from Flinders University.⁴⁹

³⁸ Hearing transcript, page 486, lines 18 to 22.

³⁹ Witness statement of Prof Hal Swerissen dated 21 May 2023, p. 1; Hearing transcript, page 618, line 7.

⁴⁰ Hearing transcript, page 618, lines 7 to 9.

⁴¹ Hearing transcript, page 618, lines 9 to 10.

⁴² Hearing transcript, page 618, lines 10 to 12.

⁴³ Hearing transcript, page 618, lines 38 to 39.

⁴⁴ Hearing transcript, page 618, line 39.

⁴⁵ Hearing transcript, page 618, lines 39 to 41.

⁴⁶ Hearing transcript, page 684, line 17; page 685, line 7.

⁴⁷ Hearing transcript, page 684, lines 16 to 17; page 685, lines 7 to 15; page 700, lines 29 to 32.

⁴⁸ Hearing transcript, page 685, lines 15 to 17.

⁴⁹ Hearing transcript, page 685, lines 21 to 22.

Ms Andrea Furness

57. Ms Andrea Furness was called as a witness by Ms Poke. She is the Principal of the Daylesford Dharma School, a role she has held for seven years.⁵⁰ The primary school currently has 33 students, but normally pre-Covid had 60 students aged 5-12.⁵¹

Dr Shelley Bowen

58. Dr Shelley Bowen was called as a witness by Ms Poke. She is a founder and the Chief Executive Officer of Health Futures Australia and a resident of the Hepburn Shire.⁵² She was previously the principal policy advisor for Chronic Disease Prevention and the Senior Public Health Advisor for the Victorian Health Department up to about 2017, for nine years overseeing the Victorian Government's policy and action on preventive health.⁵³ She is heavily involved in community activities in Lyonville and is a member of the Hepburn Shire Council's Municipal Public Health and Wellbeing Planning Working Group, and has participated in Council planning processes including the Municipal Public Health and Wellbeing Plan.⁵⁴

Ms Lynda Poke

59. Ms Lynda Poke is a Certified Practising Accountant who has lived in Daylesford and the Hepburn Shire for the last 27 years.⁵⁵ During that time, she has worked as General Manager of Springs Medical Group for eight years, the key provider of primary health care services in Daylesford, Trentham and Kyneton, from 2011 to 2019.⁵⁶ She was also the Chief Financial Officer of Health Futures Australia until 2022, and for the last four years has operated a local tourism enterprise.⁵⁷ She is also involved in several local organisations, including the Daylesford Neighbourhood Centre.⁵⁸

⁵⁰ Hearing transcript, page 724, lines 18 to 19; page 725, lines 41 to 42.

⁵¹ Hearing transcript, page 730, lines 22 to 23.

⁵² Hearing transcript, page 753, lines 36 to 37; page 755, lines 18 to 19.

⁵³ Hearing transcript, page 756, lines 2 to 5.

⁵⁴ Hearing transcript, page 754, lines 28 to 44.

⁵⁵ Hearing transcript, page 791, line 44; page 792, lines 20 to 21.

⁵⁶ Hearing transcript, page 792, lines 21 to 23.

⁵⁷ Hearing transcript, page 792, lines 36 to 37.

⁵⁸ Hearing transcript, page 792, lines 39 to 43.

Mr David Moore

60. Mr David Moore is an architect and a resident of the Hepburn Shire.⁵⁹ He has lived there since 2006, and has regularly spent time in Daylesford since 1976.⁶⁰ He is involved in various community groups in the area.⁶¹

Mr Mark Dickenson

61. Mr Mark Dickenson has been a resident of the Daylesford and Hepburn Springs areas for 19 years.⁶² He currently works part-time in the local area in hospitality.⁶³ His two children attended the Daylesford Preschool and Daylesford Primary School.⁶⁴

Ms Michelle Stephenson

62. Ms Michelle Stephenson is an Organisational Change Manager and has been a resident of Daylesford for 18 years.⁶⁵ She participates in several community organisations and activities.⁶⁶

Interested Persons

63. Several Interested Persons gave evidence at the hearing: Ms Debra Rauber, Mr Peter O'Mara, Mr David Ferguson, Mr Basil Eliades, Cr Lesley Hewitt, and Dr Jennifer Beacham.

Ms Debra Rauber

64. Ms Debra Rauber is a retired primary school teacher who has lived in Mount Franklin, 10 kilometres from Daylesford, for 42 years.⁶⁷ She taught at several schools, including Daylesford Primary School and Yandoit Primary School (an annexe of Daylesford Primary School), for 27 years in total.⁶⁸

⁵⁹ Hearing transcript, page 874, line 27; page 875, lines 28 to 29.

⁶⁰ Hearing transcript, page 876, lines 17 to 21.

⁶¹ Hearing transcript, page 876, lines 21 to 43.

⁶² Hearing transcript, page 967, lines 19 to 20.

⁶³ Hearing transcript, page 967, lines 22 to 23.

⁶⁴ Hearing transcript, page 967, lines 29 to 30.

⁶⁵ Witness statement of Ms Michelle Stephenson dated 21 May 2023, p. 1; Hearing transcript, page 1109, lines 18 to 19.

⁶⁶ Hearing transcript, page 1111, lines 12 to 16.

⁶⁷ Hearing transcript, page 363, line 5, lines 14 to 15; page 379, lines 43 to 44.

⁶⁸ Witness statement of Ms Debra Rauber dated 24 May 2023 (**Rauber Witness Statement**), p. 4.

Mr Peter O'Mara

65. Mr Peter O'Mara has lived and worked in the Daylesford area for 30 years.⁶⁹ His work has mostly been around young people (primarily 12-25 years of age) and he described himself as the lead community outreach worker.⁷⁰ He is the convenor of the Daylesford Community Park and, in that capacity, the author of the Daylesford Community Park Management Plan prepared for the Hepburn Shire Council and updated every two years.⁷¹ He said that this has given him a good overview of what happens in public spaces for young people in Daylesford.⁷²

Mr David Ferguson

66. Mr David Ferguson is a software engineer and resident of Daylesford, whose property is on the other side of Central Springs Road from the Premises, a few doors down.⁷³ He has lived in Daylesford for nine years.⁷⁴ He and his wife run a boutique accommodation business and he occasionally volunteered at the Daylesford Football Club.⁷⁵ Their children went to the local schools in Daylesford, and he participated in primary school activities when they were younger.⁷⁶

Mr Basil Eliades

67. Mr Basil Eliades has been a resident of Daylesford for almost 30 years.⁷⁷ He is an artist, author and distiller who owns a small business in the town.⁷⁸ His two adult children attended the preschool.⁷⁹

Cr Lesley Hewitt

68. Cr Lesley Hewitt is a retired social worker and a Hepburn Shire Councillor.⁸⁰ She has been a Councillor since November 2020, a ratepayer in the Shire since 1996 and a permanent resident since 2008.⁸¹ Her work history as a social worker has related to

⁶⁹ Hearing transcript, page 429, lines 32 to 33.

⁷⁰ Hearing transcript, page 429, line 33; page 431, lines 14 to 15; page 449, lines 38 to 39.

⁷¹ Hearing transcript, page 430, line 16, lines 21 to 24, line 40.

⁷² Hearing transcript, page 430, lines 26 to 29.

⁷³ Hearing transcript, page 994, line 30; page 995, lines 42 to 43.

⁷⁴ Hearing transcript, page 995, line 26.

⁷⁵ Hearing transcript, page 995, lines 34 to 36.

⁷⁶ Hearing transcript, page 995, lines 36 to 38.

⁷⁷ Hearing transcript, page 1028, line 7.

⁷⁸ Hearing transcript, page 1027, lines 18 to 19; page 1028, line 14.

⁷⁹ Hearing transcript, page 1028, lines 8 to 10.

⁸⁰ Hearing transcript, page 1070, line 6, line 29.

⁸¹ Hearing transcript, page 1071, lines 24 to 25.

dealing with interpersonal violence, including experience in child protection services and personal development.⁸² For six years, she was a director of Hepburn Health prior to its amalgamation to form Central Highlands Rural Health in 2016, including as Deputy Chair for 18 months prior to the amalgamation.⁸³ She also participates in a number of local community organisations, including as the Secretary and the Equestrian Coach at Riding for the Disabled Association of Victoria (**RDA**) in Daylesford since 2008.⁸⁴

Dr Jennifer Beacham

69. Dr Jennifer Beacham has been a resident of the Hepburn Shire for 34 years and is a tourism operator.⁸⁵ She and her husband run a guest house in Daylesford.⁸⁶ Dr Beacham has participated in a number of community organisations, including the Daylesford Neighbourhood Centre.⁸⁷

Licensee

70. The Licensee initially proposed to call two expert witnesses: Mr Chris Abery and Ms Colleen Peterson. Following the Commission's invitation on 15 September 2023 (see above at [29]), the Licensee called two further two lay witnesses: Mr James Scott-Mackenzie and Ms Rosie Prezioso. All four of the Licensee's witnesses gave oral evidence at the hearing.

Mr Chris Abery

71. Mr Chris Abery submitted a report dated 18 October 2022, entitled "Response to submissions", which was a response to submissions made by objectors to the Original Application, and was lodged before the Original Decision (**Aberly 2022 Report**). He submitted a second report dated 15 June 2023, entitled "Expert witness statement to the Victorian Liquor Commission" (**Aberly 2023 Report**).

⁸² Hearing transcript, page 1071, lines 26 to 28.

⁸³ Hearing transcript, page 1073, lines 41 to 44.

⁸⁴ Hearing transcript, page 1074, lines 1 to 8.

⁸⁵ Witness statement of Dr Jennifer Beacham dated 24 May 2023, p. 1; Hearing transcript, page 1140, line 45.

⁸⁶ Hearing transcript, page 1141, lines 5 to 7.

⁸⁷ Hearing transcript, page 1141, lines 7 to 16.

72. Mr Abery has over 35 years' experience in retail research, spatial analysis and modelling, and property market and project evaluation.⁸⁸ He is a Director of Deep End Services, which Mr Abery described as an applied spatial planning and economics firm.⁸⁹

Ms Colleen Peterson

73. Ms Colleen Peterson submitted a report entitled "Social Impact Assessment: Proposed Dan Murphy's Packaged Liquor: 63 Central Springs Road, Daylesford", dated 8 June 2023 (**Peterson Report**).
74. Ms Peterson is a qualified town planner who has practised town planning since 1992.⁹⁰ She is the Chief Executive of Ratio Consultants.⁹¹

Mr James Scott-Mackenzie

75. Mr James Scott-Mackenzie is the Business Development Manager for the Licensee.⁹² His role involves managing new packaged liquor applications; managing all liquor licence applications for the Licensee in Victoria, South Australia, the Northern Territory, Tasmania and southern New South Wales (including applications for new licences as well as applications to transfer, vary, redefine and alter existing licences); managing community and stakeholder engagement on liquor licence applications; and managing compliance with licensing laws and regulations.⁹³

Ms Rosie Prezioso

76. Ms Rosie Prezioso is the Dan Murphy's State Manager for Victoria and Tasmania, employed by the Licensee.⁹⁴

Submissions

77. The Internal Review Applicants and the Licensee submitted written submissions in May/June 2023, September 2023, and January 2024. They also made final oral submissions on 29 and 30 January.

⁸⁸ Abery 2022 Report, p. 51.

⁸⁹ Abery 2022 Report, p. 51; Hearing transcript, page 23, line 25.

⁹⁰ Peterson Report at [7].

⁹¹ Peterson Report at [6].

⁹² Witness Statement of James Alexander Scott-Mackenzie dated 25 September 2023 (**Scott-Mackenzie Witness Statement**) at [1.2].

⁹³ Scott-Mackenzie Witness Statement at [1.3].

⁹⁴ Witness Statement of Rosie Antonietta Prezioso dated 26 September 2023 (**Prezioso Witness Statement**) at [1.1]; Hearing transcript, page 1401, lines 27 to 33.

Council

78. The Council submitted three sets of written submissions. The first was prepared by Russell Kennedy Lawyers, dated 31 May 2023 (**Council May Submissions**). Subsequent to the directions hearing held on 27 June 2023, that firm ceased to act for the Council, which instructed Mr Jason Kane by direct brief. Mr Kane submitted the second and third sets of submissions on behalf of the Council, dated respectively 25 September 2023 (**Council September Submissions**) and 15 January 2024 (**Council January Submissions**).
79. The Council May Submissions set out some of the background to the planning process that preceded the Original Application.⁹⁵ It provided demographic information, identified sensitive use facilities in the community, and identified liquor licences in Daylesford.⁹⁶ The Council submitted that the granting of the Licence would be detrimental to the amenity of the area and that there is a real potential that the granting of the Licence would be conducive to or encourage the misuse or abuse of alcohol.⁹⁷
80. The Council September Submissions included a submission that there is an evidentiary onus and burden on the Licensee in this application to demonstrate that the proposed packaged liquor outlet will not result in harm through the misuse and abuse of alcohol, and that, as the applicant for the packaged liquor Licence, the evidentiary burden to satisfy these tests rests with the Licensee.⁹⁸ The Commission does not accept that there is an onus on a licence applicant as asserted by the Council.
81. The Council also referred to the Second Reading Speech for the amendment to the definition of harm:

The government commenced a review of the Act in November 2016. This review was divided into two phases. The first phase resulted in the Liquor and Gambling Legislation Amendment Act 2018, which introduced several important amendments that strengthened the harm minimisation measures in the Act, whilst also cutting red tape.

The second phase of the review has considered a range of more complicated matters, including the extent to which liquor regulation can play a part in reducing family violence. During this, the government undertook extensive consultation with industry, health, community and family violence stakeholders on the reform proposals. The outcomes of the second phase of the review will be implemented in this Bill.

⁹⁵ Council May Submissions at [7.1]-[7.12].

⁹⁶ Council May Submissions at [9.1]-[11.2].

⁹⁷ Council May Submissions at [12.12], [12.17].

⁹⁸ Council September Submissions at [43]-[44]. See also Council January Submissions at [37]; Hearing transcript, page 1582, lines 29 to 31.

I now turn to the provisions of the Bill before the House.

The Bill will introduce significant amendments to ensure that the Act is effective in minimising harm and supports a responsible industry.

The primary object of the Act is to minimise harm from the misuse and abuse of alcohol. However, harm is not currently defined in the Act. The Bill amends the Act to introduce a definition of harm. This definition will provide greater clarity and certainty for the regulator, the Victorian Commission for Gambling and Liquor Regulation (VCGLR), which must consider the objects of the Act in its decisions. The definition will include family violence and other community level harms, including injury and property damage. Including family violence in the definition of harm is an important measure in acting upon the recommendation of the Royal Commission into Family Violence that the review consider family violence and alcohol-related harms, and confirms its relevance in relation to liquor regulation for the VCGLR and the community.⁹⁹

82. The Commission notes the emphasis on community-level harms, which accommodates evidence relating to the relevant community, including input from the relevant community itself. Such evidence was a feature of the hearing in this matter.
83. The Council addressed the issue of the density of liquor outlets.¹⁰⁰ It submitted that there is a genuine risk that the proposed Dan Murphy's will increase family violence within the Hepburn Shire through: the misuse and abuse of alcohol; the concentration and density of packaged liquor outlets within Daylesford; the greater density of packaged liquor outlets will increase the risk of higher levels of alcohol consumption, misuse of alcohol, anti-social behaviour, and potentially an increase in family violence; the convenience and accessibility of alcohol that Dan Murphy's will offer to the community, including discounted and cheap alcohol; and the proposed hours of operation.¹⁰¹ The Council submitted that there is a tipping point where a small regional town such as Daylesford is not suitable for another packaged liquor outlet, and that the approval of a fourth packaged liquor outlet in this small town will result in a saturation of these outlets within Daylesford.¹⁰² In these circumstances, the Council submitted, it is the LCR Act's expectation that a liquor licence for the Dan Murphy's should not issue.¹⁰³
84. The Council also addressed the potential for harm to minors, again submitting that there is an evidentiary burden on the Licensee to establish that such harm will not result from

⁹⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 23 June 2021, 2310 (Melissa Horne, Minister for Gaming and Liquor Regulation); Victoria, *Parliamentary Debates*, Legislative Council, 14 September 2021, 3105-06 (Jaala Pulford). See Council September Submissions at [48]. See also Council January Submissions at [14].

¹⁰⁰ Council September Submissions at [49]-[54]. See also Council January Submissions at [49], [72]-[73].

¹⁰¹ Council September Submissions at [52].

¹⁰² Council September Submissions at [53].

¹⁰³ Council September Submissions at [54].

the proposed packaged liquor outlet.¹⁰⁴ This was said to arise from the location in a “family friendly precinct” containing sensitive community facilities that are heavily frequented by families, teenagers and children every day.¹⁰⁵ The Council submitted that, due to its proposed location, young people will be directly exposed to the Dan Murphy’s, which could increase positive beliefs about alcohol and promote underage drinking.¹⁰⁶ Such an outcome was said to be inconsistent with the LCR Act’s focus of harm minimisation, and the objective of encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol.¹⁰⁷ The Council also submitted that the location of the Premises is inconsistent with the objective of minimising harm by encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol, through a risk of impulsive purchasing of alcohol by parents and other adults who attend this area each day.¹⁰⁸

85. The Council in its January Submissions maintained its earlier September Submissions.¹⁰⁹ It also submitted that, in accordance with *Kordister* at [17], the Commission must assemble all the material before it and conduct an assessment of net community benefit.¹¹⁰ The Council submitted that:

based on all the material now before it, the Commission must conclude that:

- a. Daylesford is [a] vulnerable community, with vulnerable groups within the community.*
- b. In the context of Daylesford, the Dan Murphy’s is a high-risk application that will greatly increase the availability of packaged liquor and the risk of alcohol related harm.*
- c. The Dan Murphy’s will facilitate greater access to cheap packaged liquor in an extremely convenient location. There is a real risk that a change in price, and greater competition between packaged liquor outlets in Daylesford, will result in an increase in the consumption of alcohol. This in turn will increase the risk of alcohol related harm and the risking [sic] drinking of alcohol. Accordingly, this application is not conducive to minimising harm, but rather is conducive to encouraging alcohol related harm.*
- d. The application does not generate a net community benefit. The many negative impacts that the Dan Murphy’s will generate is [sic] not outweighed by the generic benefit of providing an increase in the availability of packaged liquor and the cheaper pricing of liquor.*

¹⁰⁴ Council September Submissions at [55]. See also Council January Submissions at [52]-[53].

¹⁰⁵ Council September Submissions at [57]-[58]. See also Council January Submissions at [74].

¹⁰⁶ Council September Submissions at [63]. See also Council January Submissions at [79].

¹⁰⁷ Council September Submissions at [63]. See also Council January Submissions at [79].

¹⁰⁸ Council September Submissions at [65]-[68].

¹⁰⁹ Council January Submissions at [1].

¹¹⁰ Council January Submissions at [7], [63]-[79].

e. *The proposed Dan Murphy's is fundamentally inconsistent with the fundamental objective of the Act being harm minimisation.*

f. *Dan Murphy's has failed to call any evidence regarding the relationship between alcohol supply and family violence. The consideration of family violence is a fundamental component of the definition of harm and a key plank of the Victorian Government's reform to the Act.*

g. *A Liquor Licence should not issue.*¹¹¹

86. The Council quoted from the reasons of Tate JA in *Kordister* at [152], [188], [191], [198] in referring to the concept of harm minimisation.¹¹²
87. The Council anticipated criticism that the Internal Review Applicants' evidence was not independent or was not based on relevant expertise, which it submitted would be an unfair criticism.¹¹³ In the Council's submission, all witnesses, including those called by the Licensee, made appropriate concessions when required to do so and were not evasive in their answers.¹¹⁴ Many of the Internal Review Applicants were said to be highly qualified and had particular expertise in their relevant field: Prof Swerissen (Public Health), Ms Poke (Medical), Dr Stewart (Medical), Mr O'Mara (Youth Worker/Educator), Ms Furness (Education) and Cr Hewitt (Domestic Violence).¹¹⁵
88. The Council described as a critical shortcoming that neither the Licensee, nor its expert witnesses (Mr Abery and Ms Peterson), undertook any consultation with local stakeholders or the community.¹¹⁶ It referred to the recommendation of the Darwin Independent Panel Review (IPR),¹¹⁷ with which it submitted the lack of any consultation was completely at odds:

*That the Woolworths Group [of which the Licensee was formerly part] takes a more inclusive approach to identify, engage and listen to a wider range of stakeholders concerned with the impacts of new proposals – particularly, but not necessarily exclusively, when it comes to the sale of alcohol in communities with a strong First Nations presence. In this respect, the Panel recommends that Woolworths Group takes steps to provide multiple direct and indirect channels for stakeholder engagement.*¹¹⁸

¹¹¹ Council January Submissions at [8] (emphasis in original).

¹¹² Council January Submissions at [10]-[12]. The passage identified by the Council as emanating from Tate JA's reasons at [152] was in fact a quotation by her Honour from the reasons of the judge below in that case: see *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207; (2011) 34 VAR 293 at [271].

¹¹³ Council January Submissions at [23].

¹¹⁴ Council January Submissions at [23].

¹¹⁵ Council January Submissions at [23].

¹¹⁶ Council January Submissions at [38]-[40].

¹¹⁷ Council January Submissions at [41]-[42].

¹¹⁸ *Independent Panel Review into the Proposed Dan Murphy's Development in Darwin* (28 April 2021), p.132.

89. The Council also referred to an internal Governance Committee risk assessment provided by the Licensee to the Commission, dated 7 October 2021, which contained the following executive summary:

*Daylesford is a tourist town known for its natural mineral springs, forestry flora and fauna. ~50% of the residents are in the mature age group. Daylesford forms part of the Hepburn LGA which covers a vast area in central Victoria just over an hour from Melbourne. A recent community satisfaction survey released by the Hepburn Shire specifically identifies greater consultation in planning and development are areas of critical importance to the community. Given the views of the community in a tourist town, coupled with the high licence density of this type, it's recommended that the situation be monitored off the back of any feedback from the community during the application process.*¹¹⁹

90. The Council submitted that this risk assessment was significant because it recognised that around 50% of the residents of Daylesford are in the mature age group; it acknowledged that greater consultation in planning and development are areas of critical importance to the community, and it acknowledged that Daylesford has a high licence density of this type.¹²⁰ The Council referred to people over the age of 65 years being a priority population group at risk of harmful alcohol consumption under the *National Alcohol Strategy 2019-2028* prepared by the Commonwealth Department of Health, which was addressed by Ms Peterson in her report.¹²¹

Cr Jennifer Bray

91. Cr Bray concluded her final written submissions (**Bray January Submissions**) as follows:

*I submit that the vulnerabilities inherent in this community, the increased density this proposal represents, the store policies of cheaper prices and convenience, the choice of location close to a kindergarten, primary school, swimming pool and school bus stop, will likely increase the risk of harm to this community, such as underage drinking, family violence, and an early propensity to alcohol consumption for young children exposed to alcohol on a daily basis for many years.*¹²²

92. Cr Bray addressed in her final oral submissions the issue of whether there is an onus of proof on an applicant under the LCR Act. She submitted that while the LCR Act does not explicitly make a statement about onus of proof, it is implicit, based on the objects of the LCR Act.¹²³ She submitted that the applicant must present a case that would allow the Commission to assess those criteria (the objects).¹²⁴ As with the Council's

¹¹⁹ Endeavour Group, *PCM ESG Analysis - DM Daylesford (Vic)* (7 October 2021).

¹²⁰ Council January Submissions at [44].

¹²¹ Council January Submissions at [44], [54]. See Peterson Report at [59]-[61].

¹²² Bray January Submissions, p.9. See also Hearing transcript, page 1598, lines 3 to 9.

¹²³ Hearing transcript, page 1597, lines 9 to 13.

¹²⁴ Hearing transcript, page 1597, lines 13 to 15.

submissions in this respect, the Commission does not accept that there is an onus on a licence applicant.

93. Cr Bray echoed the Council's submissions in submitting that the Commission must weigh up if the net community benefits are outweighed by the negative impacts of this proposal and whether these negative impacts will pose a likely risk of harm to members of this community, now and in the future.¹²⁵

Ms Lynda Poke

94. Ms Poke outlined five key points in her final written submissions (**Poke January Submissions**): for the Daylesford town and community, establishing a packaged liquor outlet to be known as Dan Murphy's in Daylesford, with a retail floor space of 627 square metres, is a "game changer" in the context of harm;¹²⁶ the granting of the Daylesford Dan Murphy packaged liquor Licence will increase packaged liquor density in an already saturated liquor market, especially for packaged liquor;¹²⁷ the prominent nature of the proposed site for children, the increased availability of low cost alcohol at the site, and the site's lack of integration with the community shopping precinct increases the likelihood of underage drinking in Daylesford and Hepburn Springs;¹²⁸ that Daylesford is a vulnerable community;¹²⁹ and that there is a lack of access to services, in that there is inadequate community support and health and medical services.¹³⁰
95. As to the first of these key points, she referred to the nature of the proposed outlet as what she called a "big box packaged liquor outlet" as a "game changer" for the Daylesford town and community in the context of harm.¹³¹ In this regard, Ms Poke criticised the evidence of Mr Abery and Ms Peterson for, respectively, a lack of regard for the local demographics and situation, and a failure adequately to analyse the local environment and situation.¹³² She referred to the fact that the Premises would not be a large packaged liquor outlet under the LCR Act, before continuing:

For a population the size of Daylesford, the proposed Dan Murphy's at 626.66 square metres, is by comparison, a large packaged liquor outlet (LPLO) in a Daylesford context.

¹²⁵ Bray January Submissions, p.9. See also Hearing transcript, page 1597, lines 30 to 33.

¹²⁶ Poke January Submissions at [1.2].

¹²⁷ Poke January Submissions at [2.1].

¹²⁸ Poke January Submissions at [3.2].

¹²⁹ Poke January Submissions at [4.1]-[4.2].

¹³⁰ Poke January Submissions at [5.1]-[5.4].

¹³¹ Poke January Submissions at [1.2].

¹³² Poke January Submissions at [1.8]-[1.9]. See also Hearing transcript, page 1602, line 11 to page 1603, line 19.

*The combined size of the floor space of the existing packaged liquor outlets (Cellarbrations, Liquorland and Blakes Grocers bottle shop) would be less than 50% of this new development. Perhaps policy makers and legislators could be forgiven for not foreseeing the impact of a new development in the context of a small rural town with such a small population.*¹³³

Mr Mark Dickenson

96. Mr Dickenson concluded his submissions (**Dickenson January Submissions**) in the following way:

*... this appeal revolves around the definition of harm. ... it is impossible for any discount liquor outlet to be located on a corner facing a kindergarten, primary school, swimming pool and bus depot, and to minimise harm. There is no opportunity to reduce risky drinking in a location that caters to families, young adults and public transport users. The introduction of a major discount liquor outlet in a town of less than 4,000 people, and placement of this development in an area primarily used by young locals, in fact incites risky drinking and causes harm.*¹³⁴

Ms Michelle Stephenson

97. Ms Stephenson summarised her final written submissions (**Stephenson January Submissions**) as follows:

It is not in our community's interest whatsoever to have Dan Murphy's liquor outlet establish and operating in our small town. There is no evidence to support there are any benefits that will be brought to our community as a result.

Through my personal observations and lived experience in my 18 years living in Daylesford, I have witnessed the detrimental impacts to people's lives as a result of alcohol abuse and misuse. Adding another large packaged liquor outlet will only add fuel to the fire.

Our vulnerable members of our community will be put at higher risk as there no outreach support services available in our community. As a result, Dan Murphy's will have a significant negative impact on the wellbeing of our community.

*The Commission's decision on this case may not directly improve the outcomes of the individual's stories I have shared but if the license is revoked it can contribute to broader solution rather than contribute to a growing problem.*¹³⁵

Mr David Moore

98. Mr Moore submitted (**Moore December Submissions**) that too much of Ms Peterson's evidence relied on what can be gathered from the desktop, and not enough of it is properly "road-tested in the field".¹³⁶ The Commission acknowledges that there are

¹³³ Poke January Submissions at [1.11].

¹³⁴ Dickenson January Submissions at [7] (emphasis in original). See also Hearing transcript, page 1608, lines 23 to 30.

¹³⁵ Stephenson January Submissions, p.4. See also Hearing transcript, page 1610, line 43 to page 1611, line 11.

¹³⁶ Moore December Submissions, p.6. See also Hearing transcript, page 1613, line 28 to page 1614, line 3.

limitations in relying on statistics, as they reflect what is occurring in a particular area at a particular point in time. Where evidence is available from persons with local knowledge, this offers potential utility beyond the limitations of statistical analysis. In this matter, such evidence was given by several persons. The Commission has carefully weighed both types of evidence in relation to the specific issues addressed.

Licensee

99. The Licensee lodged written submissions dated 18 October 2022, addressing objections to the Original Application that had been lodged before the Original Decision (**Licensee October Submissions**). It referred to the Abery 2022 Report.¹³⁷ It then outlined what it identified as the relevant objects of the LCR Act, making reference in this context to the new definition of harm in section 3.¹³⁸
100. The Licensee submitted that the objections, at their highest, merely suggest the possibility as a general proposition that the relevant alleged “problem” issue raised may be caused, or contributed to, by the granting of the application.¹³⁹ It submitted that that is an insufficient basis for refusing a licence application.¹⁴⁰ The Licensee also relied on its Responsible Service of Alcohol (**RSA**) initiatives.¹⁴¹ The Licensee addressed issues raised by the objections, including the “availability theory” (more supply, in larger bulk outlets, leads to more consumption); trading hours; “cheap liquor”; traffic; insufficient need for a further liquor outlet; and positive effects on amenity.¹⁴²
101. The Licensee submitted three sets of written submissions on the internal review applications, dated respectively 21 June 2023 (**Licensee June Submissions**), 26 September 2023 (**Licensee September Submissions**) and 15 January 2024 (**Licensee January Submissions**).¹⁴³

¹³⁷ Licensee October Submissions at [6]-[8].

¹³⁸ Licensee October Submissions at [11]-[12].

¹³⁹ Licensee October Submissions at [29].

¹⁴⁰ Licensee October Submissions at [29].

¹⁴¹ Licensee October Submissions at [33]-[40].

¹⁴² Licensee October Submissions at [41]-[60].

¹⁴³ In the Licensee June Submissions, the Licensee said it also relied on its earlier submissions, including those made in response to applications for a stay of the Original Decision. These appear to have little relevance to the issues for decision.

102. The Licensee in its June Submissions set out what it identified as the relevant legislative provisions.¹⁴⁴ It then quoted at length from various cases, including cases outlined above.¹⁴⁵
103. The Licensee in its June Submissions also addressed the planning process that preceded the Original Application, and set out conditions of the permit which it said addressed many of the amenity issues raised in the objections.¹⁴⁶
104. The Licensee addressed the Council May Submissions, including by criticising the Council for not calling evidence in the hearing – criticism that was repeated in the Licensee January Submissions and in its final oral submissions.¹⁴⁷
105. The Licensee addressed matters raised by the Internal Review Applicants and Interested Persons, including: whether Daylesford is more at risk of alcohol-related harm due to its demographic profile; whether Daylesford is a vulnerable community; whether Daylesford is more at risk of alcohol-related harm due to its socio-economic status; signage; underage drinking; whether the proposed location is appropriate; whether another packaged liquor licence would mean that harm would arise; Dan Murphy's as a corporate entity; tourism; and public consumption of liquor.¹⁴⁸
106. The Licensee in its September Submissions submitted that there is nothing in the limited changes to the objects of the LCR Act made by the *Liquor Control Reform Amendment Act 2021* (Vic) that imposed an onus of proof or any burden as compared with previous applications, citing authorities from the area of gaming regulation.¹⁴⁹
107. Similarly, the Licensee in its January Submissions, and in its final oral submissions, submitted that the changes made to the LCR Act by the *Liquor Control Reform Amendment Act 2021* (Vic) are subtle and minor and do not make any substantial change to the way the Commission should approach this Application as compared with previous applications.¹⁵⁰ The Licensee submitted that it bore no onus of proof and that it would be wrong to conclude that the Licensee is required to bring evidence beyond

¹⁴⁴ Licensee June Submissions at [25]-[30].

¹⁴⁵ Licensee June Submissions at [31]-[41].

¹⁴⁶ Licensee June Submissions at [42]-[50].

¹⁴⁷ Licensee June Submissions at [52]-[56]; Licensee January Submissions at [117]; Hearing transcript, page 1628, lines 30 to 35.

¹⁴⁸ Licensee June Submissions at [64]-[107].

¹⁴⁹ Licensee September Submissions at [12], citing *New Theme Pty Ltd v Victorian Casino and Gaming Authority* [2002] VSCA 80 at [67]; *Mount Alexander SC v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at [118]-[123].

¹⁵⁰ Licensee January Submissions at [11(a)]. See also Hearing transcript, page 1634, lines 1 to 5.

that required in the application.¹⁵¹ The Licensee submitted that the additional material brought before the Commission had provided further detail.¹⁵² As noted above, the Commission does not accept that there is an onus on a licence applicant.

108. The Licensee relied on its June Submissions and its September Submissions as to the appropriate approach to the application.¹⁵³ It quoted further extracts from case law, including case law outlined above.¹⁵⁴
109. The Licensee submitted that the appropriate approach is for the Commission to consider whether the Internal Review Applicants have proved that the affirmation of approval of the Licence will produce a change in the community which can be identified and is of sufficient magnitude to be said to be conducive to or encourage harm, and, if any are found, to weigh those findings in its decision-making.¹⁵⁵ Citing *Re Branbeau Pty Ltd and Victorian Commission of Gambling Regulation* [2005] VCAT 2606; (2005) 24 VAR 56, the Licensee submitted that the Commission should focus on the marginal impact of approval of the Application – not the impacts of drinking, liquor consumption or even packaged liquor consumption *per se* across the community – and to do otherwise would be to deprive the Licensee of approval on the basis of a level of risk accepted by the Government on behalf of the people of Victoria in permitting liquor to be freely available across the community.¹⁵⁶ The Licensee described its case as that, where assertions are based on mere supposition or represent mere possibilities, they should not be afforded significant weight, and not such as to cause the Commission not to affirm the Delegate’s decision to grant the Licence.¹⁵⁷
110. The Licensee submitted that certain categories of evidence should be weighed in order of reliability, with its independent expert evidence sitting atop a proposed hierarchy.¹⁵⁸ The Commission has exercised judgment as to the weight to be accorded to various items of evidence, including in light of the Commission’s assessment of the reliability of

¹⁵¹ Licensee January Submissions at [11(c)], [97], [100]. See also Hearing transcript, page 1634, lines 11 to 18.

¹⁵² Licensee January Submissions at [11(c)], [101].

¹⁵³ Licensee January Submissions at [23].

¹⁵⁴ Licensee January Submissions at [24], [51], [60], [61], [67], [78].

¹⁵⁵ Licensee January Submissions at [46].

¹⁵⁶ Licensee January Submissions at [49]. See also at [55].

¹⁵⁷ Licensee January Submissions at [77].

¹⁵⁸ Licensee January Submissions at [107].

particular evidence and whether it was tested, but it does not consider that the Licensee's suggested categorical hierarchy is apt.

111. The Licensee, relying on *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921 at [8]-[10], submitted that the only experts in the hearing who are independent are those called by the Licensee, who are both expert in their relevant fields and skilled in matters relevant to this Application.¹⁵⁹
112. The Licensee identified what it described as omissions in the evidence presented to the Commission: direct, specific and verifiable incidents of harm arising from the sale of packaged liquor in Daylesford; evidence from any person who expresses actual concern for their own personal well-being or that of close friends or family members; any independent expert witness qualified and briefed to support the propositions about density relied upon by the Council (or any other Internal Review Applicant) despite discussions having been conducted with Assoc Prof Michael Livingston, upon whose broad body of work much reliance appears to be placed; any evidence or expert evidence as to the economic or other impact (other than a newspaper report in a local publication, which is broadly consistent with Mr Abery's evidence); and any media, Council minutes or other material pre-dating the Original Application which suggests that there is an historical or disproportionate problem or vulnerability to alcohol within the community of Daylesford.¹⁶⁰
113. The Licensee in its January Submissions addressed Prof Swerissen's evidence, including his reliance on figures for alcohol consumption for the Daylesford SA2¹⁶¹ area and his explanation that his argument was not that Daylesford is particularly different from other parts of country Victoria, but rather that it has a higher than recommended alcohol consumption for lifetime risk at the moment.¹⁶² The Licensee submitted in this context that, if a situation exists across the Victorian community, there may be numerous policy interventions at a State or federal level which may assist, but it does not follow that licensing decision-making should be asked to shoulder that burden by requiring the Commission to refuse applications where there is a cohort of people said to be drinking

¹⁵⁹ Licensee January Submissions at [112]-[116].

¹⁶⁰ Licensee January Submissions at [132].

¹⁶¹ Statistical Area Level 2, as defined in the Australian Bureau of Statistics' *Australian Statistical Geography Standard (ASGS) Edition 3*.

¹⁶² Licensee January Submissions at [126].

more than the maximum limit by reference to average figures.¹⁶³ Similarly, in the context of family violence, the Licensee submitted that the Commission should not be drawn into State level policy interventions in making licensing decisions.¹⁶⁴

114. The Licensee submitted that there is no explicit need to achieve a net benefit, but that that does not preclude consideration of positive aspects which flow from the granting of the Licence.¹⁶⁵ These were said to include: increased consumer choice and product diversification; increased short-term (construction) and long-term employment opportunities; increased provision of landscaping opportunities along street frontages; provision of a vibrant commercial use on vacant land; development of vacant land at a cost of approximately \$7.5 million; and increased market competition in the form of potential for the provision of a new bottle shop to result in lower consumer prices for goods and services provided as retailers vie for customers.¹⁶⁶ The Licensee addressed in final oral submissions whether a test of “net community benefit” (as advocated by the Council) would be appropriate for the Commission to adopt, with reference to *Kordister* at [17]. The Licensee submitted that the relevant passage in that case referred to a concept of balancing the different objects within section 4(1)(a) of the LCR Act, and did not say that every application must produce a net community benefit.¹⁶⁷

Reasons for decision on review

Issues for determination on review

115. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision, and in turn grant or refuse the Original Application that is the subject of the Internal Review Applications, the Commission must consider the following key issues:
- (a) whether granting the Licence would be conducive to or encourage harm,¹⁶⁸ or contribute to minimising harm;¹⁶⁹

¹⁶³ Licensee January Submissions at [127].

¹⁶⁴ Licensee January Submissions at [163]. See also Hearing transcript, page 1653, lines 18 to 21.

¹⁶⁵ Licensee January Submissions at [284].

¹⁶⁶ Licensee January Submissions at [284].

¹⁶⁷ Hearing transcript, page 1645, lines 8 to 10.

¹⁶⁸ LCR Act, section 44(2)(b)(ii). The Commission notes that, in determining this matter, it has also considered each of the applicable grounds set out in section 44(2).

¹⁶⁹ LCR Act, sections 4(1)(a) and 172D(3).

- (b) whether granting the Licence would detract from or be detrimental to the amenity of the area in which the premises are situated;¹⁷⁰
- (c) whether granting the Licence would facilitate the development of a diversity of licensed facilities reflecting community expectations;¹⁷¹ and
- (d) whether granting the Licence would contribute to the responsible development of the liquor, licensed hospitality and live music industries.¹⁷²

116. These issues are discussed in turn.

Whether granting the Licence would be conducive to or encourage harm, or contribute to minimising harm

117. An application may be refused if granting it would be conducive to or encourage harm.¹⁷³ In addition, the Commission must exercise its discretion whether or not to grant a licence with regard to the objects of the LCR Act, particularly the primary object of harm minimisation.¹⁷⁴

118. The definition of “harm” in section 3(1) of the LCR Act is set out above. The Commission notes that it means harm arising from the misuse or abuse of alcohol, and expressly includes (but is not confined to) various forms of such harm as set out in paragraphs (a) to (c). The prospect that the Licence would be conducive to or encourage harm as so defined was the subject of evidence and submissions throughout the hearing.

119. Ultimately, the Commission finds that granting the Licence would be conducive to or encourage harm, specifically to minors. This means that a ground for refusal is made out. The Commission’s reasons for this are explained below.

Harm to minors

Introduction

120. Paragraph (a) of the definition of “harm” confirms that harm arising from the misuse and abuse of alcohol includes such harm to minors.

121. There was evidence that there is a problem with underage drinking in Daylesford.

¹⁷⁰ LCR Act, section 44(2)(b)(i).

¹⁷¹ LCR Act, sections 4(1)(b) and 172D(3).

¹⁷² LCR Act, sections 4(1)(c) and 172D(3). The object relating to sexually explicit entertainment in section 4(1)(d) is not relevant to these Internal Review Applications.

¹⁷³ LCR Act, section 44(2)(b)(ii).

¹⁷⁴ LCR Act, sections 4 and 172D(3).

122. A Youth Census Survey conducted by the Council in December 2020 (**Youth Census Survey**) recorded that 121 of 135 15-19 year olds surveyed (90%) said that they had used alcohol before.¹⁷⁵ The sample size of the survey relative to the total population of 15-19 year olds was 18.65%.¹⁷⁶
123. Accordingly, the Youth Census Survey covered “youths” who are not “minors” within the meaning of the LCR Act. However, only 15 of the participants in the survey were aged 18 years or over.¹⁷⁷ The figures for 15-17 year olds were 106 of 120 (88%).¹⁷⁸
124. By way of comparison, the national Australian Secondary Students’ Alcohol and Drug (**ASSAD**) survey for 2017 found that 66% of students aged 12-17 years reported having tried alcohol.¹⁷⁹ No percentage figure was specifically given for the age group of 15-17 years, but the percentages for the individual age groups within that range were 74% of 15 year olds, 81% of 16 year olds and 85% of 17 year olds.¹⁸⁰ It appears, therefore, that there is a higher incidence of underage drinking in Daylesford – at least for the 15-17 year old demographic – than the national average.
125. The Youth Census Survey also recorded that 28% of 15-19 year olds, and 30% of 15-17 year olds, selected “Reducing harmful alcohol and drug use” as one of their top three areas for the Council to focus on to improve health and wellbeing across the Hepburn Shire.¹⁸¹
126. The Commission received other evidence, including of an anecdotal nature, as to underage drinking in Daylesford.
127. Mr O’Mara referred to the results of the Youth Census Survey, saying his work experience corroborates these results, noting that there is a high demand by local youth and families for youth alcohol reduction work and support strategies.¹⁸²

¹⁷⁵ Youth Census Survey, p.1. See Response of Cr Bray to Commission’s request for information and submissions dated 25 September 2023 (**Bray Response**) at [25]; Hearing transcript, page 185, lines 36 to 38.

¹⁷⁶ Youth Census Survey, p.1.

¹⁷⁷ Youth Census Survey, p.1.

¹⁷⁸ Youth Census Survey, p.1; Hearing transcript, page 528, line 39 to page 531, line 43.

¹⁷⁹ Cancer Council Victoria, *Australian Secondary School Students’ Use of Tobacco, Alcohol, Over-the-Counter Drugs, and Illicit Substances: Second Edition* [ASSAD 2017 Statistics and Trends] (July 2020), p.48. See Bray Response at [30].

¹⁸⁰ Cancer Council Victoria, *Australian Secondary School Students’ Use of Tobacco, Alcohol, Over-the-Counter Drugs, and Illicit Substances: Second Edition* [ASSAD 2017 Statistics and Trends] (July 2020), p.48.

¹⁸¹ Youth Census Survey, p.2. See Bray Response at [28]; Hearing transcript, page 501, lines 30 to 34.

¹⁸² Hearing transcript, page 432, lines 35 to 39.

128. Cr Bray estimated that between 20% and 30% of 14-17 year olds might be drinking occasionally or frequently, noting that any drinking is a problem for minors.¹⁸³
129. There is one secondary school located in Daylesford: Daylesford College.¹⁸⁴ The student population in 2023 was 441 students aged 12-18 years.¹⁸⁵ Cr Bray gave evidence that she had conducted interviews with seven to 10 secondary school students, aged 15-16 years, attending Daylesford College.¹⁸⁶
130. Based on the information she gathered from these interviews, Cr Bray gave evidence that students bring alcohol into classrooms at school; and that there is drinking with friends on weekends and after school; and at parties on the weekend.¹⁸⁷ She referred to Daylesford College students bragging about their drinking and other risky behaviour aimed at getting very drunk very quickly and doing dangerous activities while drunk for thrill-seeking, including: driving; having sex; climbing up structures or on buildings; and riding kangaroos and other “dares” or pranks.¹⁸⁸
131. Cr Bray gave evidence based on her interviews with Daylesford College students that they obtained alcohol from their parents’ supply; by an older person buying it for them; and by buying online with an older person picking it up.¹⁸⁹ Cr Bray elaborated on this, claiming that regulation at the point of sale is not a rigorous enough safeguard to prevent minors from accessing alcohol.¹⁹⁰ She said that underage drinkers are not presenting at the point of sale to purchase liquor, yet they are still obtaining liquor.¹⁹¹ This was said to be shown by the ASSAD survey.¹⁹²
132. Mr Dickenson said that he was aware that there is a culture of boasting of drinking, the bringing of flasks into the school and running off to the toilets to drink.¹⁹³

¹⁸³ Hearing transcript, page 599, line 14.

¹⁸⁴ Bray Response at [33]; Hearing transcript, page 503, line 27.

¹⁸⁵ Bray Response at [11]; Hearing transcript, page 503, lines 22 to 23, lines 26 to 27.

¹⁸⁶ Bray Response at [32]-[42]; Hearing transcript, page 503, line 14 to page 504, line 21; page 593, lines 15 to 45; page 597, lines 25 to 29.

¹⁸⁷ Bray Response at [36]; Hearing transcript, page 503, lines 39 to 42.

¹⁸⁸ Bray Response at [38]; Hearing transcript, page 504, lines 3 to 7.

¹⁸⁹ Bray Response at [41]; Hearing transcript, page 504, lines 13 to 15.

¹⁹⁰ Bray Response at [57].

¹⁹¹ Bray Response at [57].

¹⁹² Bray Response at [56].

¹⁹³ Hearing transcript, page 973, lines 26 to 28; page 988, lines 30 to 43. See also Response of Mr Dickenson to Commission’s request for information and submissions received on 26 September 2023 (**Dickenson Response**), p.2.

133. The Licensee in its January Submissions submitted that no weight should attach to “survey evidence engaged in by hearing participants” including Cr Bray.¹⁹⁴ It submitted that the notion that children would tell their friend’s mother who is a Councillor that others were using alcohol irresponsibly but they themselves were not, gives no reliable understanding of the basis of these assertions or whether they are fairly or properly based.¹⁹⁵ However, the Commission considers that it is unrealistic to expect secondary school students to give evidence to the Commission in a hearing of internal review applications.
134. The Commission exercises caution with respect to the anecdotal (and “hearsay”) evidence referred to above, notwithstanding that the rules of evidence do not apply.
135. The Commission does not regard the anecdotal evidence as reliable as to the precise proportion of minors who have drunk, or who drink, in Daylesford. In respect of that particular issue, the Youth Census Survey is more reliable. Nevertheless, the Commission considers that, on the whole, the anecdotal and “hearsay” evidence is of some value in understanding underage drinking in Daylesford, noting (in particular) the obvious difficulties in obtaining direct evidence from minors who may engage in underage drinking.
136. Cr Bray submitted a letter from the Principal of Daylesford College, Mr Steve MacPhail, in which he said that the school is investing significant time and resources into addressing student wellbeing related to alcohol (mis)use.¹⁹⁶ He added that the school is actively engaged in implementing educational programs and awareness campaigns to promote responsible behaviour and discourage alcohol consumption among students.
137. Cr Bray identified various locations as ones to which Daylesford College students regularly walk after school, where they socialise, meet friends and family or wait for a ride home. These include the swimming pool, the bus stop, the Coles supermarket and the public library on the northeastern corner of Bridport and Albert Streets.¹⁹⁷ She estimated that around 200 adolescents would be exposed to the Premises on a weekly basis.¹⁹⁸ The Commission regards the supermarket and the library as too far from the

¹⁹⁴ Licensee January Submissions at [237].

¹⁹⁵ Licensee January Submissions at [237].

¹⁹⁶ Letter from Steve MacPhail, Principal, Daylesford College dated 22 May 2023. See Hearing transcript, page 502, line 12 to page 503, line 4.

¹⁹⁷ Bray Response at [12]; Hearing transcript, page 510, lines 9 to 24.

¹⁹⁸ Hearing transcript, page 512, lines 27 to 28.

Premises to be causes for concern. However, the swimming pool and the bus stop are both directly opposite the Premises, and possible risks arising from their proximity to the Premises therefore require careful consideration.

138. Reproduced below is a map submitted by Cr Bray showing the location of the Premises, the swimming pool and the bus stop.



139. Ms Peterson, who was called by the Licensee, referred to the 90% figure from the Youth Census Survey in describing the Hepburn Shire’s “ACE Youth Development Strategy”.¹⁹⁹ Ms Peterson’s firm (and King & Wood Mallesons, and the Licensee) was unable to find any other data on underage drinking in Daylesford or the Local Government Area (LGA).²⁰⁰ Ms Peterson noted that the Hepburn Shire’s strategy document indicated that reasons for youth engagement in underage drinking included a lack of entertainment, boredom and stress relief.²⁰¹ Cr Bray also gave evidence of a lack

¹⁹⁹ Peterson Report at [111]-[112]. See Hepburn Shire Council ACE [Advocate Celebrate Elevate] Youth Development Strategy (undated) (**Youth Development Strategy**).

²⁰⁰ Email communication from Mr Murray Kellock (King & Wood Mallesons) to Commission dated 26 September (**Kellock Email**).

²⁰¹ Peterson Report at [113]. See Youth Development Strategy, p.11.

of recreational activities for children and teenagers in Daylesford and the Hepburn Shire,²⁰² as did Dr Beacham.²⁰³

140. As Ms Peterson stated in evidence, teenagers and young adults are a group that is at risk of alcohol-related harm.²⁰⁴ The Australian Guidelines to Reduce Health Risks from Drinking Alcohol released by the National Health and Medical Research Council, informed by a comprehensive evaluation of scientific evidence, states: “[t]here is no clear ‘safe’ level of alcohol consumption for children and people under 18 years of age. This is because of the increased risks of harm from alcohol for young people, including from injury and potential adverse effects on brain development.”²⁰⁵ “The harms of concern include injury, alcohol poisoning, risk taking, altered brain development and the potential for developing harmful drinking patterns later in life.”²⁰⁶
141. In particular, Ms Peterson referred to evidence that alcohol is a contributing factor in 13% of deaths amongst 14-17 year olds.²⁰⁷ She said that the risk factors for teenagers are to do with exploring and pushing boundaries around alcohol consumption and cultural values and peer pressure.²⁰⁸
142. Despite this evidence, the Commission understood Ms Peterson to suggest that the Commission, in making its decision, should put less weight on any risks to teenagers arising from the proposed Premises on the basis of the relatively small proportion of teenagers in the Daylesford community.²⁰⁹ The Commission does not accept this. The number of minors in Daylesford is not trivial, irrespective of whether the proportion of minors in Daylesford is relatively small compared with other communities.²¹⁰ And, as noted above, the harm that may be caused to minors by consuming alcohol is significant.

²⁰² Hearing transcript, page 499, lines 20 to 25.

²⁰³ Hearing transcript, page 1147, lines 18 to 23.

²⁰⁴ Hearing transcript, page 173, line 1.

²⁰⁵ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (2020), p.41.

²⁰⁶ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (2020), p.42.

²⁰⁷ Hearing transcript, page 173, lines 3 to 4.

²⁰⁸ Hearing transcript, page 254, lines 6 to 9.

²⁰⁹ Hearing transcript, page 311, lines 15 to 17.

²¹⁰ See Peterson Report at [72], Fig. 5.1.

“Generational” drinking spots

143. Cr Bray was one of several witnesses to give evidence of underage drinking occurring at specific locations around Daylesford.²¹¹ She described students drinking at night at Lake Daylesford and other parks and outdoor natural settings.²¹² In particular, she identified a track down from Central Springs Road to the lake, and various spots around the lake that are not easily viewed where groups of young people meet.²¹³ Some of those young people are underage and some are older; alcohol is a part of those group gatherings.²¹⁴
144. Mr O’Mara identified Lake Daylesford, the Daylesford Skate Park and Cornish Hill Nature Reserve as the areas of highest incidence of public underage drinking.²¹⁵ All these sites were said to have undisclosed walking pathways and hidden nature-based sight lines from the Premises; once a young person leaves the Premises, they could be “unseen” within 50 metres.²¹⁶ Mr O’Mara characterised the Premises as, in this sense, having a “fringe” element when compared with the other packaged liquor outlets in Daylesford.²¹⁷ The Licensee itself noted, in its June Submissions, the “relative isolation” of the subject site from the tourist centre of town (compared with Foxy’s Liquor/Cellarbrations and Liquorland).²¹⁸
145. Based on his local knowledge and observations, Mr O’Mara said that he believed that young people will seek out outlets which best suit their needs, being quick and unsighted access to the locations identified above, which he described as “generational” drinking spots.²¹⁹ He said that he had observed young people drinking at these sites.²²⁰

²¹¹ Mara Ripani, who submitted a letter on 25 May 2023 but did not appear as a witness, described her prime objection as location on the basis that the Premises is a one-minute walk from the swimming pool; five-minute walk to Lake Daylesford; and 10-minute walk to Daylesford Skate Park. She described these as prominent areas where young adults “hang out”, most especially in summer: Letter from Ms Mara Ripani received on 25 May 2023, p.1. She did not refer to underage drinking at these sites, but her identification of them as gathering places for young adults is relevant to the question of secondary supply in light of other witnesses’ evidence.

²¹² Bray Response at [36]; Hearing transcript, page 503, lines 43 to 44.

²¹³ Hearing transcript, page 599, lines 36 to 39.

²¹⁴ Hearing transcript, page 599, lines 39 to 40, line 44.

²¹⁵ Hearing transcript, page 433, lines 41 to 43.

²¹⁶ Hearing transcript, page 433, line 43 to page 434, line 1.

²¹⁷ Hearing transcript, page 434, line 1. See also Hearing transcript, page 442, line 45 to page 445, line 18.

²¹⁸ Licensee June Submissions at [102(b)].

²¹⁹ Hearing transcript, page 434, lines 2 to 4.

²²⁰ Hearing transcript, page 454, lines 20 to 24.

146. Mr O'Mara said that work had been done on the sight lines at Daylesford Lake and Daylesford Community Park, but was not aware of any collective project to minimise the risk of harm from alcohol at those places.²²¹ He said that the forest or bushland surrounding Daylesford provides great opportunity close to the township for underage people to consume alcohol.²²²

147. The Licensee in its January Submissions criticised Mr O'Mara's evidence:

Mr O'Mara's evidence was heartfelt but ultimately did not provide a solid information on which the Commission can rely. He says there are some people who drink near the lake and in other identified places where liquor consuming is not permitted. There are some disenfranchised young people. They can obtain alcohol now and he sees no benefit to them in having a packaged liquor outlet closer to Lake Daylesford. His evidence was passionate but lacked key details such as how many people (he was unable to answer this question despite being asked it several time [sic] see transcript at page 453, line 35 and following). He was unclear as to whether he really expected further alcohol to be purchased. Realistically, he acknowledged that there were other places where liquor could currently be purchased and made no claims that there would be additional alcohol purchases – just that some added level of convenience to (which coming from his perspective) he ascribed no benefit. He could give no evidence as to whether this was different to other communities.²²³

148. The Licensee also submitted that

The evidence of Mr O'Mara provides little if any evidence on which the Commission could conclude that the youth of Daylesford are particularly at risk. There will be some who drink and some who engage in risky behaviour, and Mr O'Mara has identified that there are some in Daylesford. He has not been able to provide any evidence as to how many or how the presence of Dan Murphy's would realistically affect them (aside from slightly shortening a short walk for those attending the lake).²²⁴

149. The Commission accepts that Mr O'Mara did not provide specific evidence about precisely how many minors drink at locations such as Lake Daylesford. Nevertheless, for the reasons outlined above, including the difficulties in the Commission receiving direct evidence from minors who may engage in underage drinking, the Commission considers that his evidence as to underage drinking at such locations is useful.

150. Moreover, the Commission considers that Mr O'Mara's point about the location of the proposed Premises (as distinct from existing packaged liquor outlets in Daylesford), and in particular the undisclosed walking pathways and hidden nature-based sight lines, to be significant. On the view conducted on 13 December 2023, the Commission observed

²²¹ Hearing transcript, page 471, lines 9 to 15.

²²² Hearing transcript, page 471, line 44 to page 472, line 1.

²²³ Licensee January Submissions at [50], fn 31. See also Hearing transcript, page 1662, line 25 to page 1663, line 17.

²²⁴ Licensee January Submissions at [241].

the proximity of the Premises to tracks leading to the lake from both Bridport Street and Millar Street South.

151. Prof Swerissen said that he was aware through local knowledge that the Premises is relatively isolated from the shopping precinct, which reduces the opportunity for passive observation.²²⁵ That matters because underage people are likely not to want to run into their parents or others they know in circumstances where they are going into liquor outlets.²²⁶
152. Ms Furness referred to Mr O'Mara's evidence as to "generational" drinking spots in Daylesford.²²⁷ She said that the lake was a place where young people congregate, and that the area near the trout hatchery building (in the vicinity of Cornish Hill Reserve) is a drinking place for teenagers.²²⁸
153. Mr Ferguson, who resides close to the Premises, described seeing beer bottles and bongs in a forest area near the lake accessible from Millar Street South and Bridport Street.²²⁹ He said that the lake is a popular area for swimmers and summertime activities, including at night, although he had not seen young people in that area himself.²³⁰ He also said that there are other parts in the bush that have similar spots, such as Cornish Hill, where among the pine forests one will see the same sort of scene, including evidence of fires and rubbish.²³¹ He described there being rocks to sit on and somewhere to have a fire, which he said was an area not so much for people who have a place to go and drink, such as families and older people.²³²
154. Mr Eliades referred to Messrs O'Mara's and Ferguson's evidence of teenagers drinking in the bush, and said that he had seen them and heard stories from other teenagers.²³³ He later clarified that he had last observed them 15 years ago, before he moved out of the area.²³⁴ He identified the relevant areas as Lake Daylesford, Lake Jubilee (to a

²²⁵ Hearing transcript, page 678, line 45 to page 679, line 2.

²²⁶ Hearing transcript, page 679, lines 4 to 10.

²²⁷ Hearing transcript, page 744, lines 28 to 32.

²²⁸ Hearing transcript, page 744, lines 32 to 40.

²²⁹ Hearing transcript, page 1020, lines 1 to 6.

²³⁰ Hearing transcript, page 1020, lines 6 to 10, lines 33 to 36.

²³¹ Hearing transcript, page 1025, lines 35 to 36; page 1026, lines 7 to 9.

²³² Hearing transcript, page 1025, lines 37 to 39.

²³³ Hearing transcript, page 1030, lines 27 to 30.

²³⁴ Hearing transcript, page 1030, line 41 to page 1031, line 11.

lesser extent) and Cornish Hill.²³⁵ He said that he had seen bottles and bongs at those sites more recently.²³⁶

155. Several of the Licensee's witnesses addressed the evidence of underage drinking occurring at specific locations around Daylesford.

156. Ms Peterson referred, in her report and her oral evidence, to the Hepburn Shire's General Local Law No. 2 of 2019, concerning Community Amenity and Municipal Places, clause 2.19 of which deals specifically with the Consumption of Alcohol in Municipal Places:²³⁷

2.19.1 Council may declare any municipal place to be an area where alcoholic beverages must not be consumed or held in open containers or may only be consumed or held during specified times or in accordance with a permit.

2.19.2 A person must not consume or hold any alcoholic beverage in an open container in any area or place which is subject to a declaration under sub-clause 2.19.1.

157. "[M]unicipal place" is defined in clause 1.6 as "a public place which is owned, occupied or controlled by, or vested in, the Council in respect of which the Council has the care and management, to which the public has access whether or not on payment of an admittance fee". Cr Bray told the Commission that there is a local law in force prohibiting people from drinking around the Skate Park, but was not sure whether there is one around the lake.²³⁸ The Commission is not able to make a finding that any declaration has been made under clause 2.19.

158. Ms Peterson noted in her report that the location of the proposed bottle shop, away from the main street, assists in reducing its exposure to people going about their day-to-day activities.²³⁹ She gave estimated distances between existing packaged liquor outlets in Daylesford and the Skate Park, Cornish Hill car park and the Lake Daylesford car park, in order to demonstrate that these locations have existing proximity to packaged liquor outlets.²⁴⁰ Under examination by Counsel Assisting, she indicated that she could not speak to the level of underage drinking occurring at the locations identified in her report,²⁴¹ which were the Skate Park, lake and Cornish Hill Reserve.²⁴² However, she

²³⁵ Hearing transcript, page 1031, lines 18 to 23.

²³⁶ Hearing transcript, page 1031, lines 25 to 42.

²³⁷ Peterson Report at [114]-[117]; Hearing transcript, page 185, line 42 to page 186, line 5.

²³⁸ Hearing transcript, page 548, lines 25 to 36. See also page 589, lines 22 to 45; page 598, lines 5 to 17.

²³⁹ Peterson Report at [234].

²⁴⁰ Peterson Report at [202], Fig. 9.8; Hearing transcript, page 199, line 39 to page 200, line 9.

²⁴¹ Hearing transcript, page 291, lines 36 to 37.

²⁴² Peterson Report at [202], Fig. 9.8.

speculated that if there is an issue with the abuse of alcohol by underage youth hanging out in various locations, the number of incidents of drunk and disorderly offences could reflect that.²⁴³ As noted below at [259], Ms Peterson accepted that the lack of a police presence after hours might impact on the reporting of such offences.

159. Ms Peterson was asked by counsel for the Licensee about Mr O'Mara's evidence.²⁴⁴ She noted that underage drinking is a prevalent issue throughout society, both in metropolitan, regional and rural Victoria, and in fact Australia.²⁴⁵ She identified the question as whether or not the opening of the store will encourage the youth within town to drink more or at greater frequencies, which she thought it should not.²⁴⁶ This was because there is already ready access to the supply of alcohol within the town (including online); the hours of operation would fall within the hours of Liquorland; and the Licensee has best practice in terms of its responsible sale of and service of alcohol.²⁴⁷ On this basis, she was satisfied that there would not be an increase in risk to that segment of the community.²⁴⁸
160. The issue here is whether the granting of the Licence would be conducive to or encourage harm, specifically to minors. The Commission agrees that underage drinking is prevalent across society (although there is also evidence it is particularly prevalent in Daylesford). The Commission agrees that the focus is on whether granting the Licence would be conducive to more underage drinking occurring (having regard to particular local, social and geographic circumstances). Contrary to the view of Ms Peterson, the Commission finds that it would.
161. That conclusion is driven by a number of considerations.
162. One of those considerations is the location of the Premises relatively close to "generational" drinking spots, and relatively isolated from the town centre and shopping precinct (and with therefore relatively limited opportunities for passive observation by community members, including on routes from the Premises to drinking spots).
163. These characteristics of the location of the Premises, in the Commission's view, mean that the Premises would be significantly more conducive to facilitating "secondary supply"

²⁴³ Hearing transcript, page 330, lines 32 to 34.

²⁴⁴ Hearing transcript, page 1462, lines 10 to 17.

²⁴⁵ Hearing transcript, page 1462, lines 20 to 22.

²⁴⁶ Hearing transcript, page 1462, lines 28 to 31.

²⁴⁷ Hearing transcript, page 1462, line 33 to page 1463, line 11.

²⁴⁸ Hearing transcript, page 1463, lines 11 to 13.

of alcohol to minors – that is, the supply of alcohol to minors that has been purchased or collected by adults – as compared with the existing packaged liquor outlets. And logic suggests that, if the location of the Premises would be significantly more conducive to facilitating secondary supply, then there is at least a risk of increased secondary supply occurring and (therefore) increased consumption by minors and (therefore) increased harm from the misuse and abuse of alcohol by minors.

164. The Commission accepts that there are other ways that minors can obtain alcohol in Daylesford. In particular, the Commission accepts that the advent of online purchasing of alcohol poses its own risks. Parliament has responded to those risks in various ways.²⁴⁹ However, the Commission does not accept that the existence of particular risks of minors obtaining alcohol purchased online means that the grant of a licence that would create its own additional risks is immaterial or irrelevant.
165. Nor are the risks of online purchasing and the risks arising from the Premises entirely separate. The risks may interact and compound. For example, there might be an online request for alcohol, which is then completed by an adult collecting the alcohol at the Premises for secondary supply to minors. Ms Prezioso gave evidence to the effect that when alcohol ordered online is collected by car, the Licensee would check the photo of the person collecting the alcohol (e.g. the driver) but, if the identification matches the person nominated in the online purchase and shows that that person is over 18, then the Licensee would load the alcohol into the car, even if there were other underage people in the car. And the Commission considers that the location of the Premises makes it more conducive to facilitating secondary supply, including by this means, compared with the existing outlets.
166. There are two additional features of the location of the Premises – beyond those discussed above – that compound the Commission’s concern that the Premises would be conducive to or encourage harm to minors. These are the proximity of the Premises to the swimming pool and to the bus stop. Both of these sites are locations where minors of secondary school age congregate, bringing them to the area away from the main street, again with routes to the “generational” drinking spots and attended by less opportunity for passive observation by others. These are discussed below.

²⁴⁹ See, in particular, the condition imposed by section 18C of the LCR Act on every licence that authorises a licensee to supply liquor to a person who makes an off-premises request.

Swimming pool

167. In response to the Commission's invitation, Cr Bray submitted the following information about usage of the swimming pool:

- (a) Hepburn Shire Council records show that 12,000 people visit the pool each year;²⁵⁰
- (b) The key users of the pool are families with young children and teenagers;²⁵¹
- (c) Throughout the summer months the pool is a very popular social meeting place for young people;²⁵²
- (d) The pool is generally open between 2-6pm;²⁵³
- (e) During the school term, several schools hold their annual Swimming Carnivals at the Daylesford Pool, including Daylesford Secondary College running an All-School swimming carnival involving 441 students aged 12-18 years, 43 teachers and up to 100 family members attending;²⁵⁴
- (f) Other school activity and celebration events are held at the Daylesford pool involving, among others, Daylesford Secondary College (ages 12-18 years) and youth activities run by the Hepburn Shire Youth Events team for young people aged 12-22 years;²⁵⁵ and
- (g) The annual regional LGBTIQA+ ChillOut Festival (Australia's largest regional pride event) has held an annual Pool Party at the Daylesford pool for the past 5 years, which is an all-ages event for families and adults attended by around 300 people.²⁵⁶

168. Ms Peterson gave the opening hours of the pool as 2pm-6pm at weekends; 3pm-7pm on weekdays during school term; and 2pm-6pm on weekdays during school holidays.²⁵⁷

169. Several witnesses gave evidence as to use of the swimming pool by minors.

170. Cr Bray told the Commission in oral evidence that 150 families and between 30 and 50 teenagers frequent the pool throughout the summer months.²⁵⁸

²⁵⁰ Bray Response at [2].

²⁵¹ Bray Response at [3].

²⁵² Bray Response at [3].

²⁵³ Bray Response at [4].

²⁵⁴ Bray Response at [5].

²⁵⁵ Bray Response at [6].

²⁵⁶ Bray Response at [7].

²⁵⁷ Peterson Report at [32].

²⁵⁸ Hearing transcript, page 510, lines 13 to 14.

171. Ms Rauber explained that school swimming programs run for 10 days, and are separate from swimming carnivals.²⁵⁹
172. Ms Furness told the Commission that students from the Daylesford Dharma School attend swimming lessons once per week for four weeks during the summer months.²⁶⁰ She also said that most of the school's families, if not all, use the pool after school from December to April, and as a mother she could not count the number of times that she had attended pool parties for children with birthdays at that time of year.²⁶¹
173. The Licensee's expert witnesses addressed the swimming pool.
174. Mr Abery noted that the swimming pool is open for 14 weeks a year, with a closure policy on days of less than 21°C.²⁶² He referred to proposals for a new indoor heated pool, which would be situated elsewhere and therefore result in the disposal of the current pool site.²⁶³ He described the existing pool as well-screened from other uses by shrubs, trees and covered cyclone fencing along the Bridport Street and Central Springs Road boundaries.²⁶⁴ Mr Abery's observations about screening were not borne out by the Commissioners' site visit on 13 December 2023. The Commission finds that the building housing the Premises would be visible through the fence along Bridport Street, although the Premises' frontage would be located facing Central Springs Road, with another tenancy to the east.
175. Ms Peterson addressed the proximity to the swimming pool by noting that there are no "synergies" between it and the Premises, the entrance being on Central Springs Road with no access provided via Bridport Street.²⁶⁵ She also noted that the pool is closed for 8.5 months a year.²⁶⁶ Ms Peterson gave estimated distances between existing packaged liquor outlets in Daylesford and the pool, in order to demonstrate that it has existing proximity to packaged liquor outlets.²⁶⁷

²⁵⁹ Hearing transcript, page 422, line 9 to page 423, line 9.

²⁶⁰ Hearing transcript, page 727, lines 37 to 39; page 740, lines 9 to 15.

²⁶¹ Hearing transcript, page 727, lines 39 to 42; page 740, line 17 to page 741, line 3.

²⁶² Abery 2022 Report, p.31.

²⁶³ Abery 2022 Report, pp.31-32.

²⁶⁴ Abery 2022 Report, p.32.

²⁶⁵ Peterson Report at [202]; Hearing transcript, page 203, lines 20 to 22.

²⁶⁶ Peterson Report at [202].

²⁶⁷ Hearing transcript, page 199, lines 30 to 34.

176. The Licensee in its January Submissions submitted that, in respect of arguments based on occasional visits to the pool, this constitutes no more exposure to the outside of a licensed premises than already occurs in the town.²⁶⁸
177. The Commission holds concern over the proximity of the Premises to the swimming pool, given that the evidence suggests that this is a site frequented by secondary school students. The concern is ameliorated somewhat by the limited season for which the pool operates. However, the Commission finds that the location of the Premises near the swimming pool, which attracts minors of secondary school age, is relevant to the question of whether the granting of the Licence would be conducive to or encourage harm to minors. Specifically, there is an appreciable risk of an increase in instances of secondary supply to minors, given that minors (and young adults) will congregate in significant numbers at certain times of year near the Premises thereby increasing the opportunities for secondary supply (especially noting the other concerns that the Commission has identified about the location of the Premises relatively close to “generational” drinking spots and relatively remote from the town centre, as outlined above).

Bus stop

178. Several witnesses gave evidence as to use of the bus stop by minors.
179. Cr Bray described the bus stop as the key public transport hub for Daylesford and surrounds, and that it is predominantly used by secondary school students travelling to Ballarat schools each day and by public transport users.²⁶⁹ In addition to local bus services and V/Line services, the Department of Education and Training school bus program uses this stop for students from the Daylesford area travelling to other schools in Ballarat, including: St Patrick’s College; Ballarat Clarendon College; Ballarat High School; Ballarat Grammar; Loreto College; Woodmans Hill Secondary College and Mt Clear College.²⁷⁰ Cr Bray said that she had been informed that currently 55 students use a single bus, and in previous years up to 70 students have used it.²⁷¹ There might also be 10 families sending children to what she described as a John Marsden school in Gisborne (presumably Candlebark School) and other students going to Castlemaine

²⁶⁸ Licensee January Submissions at [240].

²⁶⁹ Bray Response at [21].

²⁷⁰ Bray Response at [22]-[23]; Hearing transcript, page 510, lines 24 to 36.

²⁷¹ Hearing transcript, page 510, lines 36 to 39; page 591, lines 6 to 15.

Secondary College, for which Cr Bray could not give figures.²⁷² She also suggested that some students going to schools in Bendigo would use V/Line coaches, but again could not give figures.²⁷³

180. Ms Rauber estimated that fewer than 10 primary school children would travel by local bus to and from school.²⁷⁴ She said that she had counted 21 cars in the vicinity of the bus stop in the morning of the day on which she gave evidence.²⁷⁵ She understood there to be a single bus servicing schools in Ballarat.²⁷⁶
181. Ms Furness gave evidence of the Daylesford Dharma School using the bus stop for student trips to locations in the town, including the preschool three times each term.²⁷⁷ She had experience of dropping off and collecting her children who were catching the school bus at that stop.²⁷⁸
182. Mr Ferguson said that his three children had attended high school in Ballarat, and all caught the bus from Bridport Street.²⁷⁹ He said that a lot of children would walk along Central Springs Road to get to town, the swimming pool, the primary school, the preschool and the bus stop.²⁸⁰ He speculated that they would cut through the Premises' car park to hurry to the bus stop, and that parents would drop their children off and pick them up from the car park out the front as well.²⁸¹
183. Mr Abery did not refer to the bus stop in either of his reports. Under examination by Counsel Assisting, he said that he was aware of the bus stop from his site visit, but had not conducted any research into which services use it.²⁸²
184. Ms Peterson did not refer to the bus stop in her report, which she described under cross-examination by counsel for the Council as an oversight.²⁸³ In her evidence, she said that she was mindful of the fact that it was there, but that it would be very common for public transport stops to be located in close proximity to licensed premises, including packaged

²⁷² Hearing transcript, page 512, lines 10 to 13.

²⁷³ Hearing transcript, page 512, lines 13 to 15.

²⁷⁴ Hearing transcript, page 388, lines 28 to 29.

²⁷⁵ Hearing transcript, page 372, lines 37 to 42; page 423, lines 39 to 40.

²⁷⁶ Hearing transcript, page 424, lines 6 to 10.

²⁷⁷ Hearing transcript, page 727, lines 28 to 34; page 740, lines 5 to 6.

²⁷⁸ Hearing transcript, page 728, lines 4 to 6.

²⁷⁹ Hearing transcript, page 996, lines 1 to 3.

²⁸⁰ Hearing transcript, page 996, lines 34 to 36.

²⁸¹ Hearing transcript, page 996, lines 38 to 40.

²⁸² Hearing transcript, page 102, lines 28 to 36. See also Hearing transcript, page 162, lines 25 to 44.

²⁸³ Hearing transcript, page 213, line 15.

liquor.²⁸⁴ She did not see it as presenting a significant risk, recognising that Liquorland is just another 100 metres up the road.²⁸⁵ Ms Peterson also gave evidence that there are a handful of bus stops clustered around a circuit that runs around Albert Street, Vincent Street, Bridport Street and Central Springs Road.²⁸⁶ She had not looked specifically at whether school buses depart and arrive from the bus stop, but said she would not be surprised if they did.²⁸⁷

185. Cr Bray later gave evidence that the bus stop that she had described was the only bus stop in Daylesford.²⁸⁸ Ms Peterson responded to this when recalled, accepting that her own evidence about other bus stops was incorrect.²⁸⁹ She said that, having an understanding from the transcript of the way the buses go from the school up to the other schools, the location of the bus stop in proximity to the Premises did not present her with any difficulties.²⁹⁰ She said that the sale of packaged liquor is seen in close proximity to public transport in virtually every activity centre in regional and metropolitan Victoria, and she did not see them as being incompatible.²⁹¹
186. The Licensee in its January Submissions submitted that a limited number of school children may observe the site primarily across to the adjacent tenancy from the bus stop in the mornings before the Premises opens and at the end of the day.²⁹² It submitted that they will not be permitted entry in uniform and no compelling evidence had been provided to explain how a view of the side of the building will induce harm where no person had indicated that harm is arising from other alcohol signage in town – noting that a pylon sign had not been approved (see below at [245]).²⁹³
187. The Commission holds significant concern over the proximity of the Premises to the bus stop, which many secondary school students use. The Commission's concern is not one of exposure to signage, which is addressed below, but rather the prospect that the congregation of youth at the bus stop is apt to increase the risk of secondary supply taking place, given that students, some of whom will be 18 years old and many of whom

²⁸⁴ Hearing transcript, page 211, lines 19 to 23.

²⁸⁵ Hearing transcript, page 211, lines 23 to 24.

²⁸⁶ Hearing transcript, page 213, lines 33 to 36.

²⁸⁷ Hearing transcript, page 214, lines 3 to 7.

²⁸⁸ Hearing transcript, page 511, lines 39 to 40.

²⁸⁹ Hearing transcript, page 1461, lines 8 to 9.

²⁹⁰ Hearing transcript, page 1461, lines 18 to 28.

²⁹¹ Hearing transcript, page 1461, lines 28 to 30.

²⁹² Licensee January Submissions at [216].

²⁹³ Licensee January Submissions at [216]. See also at [240].

will be minors, will be dropped by the school bus across the road from the Premises on weekdays after school.

188. The Commission does not consider it fanciful to suppose that, when youth are congregating in significant numbers near the Premises, that would be conducive to secondary supply and, thereby, conducive to harm. That is especially so, given the relative proximity of the Premises to “generational” drinking spots, the relative isolation of the Premises from the town centre, and the relatively limited opportunity for passive observation by community members, as outlined above.

Lack of 24-hour police presence

189. Given the evidence of underage drinking and secondary supply before the Commission, the Commission also considers it relevant to consider the existing ability of the police to take action in respect of these activities. Mr O’Mara specifically identified the limited police presence as not helping the problem of local youth drinking due to the decrease in formal and incidental surveillance.²⁹⁴
190. While there were discrepancies as to the opening hours of the police station in Daylesford, several witnesses gave evidence that it is not staffed on a 24-hour basis. Instead, the community relies on police from Bacchus Marsh out of hours.
191. Mr Beacham, who did not give evidence at the hearing, said that, as the Daylesford Police station is only staffed during the daytime, police have to come from Bacchus Marsh or Ballarat which takes some time for them to arrive.²⁹⁵ Mara Ripani, who also did not give evidence at the hearing, claimed that Daylesford did not have a staffed police station.²⁹⁶
192. Dr Bowen in her witness statement said that the local police force operates in office hours only Monday to Friday, with urgent calls evening and weekends requiring police to travel from almost 60 kilometres away from Bacchus Marsh.²⁹⁷
193. Cr Bray submitted a photograph of a sign on the door of the Daylesford Police Station, which indicated that a communications button (presumably near the door) diverts to

²⁹⁴ Hearing transcript, page 434, lines 7 to 9. See also Hearing transcript, page 464, line 25 to page 465, line 19; page 466, lines 14 to 15.

²⁹⁵ Letter from Mr Edwin Beacham dated 24 May 2023, p.1.

²⁹⁶ Letter from Ms Mara Ripani received on 25 May 2023, p.2.

²⁹⁷ Witness statement of Prof Rob Moodie and Dr Shelley Bowen dated 23 May 2023, p. 4.

Bacchus Marsh Police Station, not Daylesford Police Station.²⁹⁸ Mr Ferguson described his experience of this in telling the Commission about an incident addressed below (at [255]).²⁹⁹

194. Mr Moore referred to police having to come 40 minutes from Bacchus Marsh to attend a violent altercation outside a venue.³⁰⁰ He said that he had called the police 10 times during his time in the area and they were always delayed.³⁰¹
195. Mr Eliades said that the reason the police were able to attend within 15-20 minutes on 5 November 2023 (the date of an incident in which five persons were killed by a motor vehicle that left the road near a public house) was because it was Cup Day weekend, and they were in town specifically for that.³⁰² He said that when he had called the police in the past, he had issues when needing to get hold of them; he would either ring and there would be no answer; he would go to the police station and there would be no one there; or he would ring and be transferred to Bacchus Marsh, resulting in a call back a day or two later.³⁰³
196. Dr Beacham said that there used to be a 24-hour police presence in Daylesford, but that it has been reduced to 16 hours a day, covered by three police officers who have to attend to the surrounding areas; two of whom have to be on a shift at once.³⁰⁴ She said that she obtained this information from a policeman at the station a few weeks earlier.³⁰⁵
197. The Licensee's expert witnesses addressed the lack of a 24-hour police presence in Daylesford.
198. Mr Abery asserted that the absence of a 24/7 police presence should not be a relevant consideration for the Licence given the tenuous basis on which increased crime is alleged because of the grant of the Licence.³⁰⁶

²⁹⁸ Presentation slides of Cr Bray received on 8 November 2023, "Photo 28 Sign on Daylesford Police Station Door".

²⁹⁹ Hearing transcript, page 1001, lines 39 to 40.

³⁰⁰ Witness statement of Mr David Moore dated 24 May 2023, p.3.

³⁰¹ Hearing transcript, page 891, lines 18 to 19, line 23.

³⁰² Hearing transcript, page 1029, lines 2 to 4.

³⁰³ Hearing transcript, page 1029, lines 4 to 8.

³⁰⁴ Hearing transcript, page 1145, lines 14 to 17; page 1163, lines 27 to 28.

³⁰⁵ Hearing transcript, page 1161, lines 32 to 35.

³⁰⁶ Abery 2022 Report, p.44.

199. Ms Peterson asserted that the framework of the LCR Act does not allow for objections based on lack of 24-hour police presence.³⁰⁷
200. The Licensee submitted in its January Submissions that it is significant that local police officers are aware of Victoria Police's decision not to object to the Original Application and that that decision has not been revised since it was made despite various discussions with residents.³⁰⁸ This was said to be because the police have a statutory role in the licensing process and they have, in other instances, participated vigorously in licensing applications – from which it is said to follow that the Commission has no basis to conclude that the police consider there is any difficulty with their ability to service Daylesford.³⁰⁹
201. The Licensee submitted in final oral submissions that many second-hand numbers as to police operating hours in Daylesford had been given over time, and suggested that the police did not wish to advertise their hours.³¹⁰ The Commission accepts that the actual operating hours of the police are unclear on the evidence, but that it is not in dispute that there is no 24-hour police presence in Daylesford.
202. The Commission does not agree that the framework of the LCR Act renders the absence of a 24-hour police presence irrelevant. Nor does the Commission consider that the mere fact that the Commissioner of Police has not objected to the Original Application entails (by some implication) that there is no concern about the prospect of harm to minors. The Commission's function is to make its own assessment, on the evidence before it, as to whether the Premises would be conducive to or encourage harm including, specifically, harm to minors. In making that decision, the evidence of the lack of a 24-hour police presence in Daylesford and the Hepburn Shire is relevant, combined with other matters that the Commission has considered and outlined above, to the prospect that the Premises would be conducive to harm to minors.

Licensee's measures to minimise secondary supply

203. The Licensee gave evidence of its proposed measures to minimise harm. These were generally instantiations of policies and procedures that apply across the Licensee's

³⁰⁷ Peterson Report at [235]-[236].

³⁰⁸ Licensee January Submissions at [133]-[134].

³⁰⁹ Licensee January Submissions at [134]-[135].

³¹⁰ Hearing transcript, page 1667, lines 4 to 8.

packaged liquor outlets, rather than being specifically focused on Daylesford. Most of them were measures relating to the Premises itself.

204. Mr Scott-Mackenzie submitted a Plan of Management dated February 2022 with his witness statement, to which were appended a number of documents including the Licensee’s “House Policy” and accompanying “Best Practice Policies and Interventions” document (to assist staff in identifying and preventing secondary sales to minors and in turn help to reduce or eliminate alcohol-related harm in the community); “School Uniform Policy”; “Refusal of Service – Intoxication Policy”; “Secondary Supply Policy”; “ID25 Policy” and “Responsible Buying Charter” (this Policy is in relation to the Licensee seeking not to stock drinks that appeal to young people or encourage excess).³¹¹ Mr Scott-Mackenzie said that the leadership and executives of the Licensee live and breathe responsibility.³¹² He also described sanctions for people on the floors in the Licensee’s stores for failing to comply with policies like the ID25 Policy and a process of internal audits, including mystery shops.³¹³
205. Mr Scott-Mackenzie said that all staff to be employed in the conduct of the Dan Murphy’s premises will undergo extensive RSA training.³¹⁴ He indicated that the Licensee is open to consulting with, and hearing from, Victoria Police and/or the local community in relation to any local measures which might be undertaken consistent with harm minimisation, giving the example of some licensed premises in Victoria where the Licensee has voluntarily agreed that certain liquor items below a certain price will not be stocked and sold.³¹⁵
206. Mr Scott-Mackenzie told the Commission that the Licensee’s compliance and its record in various states and territories is of paramount importance and demonstrates an understanding that the products it sells are heavily regulated and, if they are abused, have the potential to cause harm.³¹⁶ He said that the Licensee takes that responsibility extremely seriously and that its record, and previously under the Woolworths Group

³¹¹ Plan of Management: Dan Murphy’s Daylesford, Annexure JSM-2 to Witness Statement of James Alexander Scott-Mackenzie dated 25 September 2023 (**Plan of Management**). See Hearing transcript, page 1185, line 15 to page 1187, line 8.

³¹² Hearing transcript, page 1187, lines 15 to 16.

³¹³ Hearing transcript, page 1187, lines 23 to 35. See also Hearing transcript, page 1363, line 8 to page 1364, line 9.

³¹⁴ Scott-Mackenzie Witness Statement at [3.2].

³¹⁵ Scott-Mackenzie Witness Statement at [3.3].

³¹⁶ Hearing transcript, page 1184, lines 15 to 18.

Limited banner, in Victoria is unblemished.³¹⁷ He estimated that the Licensee operates around 400 licences in Victoria.³¹⁸

207. One of the stated objectives of the Plan of Management and appended documents submitted by Mr Scott-Mackenzie with his witness statement is that alcohol is to be sold responsibly at all times, and that every possible effort is made to prevent sales to minors or secondary sales (as well as sales to other persons who are intoxicated).³¹⁹ Of particular relevance in this context are the School Uniform Policy,³²⁰ ID25 Policy³²¹ and the Responsible Buying Charter.³²²
208. Mr Scott-Mackenzie was asked by counsel for the Council what are the local measures that he envisaged to minimise harm.³²³ He identified concerns about teen drinking and referred to the Licensee's association with the Teen Rescue Foundation and DrinkWise.³²⁴ He also described participation in RSA education in schools through liquor accords, teaching young people about the real harms of things like binge-drinking and irresponsible consumption, and abstaining until at least the age of 18 years.³²⁵ He said that, if the Licensee could do something to help change the culture of teen drinking in Daylesford, it would absolutely love to be a part of that.³²⁶ Mr Scott-Mackenzie referred to the evidence before the Commission of a youth drinking problem in Daylesford and said that the Licensee could have information available in its store at a higher rate than it would normally.³²⁷ He specified educational material on teen drinking and the impact it has, which the Licensee can obtain from its partnerships with DrinkWise and the Teen Rescue Foundation.³²⁸ Specifically in relation to Daylesford, Mr Scott-Mackenzie said that there may be opportunities for the Licensee to do more, and it would be very live to those opportunities.³²⁹ He suggested that such opportunities might be identified through any active liquor accord and community consultation, giving the example of considering

³¹⁷ Hearing transcript, page 1184, lines 18 to 26.

³¹⁸ Hearing transcript, page 1184, lines 28 to 41.

³¹⁹ Plan of Management at [2(a)].

³²⁰ Plan of Management, Appendix 3: School Uniform Policy.

³²¹ Plan of Management, Appendix 6: ID25 Policy.

³²² Plan of Management, Appendix 9: Responsible Buying Charter.

³²³ Hearing transcript, page 1218, lines 15 to 16.

³²⁴ Hearing transcript, page 1218, lines 24 to 30.

³²⁵ Hearing transcript, page 1218, line 39 to page 1219, line 9.

³²⁶ Hearing transcript, page 1219, lines 13 to 15.

³²⁷ Hearing transcript, page 1222, lines 20 to 23.

³²⁸ Hearing transcript, page 1222, lines 23 to 25.

³²⁹ Hearing transcript, page 1353, lines 34 to 35.

at a corporate level (through the Chief Legal Officer) assisting Mr O'Mara with a specific activity that he wanted to undertake.³³⁰

209. Cr Bray asked Mr Scott-Mackenzie whether, having heard some of the evidence that was presented at the hearing, he would concede that there had been a different picture painted about the Daylesford community and its level of vulnerability, compared with one based on the data and statistics available.³³¹ He said that he had heard clear evidence that there are individuals and groups of individuals, being young people, who are not consuming alcohol responsibly, but that is not unlike any other area in Victoria or Australia.³³² More generally, Mr Scott-Mackenzie, under cross-examination by Mr Dickenson, said that he had not seen anything to date that made him think that the Licensee had made the wrong decision here.³³³ He said that he understood, and had heard all of the stories – which were troubling – but the stories had not led him to believe that there is any more harm in Daylesford than in any other community in Victoria.³³⁴
210. One of the documents appended to Mr Scott-Mackenzie's witness statement was the Licensee's Secondary Supply Policy.³³⁵ Mr Scott-Mackenzie also submitted a document entitled "Commitment to Community", which refers to a point of sale "Don't Buy It For Them" campaign to raise community awareness and understanding of the Licensee's staff enforcing their responsibilities in the secondary supply of alcohol to minors.³³⁶
211. Cr Bray put a number of questions to Mr Scott-Mackenzie about secondary supply.³³⁷ In particular, she asked whether he agreed that, while the Licensee can do its best to minimise it with its policies, secondary supply is fundamentally out of its control.³³⁸ Mr Scott-Mackenzie referred to the policy, saying it would prevent secondary supply from occurring within the store and through the car park area, but the things the Licensee does beyond those policies and procedures are really where it is going to make a difference.³³⁹ He referred to the Licensee's in-store materials, its partnerships with DrinkWise, and its partnership with the Teen Rescue Foundation about providing

³³⁰ Hearing transcript, page 1353, line 37 to page 1354, line 6.

³³¹ Hearing transcript, page 1270, lines 18 to 26.

³³² Hearing transcript, page 1270, lines 28 to 30.

³³³ Hearing transcript, page 1296, lines 30 to 31.

³³⁴ Hearing transcript, page 1296, lines 31 to 34.

³³⁵ Plan of Management, Appendix 5: Secondary Supply Policy.

³³⁶ Commitment to Community, Annexure JSM-3 to Witness Statement of James Alexander Scott-Mackenzie dated 25 September 2023, p.10. See Scott-Mackenzie Witness Statement at [3.1.3].

³³⁷ Hearing transcript, page 1255, line 15 to page 1258, line 37.

³³⁸ Hearing transcript, page 1257, line 45 to page 1258, line 2.

³³⁹ Hearing transcript, page 1258, lines 4 to 7.

education to young people and parents on the harms associated with alcohol consumption.³⁴⁰ He confirmed that the secondary supply policy does not deal with anything beyond the actual site of the store and the Licensee has no control over what happens once alcohol has left the Premises, but that is why the Licensee takes part in education programs.³⁴¹ He said that, in terms of the Licensee being able to control secondary supply, the only influence that it can have is on educating people about the harms in relation to supplying alcohol to minors, which is something that the Licensee does in every store.³⁴² He later said that the Licensee has traditionally been led by schools on what programs they want to run in terms of what the Licensee supports, and clarified that these were high schools.³⁴³ He confirmed his understanding that the most common source of alcohol for minors is older family members (brothers, sisters or parents) and friends.³⁴⁴

212. Ms Prezioso gave evidence as to the ID25 Policy.³⁴⁵ She said that, to ensure compliance with the ID25 Policy, the Licensee will require all staff to request identification (**ID**) from customers who appear to be under 25 years of age.³⁴⁶ She gave details of the training regime and a daily “huddle” of staff in which the store manager reiterates the ID25 Policy and the requirement to request ID (the evening staff also receiving a reminder each day).³⁴⁷ Compliance with the ID25 policy would be monitored by mystery shoppers twice a quarter.³⁴⁸ Ms Prezioso said that a failure to comply with, in particular, the ID25 Policy results in an investigation and may require serious disciplinary action, up to and including termination of employment.³⁴⁹ In her witness statement, Ms Prezioso said that mystery shoppers monitor compliance with the Secondary Supply Policy, but she clarified in her oral evidence that this is not the case.³⁵⁰

³⁴⁰ Hearing transcript, page 1258, lines 7 to 10.

³⁴¹ Hearing transcript, page 1258, lines 33 to 37.

³⁴² Hearing transcript, page 1329, lines 10 to 12.

³⁴³ Hearing transcript, page 1291, lines 9 to 10, lines 31 to 34.

³⁴⁴ Hearing transcript, page 1329, lines 9 to 10; page 1330, lines 8 to 9.

³⁴⁵ ID25 Policy, Annexure RAP-1 to Witness Statement of Rosie Antonietta Prezioso dated 26 September 2023.

³⁴⁶ Prezioso Witness Statement at [3.3].

³⁴⁷ Prezioso Witness Statement at [3.4]-[3.7].

³⁴⁸ Prezioso Witness Statement at [3.8]. At the request of the Commission, the Licensee later identified the national contractor for the mystery shopping service as Creative Activation: Kellock Email.

³⁴⁹ Prezioso Witness Statement at [3.8]; Hearing transcript, page 1403, line 16 to page 1404, line 7.

³⁵⁰ Prezioso Witness Statement at [3.8]; Hearing transcript, page 1411, line 41 to page 1412, line 1.

213. Ms Prezioso gave evidence as to the Secondary Supply Policy.³⁵¹ She referred to the Licensee’s training regime, which would make employees aware of situations in which secondary supply may be evident.³⁵² She gave some examples of circumstances in which service would be refused.³⁵³ She was asked by Counsel Assisting whether staff could do anything to prevent a scenario where an older person goes into a store and a young person stays outside out of sight.³⁵⁴ Her response was that if staff can see them, they can refuse service; if staff cannot see them, then they have no reason to believe that the older person is not buying it for themselves, and staff will sell them alcohol.³⁵⁵
214. In final oral submissions, Cr Bray answered a question from the Commission as to whether she had any suggestions as to what the Licensee could do to address the issue of secondary supply.³⁵⁶ She submitted that the issue is that the Licensee’s policies are all in-store-based, such as policing the car park with closed circuit television cameras, whereas secondary supply is a harm that happens away from the store.³⁵⁷ She submitted that is not about a “quick fix” but is a wider community issue on which she did not have an answer.³⁵⁸
215. The Licensee in final oral submissions submitted that the Licensee cannot necessarily control what happens after alcohol goes out the door, and that it should not be criticised, and cannot be held accountable, for people’s decisions to deal with alcohol illegally, by giving it to children, or over-consuming.³⁵⁹ The Licensee should not be held accountable because it simply cannot control them.³⁶⁰ The Licensee later submitted that it cannot necessarily stop every illegal provision of alcohol to minors.³⁶¹ That is a decision of an adult to break the law, or facilitate drinking within their home, that cannot reasonably be expected to be policed by the Licensee, and which is able to occur at present.³⁶² The Licensee’s inability to prevent such behaviour should not weigh against it.³⁶³

³⁵¹ Secondary Supply Policy, Annexure RAP-2 to Witness Statement of Rosie Antonietta Prezioso dated 26 September 2023.

³⁵² Prezioso Witness Statement at [3.7].

³⁵³ Prezioso Witness Statement at [3.7].

³⁵⁴ Hearing transcript, page 1408, lines 20 to 21.

³⁵⁵ Hearing transcript, page 1408, lines 23 to 25.

³⁵⁶ Hearing transcript, page 1599, lines 9 to 18.

³⁵⁷ Hearing transcript, page 1599, lines 20 to 23.

³⁵⁸ Hearing transcript, page 1599, lines 23 to 24.

³⁵⁹ Hearing transcript, page 1627, lines 9 to 14.

³⁶⁰ Hearing transcript, page 1627, lines 14 to 15.

³⁶¹ Hearing transcript, page 1665, lines 13 to 14.

³⁶² Hearing transcript, page 1665, lines 14 to 16.

³⁶³ Hearing transcript, page 1665, line 18.

216. The Commission must consider, not only what happens in and around licensed premises, but what happens in the community more broadly. If the opening of the Premises would be conducive to increasing secondary supply and therefore harm to minors because of various considerations regarding its locality – including its relative proximity to “generational” drinking spots, its relative isolation from the shopping precinct, the relatively reduced opportunity for passive observation by community members, and its proximity to the pool and the bus stop where young people congregate – then the Commission considers that it is no answer to say that the Licensee cannot control conduct outside of its premises. The Commission can control whether the Licensee should have a licence for the Premises, and may take into account evidence as to particular risk associated with a licence at these premises that the Licensee cannot avoid or substantially mitigate by its policies.
217. The Commission accepts that the Licensee has an impeccable record in Victoria in relation to issues such as RSA. However, the Commission considers that the risk that it has identified, arising in particular from various characteristics of the location of the Premises, is not one that the Licensee’s policies and procedures will substantially mitigate.

Exposure of minors to signage

218. Cr Bray expressed concern that the constant exposure to the presence of the Dan Murphy liquor store would normalise the presence of alcohol in young people’s lives and make them more susceptible to alcohol use at a young age.³⁶⁴ Cr Bray relied on a 2011 paper by Sandra C Jones and Christopher A Magee of the University of Wollongong entitled “Exposure to alcohol advertising and alcohol consumption among Australian adolescents”.³⁶⁵ Ms Rauber expressed similar concerns, also relying on that article.³⁶⁶
219. Ms Rauber and Mr Moore also relied on a 2009 article by Andrew W Ellis et al, entitled “Age of acquisition and the recognition of brand names: On the importance of being early”.³⁶⁷ Ms Rauber also relied on a 2018 article by Alexandra Aiken et al, entitled “Youth perceptions of alcohol advertising: are current advertising regulations working?”

³⁶⁴ Witness statement of Ms Jennifer Ann Bray dated 24 May 2023 at [23].

³⁶⁵ Hearing transcript, page 515, line 33 to page 516, line 7. See also Hearing transcript, page 569, line 35 to page 571, line 19.

³⁶⁶ Rauber Witness Statement, pp.5-10.

³⁶⁷ Hearing transcript, page 389, lines 27 to 40; Hearing transcript, page 1612, lines 13 to 15.

and a 2017 article by Matthew A Lapierre et al, entitled “The Effect of Advertising on Children and Adolescents”.³⁶⁸

220. The Licensee in the Licensee January Submissions submitted that the academic research relied upon by the Internal Review Applicants does not assist the Commission and would require it to draw inferences not supported by that literature, and without any proper evidence or basis, in circumstances where the articles do not address alcohol advertising or appear to relate to studies primarily of older generations with different exposure to media to the current generation.³⁶⁹
221. Ms Rauber also gave evidence of primary school students attending the Country Fire Authority (**CFA**) premises immediately to the north of the site of the Premises for bushfire safety talks.³⁷⁰ Ms Furness did likewise with respect to children from preparatory to year 2 from the Daylesford Dharma School, who attend annually.³⁷¹ The Licensee in the Licensee January Submissions submitted that, in respect of arguments based on occasional visits to the CFA, this constitutes no more exposure to the outside of a licensed premises than already occurs in town.³⁷²
222. Ms De Vecchi, who do not did give evidence at the hearing but submitted a witness statement, expressed concern that, being in visible proximity of the school, Dan Murphy’s signage could potentially encourage young children to normalise excessive consumption of alcohol.³⁷³
223. Vanesa Hernandez Rodriguez, who likewise did not appear at the hearing, expressed similar concerns, albeit she referred to exposure to alcohol advertising.³⁷⁴ As, consistently with section 115B of the LCR Act, there is no proposal for advertising to be displayed, the Commission places no weight on this evidence.
224. In relation to the preschool, Mr Abery noted that it offers 1st and 2nd year sessions from 9am-2pm, three days a week.³⁷⁵ It therefore operates for 15 hours a week or about 21% of Dan Murphy’s usual operating hours during school terms – or less across the entire

³⁶⁸ Hearing transcript, page 389, lines 27 to 40.

³⁶⁹ Licensee January Submissions at [217], including fn 97.

³⁷⁰ Rauber Witness Statement, p.7; Hearing transcript, page 420, line 23 to page 421, line 26.

³⁷¹ Hearing transcript, page 741, line 21 to page 742, line 24.

³⁷² Licensee January Submissions at [240].

³⁷³ Witness statement of Ms Bridie De Vecchi dated 24 May 2023 (**De Vecchi Witness Statement**), p.2.

³⁷⁴ Letter from Ms Vanesa Hernandez Rodriguez received on 24 May 2023.

³⁷⁵ Abery 2022 Report, p.32. See also Kellock Email.

- year.³⁷⁶ Therefore, for about 80% of the operating hours of the proposed Dan Murphy's during school terms, no children are present at the preschool.³⁷⁷
225. Ms Peterson in her report did not consider that mere proximity will result in an increased risk to primary school and kindergarten aged children. She said that she had seen no research to indicate that children in these age groups will become more susceptible to alcohol-related harm due to proximity to packaged liquor sales.³⁷⁸ She said that it is unproven whether increased exposure of alcohol to young people in itself has any harm for those young people.³⁷⁹ In response to a question from the Commission, Ms Peterson said she was not sure if the knowledge that the Premises sold alcohol would have much impact on children of primary school age.³⁸⁰
226. Ms Peterson asserted under cross-examination by counsel for the Council that Foxy's Liquor/Cellarbrations can be seen from the primary school.³⁸¹ This was contradicted by Ms Rauber, with reference to photographs that she had taken.³⁸² Ms Peterson when recalled conceded that it would be very difficult, if not impossible, to see the Foxy's Liquor/Cellarbrations signage from the primary school.³⁸³
227. The Licensee in its January Submissions referred to section 115B of the LCR Act, which prohibits display of any alcohol advertising that is static advertising within 150 metres of the perimeter of a school.³⁸⁴ It submitted that the Licensee complies and will continue to comply with section 115B of the LCR Act.³⁸⁵
228. The Licensee also submitted that liquor signage and actual liquor consumption are part of the experience of people moving around the vicinity of the proposed site and school sites at present, including by reference to Daylesford Brewing on Vincent Street;³⁸⁶ Café Koukla at Frangos Hotel on the north-eastern corner of Central Springs Road and

³⁷⁶ Abery 2022 Report, p.32.

³⁷⁷ Abery 2022 Report, p.32.

³⁷⁸ Peterson Report at [197]; Hearing transcript, page 201, lines 3 to 6.

³⁷⁹ Hearing transcript, page 203, lines 31 to 33.

³⁸⁰ Hearing transcript, page 279, lines 18 to 29.

³⁸¹ Hearing transcript, page 230, lines 33 to 37.

³⁸² Hearing transcript, page 365, lines 22 to 23. See Photographs received from Ms Rauber on 5 October 2023, "1e) View From Cellarbrations, looking South towards Daylesford Primary School".

³⁸³ Hearing transcript, page 1461, lines 43 to 44.

³⁸⁴ Licensee January Submissions at [209].

³⁸⁵ Licensee January Submissions at [209].

³⁸⁶ The Licensee incorrectly identified this premises as on Bridport Street.

Bridport Street; Foxy's Liquor/Cellarbrations on Vincent Street and Liquorland on Albert Street.³⁸⁷

229. The Licensee in its January Submissions submitted that children will not pick up an understanding that Dan Murphy's sells alcohol from brochures or television, and may more readily do so from advertising by Cellarbrations at the local sporting ground or in Coles catalogues.³⁸⁸
230. The Licensee submitted that, without a pylon sign there is very little visibility possible of the Premises from either the primary school or the preschool.³⁸⁹ The Commission accepts that the absence of a pylon sign on the corner of the site (see below at [245]) will reduce the visibility of the Licensee's branding and thereby ameliorate any impact in terms of the exposure of minors to signage.
231. The Commission finds that the academic literature submitted by the Internal Review Applicants does not support their contentions on this issue. In the absence of evidence that children will be affected by exposure to signage, the Commission places no weight on this factor.

Conclusion

232. The Commission concludes that granting the Licence would be conducive to or encourage harm, specifically to minors. In particular, the Commission concludes that there is an appreciable risk that granting the Licence would result in an increase of secondary supply of alcohol to minors in Daylesford and (therefore) an increase in alcohol consumption by minors and (therefore) increased harm from the misuse and abuse of alcohol by minors. This conclusion is driven by the accumulation of a number of factors outlined above, deriving from the "particular local, social, demographic and geographic circumstances" of Daylesford. To reiterate, these include:
- (a) the existing problem of underage drinking in Daylesford;
 - (b) the relative proximity of the Premises to "generational" drinking spots such as Lake Daylesford compared with existing outlets; the relative isolation of the Premises from the town centre compared with existing outlets; and (in light of these matters) the

³⁸⁷ Licensee January Submissions at [211]-[212].

³⁸⁸ Licensee January Submissions at [215].

³⁸⁹ Licensee January Submissions at [242].

- relatively limited opportunity for passive observation by community members resulting in the Premises being significantly more conducive to facilitating secondary supply;
- (c) the proximity of the Premises to the town's swimming pool, and the bus stop, with the consequence that significant numbers of young people (some under and some over 18 years of age) will congregate near the Premises thereby increasing the opportunities for secondary supply;
 - (d) the lack of a 24-hour police presence in Daylesford; and
 - (e) the Licensee's policies and procedures not being able substantially to mitigate the risk that the Commission has identified.
233. Overall, having regard to all of the evidence and submissions, guided by the Court of Appeal's decision in *Kordister*, and noting that "the concept of harm minimisation is itself anticipatory", the Commission considers that this is a case where "a conservative approach ... should be adopted". As noted above, "a conservative approach may mean a precautionary approach leading to the conclusion that if an appreciable risk of harm is identified, harm minimisation favours avoiding such potential risk unless it can be positively justified".
234. In light of the evidence and submissions, and having regard to the "particular local, social, demographic and geographic circumstances", the Commission does not consider that the risk of harm to minors that it has identified arising from the proposed Dan Murphy's outlet at the Premises is "fanciful" or "trivial". Rather, the Commission is satisfied that the risk of harm to minors is real. And the Commission considers that "the object of harm minimisation", specifically with respect to minors, "stands out as being poorly served" by reason of the particular "local, social, demographic and geographic circumstances" that it has identified above.
235. Accordingly, the Commission concludes that granting the Licence would be conducive to or encourage harm, specifically to minors.

Harm to other persons or in other ways

236. In light of:
- (a) the Commission's conclusion above that granting the application would be conducive to or encourage "harm", specifically to minors;

- (b) the balancing exercise that the Commission has engaged in and explained at [275] to [284] below,

it has not been necessary for the Commission to make findings as to whether granting the application would be conducive to or encourage “harm” to other persons or in other ways (e.g. harm to other vulnerable persons or communities, family violence or anti-social behaviour).

237. However, the Commission has carefully considered all of the evidence given and submissions made to it.

238. In particular, the Commission notes that there were competing views expressed by different witnesses in the proceeding (and competing submissions made by parties in the proceeding based on this evidence) as to whether granting the application would be apt to result in increased consumption across the Daylesford community generally, or among particular demographic cohorts (aside from minors addressed above), and thereby be conducive to or encourage harm.

239. For example (though at the risk of some simplification):

- (a) Mr Abery (who was called by the Licensee) gave evidence to the effect that, while the effect of introducing the new Premises would be to increase sales of alcohol in Daylesford by approximately 40%, there would be no significant increase in consumption *per capita*.³⁹⁰ Mr Abery advanced this view based on evidence as to inelasticity in demand for alcohol.³⁹¹ He appeared to suggest that, instead, the increase in total sales would be attributable to increased purchases of alcohol in Daylesford from people who might otherwise have purchased alcohol from outside of Daylesford.³⁹²
- (b) On the other hand, Prof Swerissen (who was called by Ms Poke) said that to argue that the introduction of the Premises would have no impact on *per capita* consumption

³⁹⁰ Hearing transcript, page 80, lines 40 to 41; page 109, lines 24 to 37; page 136, line 24 to page 137, line 20.

³⁹¹ Hearing transcript, page 137, lines 22 to 25; page 141, lines 6 to 27. See also Abery 2023 Report: Mr Abery stated at p.3 that “the presence of Dan Murphy’s and its price position in Daylesford will not induce significantly higher levels of alcohol consumption leading to higher levels of harm or abuse of alcohol”. He explained at p.9 that “[t]he price elasticity of demand is a microeconomic theory which measures how sensitive the quantity demanded (or purchased) of a product or service is to its price”. He referred at p.10 to recent economic modelling concluding that “new evidence on demand elasticities of beer, wine and spirits in Australia found consumption to be quite inelastic, a result that is consistent with most previous work in the area”.

³⁹² Hearing transcript, page 109, line 39 to page 110, line 7.

would be to “fly in the face of the evidence”.³⁹³ However, Prof Swerissen was reluctant to make a prediction as to how much an increase there would be to *per capita* consumption, noting (amongst other things) that “elasticities apply differently” for different demographics, including people with less discretionary income.³⁹⁴

240. The Commission doubts that, if the application were to be granted and the Premises established, there would not be any increase in *per capita* consumption of alcohol across the Daylesford community or within particular demographic groups (setting aside minors). That is particularly so if (as Mr Abery suggested) sales of alcohol in Daylesford would increase by a significant figure like 40%. However, it has not been necessary for the Commission to resolve this issue, or any broader questions about the impact of the grant of the Licence (beyond the appreciable risk that the Commission has identified with respect to minors).

Whether granting the Licence would detract from or be detrimental to the amenity of the area in which the premises are situated

241. The Licensee in the License January Submissions submitted that, to the extent that the material presented by the Internal Review Applicants is at odds with the town planning aspects of the Original Application (such as traffic, location and noise), they are matters that were considered and settled in the granting of a planning permit.³⁹⁵ The Licensee will be required to comply with all requirements of the permit including the conditions and endorsed plans, which contain noise assessments and other requirements.³⁹⁶ The Licensee submitted that the Commission should proceed on the basis that the conditions will be complied with.³⁹⁷
242. The Commission accepts this submission, and also finds that the evidence that was led as to whether granting the Licence would detract from or be detrimental to the amenity of the area in which the premises are situated did not amount to a sufficient basis for the Commission to refuse the Licence on this ground. This evidence can be grouped into four categories, addressed in turn below: signage/location; traffic/parking/noise; anti-social behaviour and other issues. On the assessment of this evidence, the Commission does not find that the granting of the Original Application would detract from or be

³⁹³ Hearing transcript, page 680, lines 11 to 12. See generally page 679, line 34 to page 680, line 15.

³⁹⁴ Hearing transcript, page 680, lines 1 to 5.

³⁹⁵ Licensee January Submissions at [274].

³⁹⁶ Licensee January Submissions at [274].

³⁹⁷ Licensee January Submissions at [275].

detrimental to the amenity of the area in which the premises to which the application relates are situated under section 44(2)(b)(i).

Signage/location

243. The signage and location of the Premises received close attention during this matter, although most of that arose in the context of consideration of harm minimisation. This issue was addressed above, and the immediately following paragraphs are concerned with evidence given and submissions made in the context of consideration of amenity.
244. The Premises are situated on the north-western corner of Central Springs Road and Bridport Street. The south-western corner of that intersection is occupied by residential premises. Immediately to the west of the Premises are also residential premises. On the north-eastern corner of the intersection is the Daylesford Olympic Swimming Pool. The entrance to the swimming pool faces south onto Central Springs Road. Along the western side of the swimming pool site, on Bridport Street, is the bus stop used by local and V/Line bus services, and buses serving secondary schools in the wider area. On the south-eastern corner of the intersection is the Daylesford Preschool. Immediately to the east and south of the site of the preschool is the Daylesford Primary School. The main entrance to the school faces east onto Vincent Street, while there is a secondary car park entrance facing north onto Central Springs Road, next to the preschool. The Commission is not satisfied that the mere proximity of the Premises to these other facilities would detract from or be detrimental to the amenity of the area (noting that the Commission has dealt separately with the question of whether the granting of the Licence, in light of the location of the Premises, would be conducive to or encourage harm).
245. Around the time of the hearing in this matter, the Victorian Civil and Administrative Tribunal (**VCAT**) was hearing a matter about a proposed pylon sign to be located on the south-eastern corner of the site of the Premises. Between the close of evidence and final oral submissions on the Internal Review Applications, VCAT on 4 January 2024 published its decision in *Banco Properties Pty Ltd v Hepburn SC* [2024] VCAT 4. The effect of this decision is that no permit has been granted for the proposed sign.³⁹⁸ The Licensee indicated during final oral submissions (instructions having been sought by counsel, as the Licensee was not a party to the VCAT matter) that there is no appeal

³⁹⁸ Licensee January Submissions at [276].

being pursued from that decision and that, if the Commission were to affirm the Licence, the Licensee would be content with a condition that there be no pylon sign associated with Dan Murphy's on the site.³⁹⁹ The Licensee in its January Submissions submitted that should the Commission have held any concerns about the visibility of the sign from the swimming pool or the primary school, that issue need not concern the Commission.⁴⁰⁰ The Commission accepts the Licensee's submission.

246. Mr Ferguson expressed concern about illuminated signage.⁴⁰¹ Mr Scott-Mackenzie clarified in his evidence that the illuminated signs would turn on and off on a needs basis, that is, they would not be on during the day, and would also be programmable so that the lights could, for example, turn off half an hour after closing.⁴⁰²

Traffic/parking/noise

247. Ms De Vecchi, a member of the Daylesford Primary School Council, expressed concerns about the proximity of the proposed outlet to the primary school.⁴⁰³ She referred to traffic congestion in the area and the presence of a truck route passing along Central Springs Road into Bridport Street to the north.⁴⁰⁴

248. Mr McDiarmid also referred to the proximity of the Premises to the preschool, primary school, swimming pool, truck route and an existing packaged liquor outlet, and said that this was not the spot for more pedestrian or vehicle traffic.⁴⁰⁵

249. Mr Moore referred to the potential impact of increased traffic on the operations of the CFA.⁴⁰⁶ After the close of evidence, Mr Moore sought to submit a letter from Paul Anderson, Secretary/Treasurer of Daylesford Fire Brigade, which referred to parking and traffic problems that he said the proposed outlet would cause.⁴⁰⁷ The Licensee in the Licensee January Submissions submitted that the late provision by Mr Moore of material from the CFA did not assist, as there was no basis to assess what the concerns were and if there was any basis for them.⁴⁰⁸ It submitted that this is not a matter on which the

³⁹⁹ Hearing transcript, page 1589, lines 29 to 39. See also page 1624, line 36 to page 1625, line 44.

⁴⁰⁰ Licensee January Submissions at [277].

⁴⁰¹ Hearing transcript, page 998, lines 3 to 7.

⁴⁰² Hearing transcript, page 1195, lines 3 to 9.

⁴⁰³ De Vecchi Witness Statement, p.1.

⁴⁰⁴ De Vecchi Witness Statement, p.2.

⁴⁰⁵ Letter from Mr Daniel J McDiarmid dated 22 May 2023, p.2.

⁴⁰⁶ Hearing transcript, page 890, lines 19 to 38.

⁴⁰⁷ Email communication from Paul Anderson, Secretary/Treasurer, Daylesford Fire Brigade dated 31 August 2023.

⁴⁰⁸ Licensee January Submissions at [267].

Commission should put weight given that it has not been actively pursued in any forum by the CFA.⁴⁰⁹

250. Mr Ferguson said that the increased traffic that would result if the proposed outlet were to open would be a major inconvenience to children walking on the Premises' side of the road on their way to school, and worsen road safety.⁴¹⁰ He also expressed concern about noise.⁴¹¹
251. Mr Scott-Mackenzie said that the Licensee would take a range of steps to ensure that it monitors the car park area as best as it can, including by team members collecting trolleys and looking for rubbish and graffiti.⁴¹² He said that the Licensee has stores in other areas where it has engaged contractors to collect trolleys around the streets, where people have left them on the footpath.⁴¹³ Mr Scott-Mackenzie described the closed circuit television that would be deployed at the Premises.⁴¹⁴ He said that staff patrolling down the street was something that occurred at stores in some circumstances, but also was not going to advocate to put staff into unsafe situations, such as approaching people who are minded to do the wrong thing.⁴¹⁵
252. Ms Peterson considered the proposed arrangements for a loading bay and parking at the site.⁴¹⁶ She was satisfied that noise would not create unreasonable impacts, relying on an acoustic report prepared by Renzo Tonin & Associates.⁴¹⁷ Ms Peterson also found that the expected increase in traffic associated with the proposal is also appropriate and can be accommodated on the local road network.⁴¹⁸
253. The Licensee in its January Submissions submitted that, while there have been some concerns expressed about traffic movements, these have been assessed as part of the planning application and plans have been endorsed under that process.⁴¹⁹ It submitted that, the previous reference in the LCR Act to traffic being considered as part of amenity

⁴⁰⁹ Licensee January Submissions at [267].

⁴¹⁰ Hearing transcript, page 997, lines 40 to 43; page 998, lines 12 to 15.

⁴¹¹ Hearing transcript, page 998, lines 7 to 9.

⁴¹² Hearing transcript, page 1195, lines 29 to 33.

⁴¹³ Hearing transcript, page 1293, lines 7 to 10.

⁴¹⁴ Hearing transcript, page 1195, line 38 to page 1196, line 8.

⁴¹⁵ Hearing transcript, page 1390, line 40 to page 1391, line 14.

⁴¹⁶ Peterson Report at [54].

⁴¹⁷ Peterson Report at [167]. See also Hearing transcript, page 190, lines 20 to 34.

⁴¹⁸ Peterson Report at [171]. See also Hearing transcript, page 190, line 34 to page 191, line 6.

⁴¹⁹ Licensee January Submissions at [265].

having been removed, and in this case planning permission having been granted, it would be inappropriate to reconsider this issue.⁴²⁰

254. The Commission accepts the Licensee's evidence and submissions on this issue.

Anti-social behaviour

255. Mr Ferguson told the Commission of an incident that had occurred about seven weeks before he gave evidence in which, at 9.30pm, two drunk youths wandered into the well-lit driveway of his property and proceeded to urinate and spit on his family's car, amongst other things, vandalising the driveway.⁴²¹ He reported the incident to the police, the Constable saying he knew the youths, who were underage, and he would take care of the matter.⁴²² Mr Ferguson said that the town has its fair share of bored children looking for something to do on a Sunday night, and that the two youths were very drunk.⁴²³

256. Ms Stephenson related a conversation she had had with the police officer who had approved the Original Application, including reference to the decriminalisation of public drunkenness in November 2023.⁴²⁴ She said this meant the police would not be able to pick up someone who is drunk in the streets and take them back to the police station where they are safe.⁴²⁵ She suggested that this increased the potential for antisocial behaviour.⁴²⁶

257. Ms Peterson reviewed the licensed hours of the existing packaged liquor outlets in Daylesford and concluded that they had later trading hours than the proposed Dan Murphy's outlet.⁴²⁷ She noted that Liquorland and Foxy's Liquor/Cellarbrations are licensed until 11pm and in closer proximity to late night venues, most of which hold general licences.⁴²⁸ She said in evidence that those outlets may not necessarily trade that late, but they are licensed to that time.⁴²⁹

258. Ms Peterson did not expect there to be an increase in littering over and above any other proposed use or that it would increase the likelihood of noise or anti-social behaviour,

⁴²⁰ Licensee January Submissions at [266].

⁴²¹ Hearing transcript, page 997, lines 22 to 24.

⁴²² Hearing transcript, page 997, lines 27 to 30; page 1022, lines 8 to 19.

⁴²³ Hearing transcript, page 997, lines 31 to 32.

⁴²⁴ Hearing transcript, page 1115, line 40 to page 1116, line 35.

⁴²⁵ Hearing transcript, page 1116, lines 26 to 27.

⁴²⁶ Hearing transcript, page 1116, lines 33 to 35.

⁴²⁷ Peterson Report at [146]. See also Hearing transcript, page 188, lines 31 to 33.

⁴²⁸ Peterson Report at [147].

⁴²⁹ Hearing transcript, page 188, lines 33 to 34. See also Hearing transcript, page 287, line 26 to page 289, line 4.

as patrons will not be able to consume liquor on-site.⁴³⁰ Ms Peterson referred to the operations management plan for the Premises, which sets out operational arrangements to address common amenity concerns.⁴³¹

259. Ms Peterson considered the rate of drunk and disorderly in public offences in the Hepburn LGA as reported by the Crime Statistics Agency, which sits well below the Victorian average over the period between 2013 and 2022.⁴³² She also reviewed the total number of drunk and disorderly in public offences in each of the major population centres within the Hepburn LGA, to which Daylesford is the highest contributor to the overall number, albeit this number is very low.⁴³³ The highest number of drunk and disorderly in public offences recorded in Daylesford is four in a single year.⁴³⁴ Under examination by Counsel Assisting, Ms Peterson accepted that the lack of a police presence after hours might impact on the reporting of such offences, given that they are more likely to occur between 8pm and 6am.⁴³⁵ She was not able to estimate this effect by reference to a percentage or figure.⁴³⁶
260. The Licensee submitted that it is only the statistical information which gives any indication of “disorderly behaviour” referred to by Ms Peterson – which indicates very minimal disruptive behaviour.⁴³⁷ It submitted that this should give the Commission comfort that there is little impact on amenity arising from the current provision of packaged liquor, and no basis to conclude that this would change if the Licensee commenced trading.⁴³⁸
261. The Commission broadly agrees with the Licensee’s submission on this point.
262. However, the Commission has explained its conclusion above that granting the Licence would be conducive to or encourage harm, specifically to minors, on the basis that there is an appreciable risk it would result in an increase of secondary supply.
263. The Commission finds that there is some consequential risk, therefore, that granting the application would also be detrimental to the amenity of the area in which the premises

⁴³⁰ Peterson Report at [173]-[175]; Hearing transcript, page 191, lines 6 to 14.

⁴³¹ Peterson Report at [177]; Hearing transcript, page 191, lines 14 to 24.

⁴³² Peterson Report at [179], Fig. 9.5; Hearing transcript, page 195, lines 39 to 40.

⁴³³ Peterson Report at [179], Fig. 9.6.

⁴³⁴ Hearing transcript, page 196, lines 1 to 2.

⁴³⁵ Hearing transcript, page 293, lines 39 to 43.

⁴³⁶ Hearing transcript, page 293, line 45 to page 294, line 12.

⁴³⁷ Licensee January Submissions at [260].

⁴³⁸ Licensee January Submissions at [260].

to which the application relates are situated insofar as there is an increase in drinking by minors in the area with consequent anti-social behaviour. However, the Commission is not persuaded that any increase in such anti-social behaviour that is consequent to minors drinking in the area, of itself, justifies refusal.

Other issues

264. Mr Eliades expressed concerns about the effect the proposed outlet would have on the amenity of the area.⁴³⁹ These ranged beyond the scope of the concept of amenity in the LCR Act, and the Commission places no weight on them.
265. Mr O'Keefe also expressed the concern that the introduction of a corporate conglomerate like Dan Murphy's would impact the amenity of the area, based on an understanding that the word amenity relates to the whole community, and not just those directly impacted by a Dan Murphy's outlet at the Premises.⁴⁴⁰ The Licensee in the Licensee January Submissions submitted that there is nothing in the LCR Act which seeks to differentiate between licensees; "chain stores" already exist in Daylesford such as Coles and Liquorland, and the very prominent hardware chain store on the major roundabout on the main street.⁴⁴¹ The Commission agrees with the Licensee on this point.

Whether granting the Licence would facilitate the development of a diversity of licensed facilities reflecting community expectations

266. The Commission must exercise its discretion whether or not to grant a licence with regard to the object of the LCR Act of facilitating the development of a diversity of licensed facilities reflecting community expectations.⁴⁴²
267. Ms Poke described the roots of the Victorian wine industry in the early Swiss Italian settlers who came to Hepburn Springs since the 1850s.⁴⁴³ Many of the local wineries, breweries and distilleries have been inspired by these original suppliers.⁴⁴⁴ Ms Poke submitted that these businesses add to the diversity of the licensed businesses reflecting community values and expectations.⁴⁴⁵

⁴³⁹ Witness statement of Mr Basil Eliades dated 23 May 2023.

⁴⁴⁰ Letter from Mr Simon O'Keefe dated 24 May 2023.

⁴⁴¹ Licensee January Submissions at [263].

⁴⁴² LCR Act, sections 4(1)(b) and 172D(3).

⁴⁴³ Hearing transcript, page 793, lines 15 to 17.

⁴⁴⁴ Hearing transcript, page 793, lines 19 to 20.

⁴⁴⁵ Hearing transcript, page 793, lines 20 to 21.

268. Ms Peterson inspected various licensed premises in Daylesford on 4 May 2023.⁴⁴⁶ From this inspection, she noted that the Liquorland and Foxy's Liquor/Cellarbrations packaged liquor outlets are small retail offers.⁴⁴⁷ Liquorland is associated with the Coles supermarket, whilst Foxy's Liquor/Cellarbrations is a standalone outlet on the main street of Daylesford.⁴⁴⁸ She described Blake Family Grocers as a gourmet mini supermarket with just a few shelves of alcohol for sale located near the cash register, which she considered to be tailored toward the tourism market with more expensive and gourmet products.⁴⁴⁹
269. Mr Abery identified various features of the proposed Premises as differentiating it from other liquor stores in Daylesford.
270. Mr Scott-Mackenzie in his evidence identified an opportunity for the people of Daylesford to enjoy a much wider range of products and services than is currently available.⁴⁵⁰
271. The Commission concludes that, subject to the findings that it has made that the granting of the Licence would be conducive to or encourage harm to minors, the granting of the Licence would facilitate the development of a diversity of licensed facilities reflecting community expectations.

Whether granting the Licence would contribute to the responsible development of the liquor, licensed hospitality and live music industries

272. The Commission concludes that, subject to the findings that it has made that the granting of the Licence would be conducive to or encourage harm to minors, the granting of the Licence would contribute to the responsible development of the liquor industry.⁴⁵¹

Decision

273. In all the circumstances, having regard to all the materials before it, the Commission is satisfied that it is appropriate to exercise its discretion to refuse to grant the Licence on the basis that granting the Licence would be conducive to or encourage harm (to minors).
274. For the reasons set out above, the Commission concludes that granting the Licence would be conducive to or encourage harm, specifically to minors. Subject to this finding,

⁴⁴⁶ Peterson Report at [17], [207].

⁴⁴⁷ Peterson Report at [207].

⁴⁴⁸ Peterson Report at [207]; Hearing transcript, page 187, lines 30 to 34.

⁴⁴⁹ Peterson Report at [208]; Hearing transcript, page 187, line 36 to page 188, line 1.

⁴⁵⁰ Hearing transcript, page 1206, lines 39 to 40.

⁴⁵¹ LCR Act, sections 4(1)(c) and 172D(3).

the Commission:

- (a) concludes that, generally speaking, the granting of the application would not detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated, albeit that the Commission accepts that there is some risk that granting the application would be conducive to an increase in anti-social behaviour in the area;
 - (b) accepts that the Premises would facilitate the development of a diversity of licensed facilities reflecting community expectations; and
 - (c) accepts that the Premises would contribute to the responsible development of the liquor, licensed hospitality and live music industries.
275. As explained by the majority in *Kordister*, the Commission must balance each of the objects of the LCR Act and arrive at an appropriate synthesis in the particular circumstances of the case by the way of a discretionary judgment.
276. The Commission in this instance places significant weight on the primary regulatory object of harm minimisation in relying on the ground of refusal under section 44(2)(b)(ii) of the LCR Act that the granting of the application would be conducive to or encourage harm.
277. As noted above, the Commission does not find that (generally speaking) the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated. And the Commission accepts that, to some extent, the granting of the Licence would contribute to community life, by providing another venue at which consumers could purchase liquor in Daylesford. The Commission has given these matters some weight.
278. The Commission has also given some weight to the remaining objects of the LCR Act, concerning the development of a diversity of licensed facilities reflecting community expectations, and contributing to the responsible development of the liquor, licensed hospitality and live music industries, under section 4(1)(b) and (c) respectively.
279. The majority in *Kordister* also held that the notion of harm minimisation is not simply one of limiting the supply of alcohol, but is concerned with regulating supply of alcohol so as to ensure, as far as practicable, net community benefit. However, in the Commission's view, *Kordister* does not stand for the proposition that the Commission is considering

net community benefit in some wholly general way. Rather, the question of regulating the supply of alcohol to ensure net community benefit is “balanc[ing] each of the objects” of the LCR Act.

280. The Licensee in its January Submissions alleged that a number of positive benefits would flow from the granting of the Licence, and referred to Ms Peterson’s identification of these in her report and oral evidence.
281. Some of these alleged benefits are not, however, in the Commission’s view, relevant. That is because they are not connected to the objects of the LCR Act.⁴⁵² These alleged benefits include increased short-term (construction) and long-term employment opportunities; increased provision of landscaping opportunities along street frontages; provision of a vibrant commercial use on vacant land; and development of vacant land at a cost of approximately \$7.5 million. The Commission places no weight on these claimed benefits.
282. Those claimed benefits that do relate to the objects of the LCR Act are increased consumer choice and product diversification, and increased market competition in the form of potential for the provision of a new bottle shop to result in lower consumer prices for goods and services provided as retailers vie for customers. These fall within the scope of objects under section 4(1)(b) and (c). To the extent that Ms Peterson’s evidence was within the scope of the objects of the LCR Act (including under section 4(1)(a) as well as (b) and (c)), the Commission regards it as helpful and relevant. Ms Peterson, when recalled, responded to a question from the Commission by saying that if she were to write her report again, she would not change the table of benefits and disbenefits in her report, but that she would be more explicit in discussing harm minimisation as a concept.
283. Ultimately, the Commission considers in light of all of the evidence in this case that the appropriate decision involves giving greater weight to the primary regulatory object of

⁴⁵² The Commission also notes that, as the Licensee submitted, this is not an application for a licence for a large packaged liquor outlet, where the LCR Act provides an additional ground of refusal under section 44(2)(d) (that the “net economic and social impact of granting the application would be detrimental to the wellbeing of the local community”). The Commission does not consider that, expressed in general terms, any asserted economic and social impact benefit (e.g. increased employment opportunities, or attractive landscaping proposed for a venue) is necessarily relevant to its decision-making. The Commission has focused on the objects of the LCR Act in making its decision.

minimising harm (sections 4(1)(a) and (2)), and that this outweighs the positive benefits of granting the Licence (sections 4(1)(b) and (c)).

284. No conditions have been identified by the Licensee or any of the Internal Review Applicants that would mitigate the appreciable risk that granting the Licence would be conducive to or encourage harm to minors, and the Commission has also not identified any.

Decision on review

285. Based on the reasons set out above, the Commission is not satisfied that granting the Original Application the subject of the Internal Review Applications is appropriate in the circumstances.

286. The Commission has therefore determined to grant the Internal Review Applications and to set aside the Original Decision, and to refuse the Original Application.

The preceding 286 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Acting Chair), Mr James O'Halloran (Deputy Chair) and Ms Susan Timbs (Commissioner).

Appendix: Material before the Commission

- (a) Statement of Reasons for the Decision dated 9 December 2022;
- (b) Internal Review Application of Ms Krystyna Szokolai received on 5 January 2023;
- (c) Internal Review Application of Ms Gina Butera received on 6 January 2023;
- (d) Internal Review Application of Mr Mark Dickenson received on 6 January 2023;
- (e) Internal Review Application of Cr Jen Bray received on 6 January 2023;
- (f) Internal Review Application of Hepburn Shire Council received on 6 January 2023;
- (g) Internal Review Application of Ms Lynda Poke received on 6 January 2023;
- (h) Internal Review Application of Ms Irene Holub received on 9 January 2023 and annexures:
 - a. VicHealth 2013 report entitled “The social harms associated with the sale and supply of packaged liquor in Victoria”;
 - b. Sax Institute 2016 report entitled “Community impact of liquor licences”;
- (i) Submissions of the Licensee opposing stay application dated 11 January 2023;
- (j) Community Impact and Community Interest Assessment dated May 2023, submitted by Ms Poke;
- (k) Witness statement of Ms Poke dated 21 May 2023;
- (l) Witness statement of Prof Hal Swerissen dated 21 May 2023, submitted by Ms Poke;
- (m) Witness statement of Ms Michelle Stephenson dated 21 May 2023;
- (n) Witness statement of Ms Philippa June Burne dated 21 May 2023;
- (o) Witness statement of Ms Andrea Maree Furness dated 22 May 2023, submitted by Ms Poke;
- (p) Letter from Mr Daniel J McDiarmid dated 22 May 2023;
- (q) Witness statement of Prof Rob Moodie and Dr Shelley Bowen dated 23 May 2023, submitted by Ms Poke;
- (r) Witness statement of Mr Basil Eliades dated 23 May 2023 (excluding page 4) and annexures:
 - a. 21 February 2022 newspaper article entitled “Endeavour Group and Dan Murphy’s win from drinking at home”;
 - b. Guildford Association submission in respect of a development application for a McDonalds fast food outlet in Guildford, Western Australia dated 4 May 2017;

- c. Minutes of the Metro East Joint Development Assessment Panel dated 7 August 2017;
- d. 2010 report by the New Economics Foundation entitled “Re-imagining the high street: Escape from Clone Town Britain”;
- (s) Witness statement of Mr David Ferguson dated 23 May 2023;
- (t) Witness statement of Mr David Moore dated 24 May 2023 and annexure entitled “Kathleen McCrae’s and David Moore’s Lived experience with a local Alcohol compromised person”;
- (u) Witness statement of Cr Bray dated 24 May 2023 and annexures:
 - a. 2021 Census All persons QuickStats: Daylesford;
 - b. Hepburn Shire Council’s “A Home in Hepburn Shire: Draft Strategy and Action Plan”;
 - c. 2021 Census All persons QuickStats: Hepburn LGA;
 - d. Hepburn Shire’s “ACE Youth Census Summary Report, Hepburn Shire 2021”;
 - e. Hepburn Shire Youth Census Survey conducted in December 2020;
 - f. Australian Bureau of Statistics General Community Profile: Daylesford (SAL20721);
 - g. Presentation slides including photographs;
 - h. Letter from Steve MacPhail, Principal, Daylesford College dated 22 May 2023;
 - i. 2011 paper by Sandra C Jones and Christopher A Magee of the University of Wollongong entitled “Exposure to alcohol advertising and alcohol consumption among Australian adolescents”;
 - j. Media release on the “Ten to Men: The Australian Longitudinal Study on Male Health” report dated 8 October 2020;
 - k. Report by the Australian Institute of Health and Welfare entitled “Alcohol, tobacco & other drugs in Australia” dated 26 April 2023;
 - l. Report of the Independent Panel Review into the proposed Dan Murphy’s development in Darwin dated 28 April 2021;
- (v) Witness statement of Mr Dickenson dated 24 May 2023;
- (w) Witness statement of Ms Bridie De Vecchi dated 24 May 2023;
- (x) Witness statement of Ms Debra Rauber dated 24 May 2023;
- (y) Witness statement of Dr Jennifer Beacham dated 24 May 2023;
- (z) Witness statement of Cr Lesley Hewitt dated 24 May 2023;

- (aa) Witness statement of Mr Peter Joseph O'Mara dated 24 May 2023;
- (bb) Letter from Mr Edwin Beacham dated 24 May 2023;
- (cc) Letter from Mr Simon O'Keefe dated 24 May 2023;
- (dd) Letter from Ms Vanesa Hernandez Rodriguez received on 24 May 2023;
- (ee) Letter from Springs Medical dated 25 May 2023, submitted by Ms Poke;
- (ff) Letter from Ms Mara Ripani received on 25 May 2023;
- (gg) Letter from Ms Karri Flood received on 25 May 2023 from Ms Ripani;
- (hh) Submissions of Hepburn Shire Council dated 31 May 2023 and annexures:
 - a. Planning Permit dated 4 December 2018;
 - b. Planning Property Report dated 29 May 2023;
 - c. Amended Planning Permit dated 5 July 2022;
 - d. Planning Permit Assessment Report dated 14 June 2022;
 - e. Daylesford: Sensitive Uses map;
 - f. Daylesford: Liquor licence by category Map;
 - g. List of Liquor Licences;
 - h. 2011 article by Jennie L Connor et al entitled "Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study";
 - i. 2016 article by B Rowland et al entitled "The density of alcohol outlets and adolescent alcohol consumption: An Australian longitudinal analysis";
- (ii) Social Impact Assessment report prepared by Colleen Peterson dated 8 June 2023;
- (jj) Witness statement of Mr Chris Aberly dated 15 June 2023;
- (kk) Submissions of the Licensee dated 21 June 2023 and annexures:
 - a. Victoria Government Gazette – No. S 384 Tuesday 2 August 2022;
 - b. Document entitled "Information Required When Lodging Objection";
 - c. Hepburn Shire Council General Local Law No. 2 of 2019;
 - d. *Black and Cooke v Director of Liquor Licensing* [2000] VCAT 459;
 - e. *Woolworths Limited at Dan Murphy's Cranbourne East premises (Liquor-internal review)* [2016] VCGLR 7;
 - f. *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325;
- (ll) Witness statement of Dr Gregory Stewart dated 10 August 2023;
- (mm) Response of Ms Poke to Commission's request for information and submissions dated 25 September 2023;
- (nn) Response of Mr Eliades to Commission's request for information and submissions dated 25 September 2023;

- (oo) Response of Mr Eliades to Commission's request for information and submissions dated 25 September 2023;
- (pp) Response of Cr Bray to Commission's request for information and submissions dated 25 September 2023;
- (qq) Response of Ms Furness to Commission's request for information and submissions received on 26 September 2023;
- (rr) Response of Mr Dickenson to Commission's request for information and submissions received on 26 September 2023;
- (ss) Submissions of Hepburn Shire Council dated 26 September 2023 and annexure:
 - a. Hepburn Shire Youth Census Survey conducted in December 2020;
- (tt) Presentation slides of Ms Rauber received on 26 September 2023;
- (uu) Articles submitted by Ms Rauber on 26 September 2023:
 - a. 2009 article by Andrew W Ellis et al, entitled "Age of acquisition and the recognition of brand names: On the importance of being early";
 - b. 2017 article by Matthew A Lapierre et al, entitled "The effect of advertising on children and adolescents";
 - c. 2018 article by Alexandra Aiken et al, entitled "Youth perceptions of alcohol advertising: are current advertising regulations working?";
- (vv) Presentation slides of Mr Moore received on 26 September 2023;
- (ww) Email communication from Mr Murray Kellock (King & Wood Mallesons) to Commission dated 26 September and attachments:
 - a. Document entitled "Hepburn LGA Statistics – Rates of Family Violence";
 - b. Witness Statement of James Alexander Scott-Mackenzie dated 25 September 2023 and annexures:
 - i. JSM-1: Curriculum Vitae;
 - ii. JSM-2: Plan of Management: Dan Murphy's Daylesford;
 - iii. JSM-3: Commitment to Community;
 - iv. JSM-4: Crime Prevention through Environmental Design;
 - c. Witness Statement of Rosie Antonietta Prezioso dated 26 September 2023 and annexures:
 - i. RAP-1: ID25 Policy;
 - ii. RAP-2: Secondary Supply Policy;
 - d. Submissions of Licensee and annexure dated 26 September 2023;

- i. Second reading speech for Liquor Control Reform Amendment Bill 2021;
 - (xx) Newspaper article dated 5 August 2022 received from Licensee on 2 October 2023;
 - (yy) Photographs received from Mr Moore on 2 October 2023;
 - (zz) Presentation slides of Cr Bray received on 3 October 2023;
 - (aaa) Presentation slides of Mr Dickenson received on 3 October 2023;
 - (bbb) Photographs received from Mr Moore on 3 October 2023;
 - (ccc) Dan Murphy's website pages received from Hepburn Shire Council on 3 October 2023;
 - (ddd) Document received from the Licensee entitled "Proposed Elevations" received on 3 October 2023;
 - (eee) Document received from Ms Poke on 4 October 2023 entitled "Overview of density of packaged liquor outlets for Daylesford";
 - (fff) Document extract received from Cr Bray entitled "Who are our ratepayers?" received on 4 October 2023;
 - (ggg) Extracts received from Cr Bray from 2016 article by B Rowland et al entitled "The density of alcohol outlets and adolescent alcohol consumption: An Australian longitudinal analysis" received on 4 October 2023;
 - (hhh) Untitled documents recording statistical information received from Ms Peterson on 4 October 2023;
 - (iii) Photograph received from Cr Bray on 5 October 2023;
 - (jjj) Photographs received from Ms Rauber on 5 October 2023;
 - (kkk) Letter from Emma Johns, Manager, Springs Medical dated 5 October 2023, submitted by Ms Poke;
 - (lll) Email communication from Cr Bray received on 6 October 2023 containing internet links to Hepburn Shire Township Structure Plan Review and news article;
 - (mmm) 2009 article by Andrew W Ellis et al, entitled "Age of acquisition and the recognition of brand names: On the importance of being early" received from Mr Moore on 6 October 2023;
 - (nnn) Documents received from the Licensee on 6 October 2023:
 - a. Daylesford Primary School Facebook post;
 - b. Incomplete copy of 2011 paper by Sandra C Jones and Christopher A Magee of the University of Wollongong entitled "Exposure to alcohol advertising and alcohol consumption among Australian adolescents";

- c. Extracts from Cancer Council Victoria, Australian Secondary School Students' Use of Tobacco, Alcohol, Over-the-Counter Drugs, and Illicit Substances: Second Edition [ASSAD 2017 Statistics and Trends];
 - d. Hepburn Shire Youth Census Survey conducted in December 2020;
 - e. Extract from report entitled "Interventions for reducing alcohol supply, alcohol demand and alcohol-related harm";
- (ooo) Presentation slides of Cr Bray received on 8 October 2023;
- (ppp) Presentation slide of Cr Bray received on 9 October 2023;
- (qqq) Document received from Ms Poke on 9 October 2023 entitled "Responsible Investment Benchmark Report";
- (rrr) 2015 article by Denise Azar et al, entitled "The association between alcohol outlet density and alcohol use among urban and regional Australian adolescents" received from Licensee on 9 October 2023;
- (sss) Documents received from the Licensee on 9 October 2023:
 - a. Cellarbrations at Foxy's Daylesford Facebook post;
 - b. Hepburn Shire Council ACE [Advocate Celebrate Elevate] Youth Development Strategy;
- (ttt) Articles submitted by Prof Swerissen on 9 October 2023:
 - a. 2008 article by Michael Livingston et al, entitled "Individual and community correlates of young people's high-risk drinking in Victoria, Australia";
 - b. 2015 article by B Rowland et al, entitled "The density of alcohol outlets and adolescent alcohol consumption: An Australian longitudinal analysis";
 - c. 2018 article by Adam Sherk et al, entitled "Alcohol consumption and the physical availability of take-away alcohol: Systematic reviews and meta-analyses of the days and hours of sale and outlet density";
- (uuu) 2009 article submitted by Prof Swerissen on 10 October 2023 by Alexander C Wagenaar et al, entitled "Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies";
- (vvv) Document entitled "Alcohol, tobacco & other drugs in Australia" received from Licensee on 10 October 2023;
- (www) Document entitled "Risk factors (estimates)" received from Licensee on 10 October 2023;
- (xxx) 3D Model images received from Mr Moore on 10 October 2023;
- (yyy) Documents received from Mr Moore on 10 October 2023;

- a. Statement of Reasons for an Application for a Packaged Liquor Licence ALDI Byron Bay dated 31 May 2016;
 - b. National Health and Medical Research Council Australian guidelines to reduce health risks from drinking alcohol;
 - c. Document entitled “David Moore Architect”;
 - d. Google Street View images;
 - e. Foundation for Alcohol Research and Education Submission to proposed Queensland regulatory framework for online liquor sale and delivery;
 - f. World Health Organization news release dated 4 January 2023;
 - g. 2023 article by Benjamin O Anderson et al entitled “Health and cancer risks associated with low levels of alcohol consumption”;
 - h. business.gov.au Packaged Liquor Licence – Victoria: Description;
 - i. AOD Stats Liquor licences;
 - j. Foundation for Alcohol Research and Education 2014 paper entitled “Stemming the tide of alcohol: Liquor licensing and the public interest”;
 - k. The Guardian news article dated 29 April 2021;
 - l. Redshift Architecture document entitled “What is this amenity of which you speak?”;
 - m. The Byron Shire Echo news article dated 9 October 2012;
- (zzz) Email communication from Dr Bowen received on 15 October 2023 containing Australian Bureau of Statistics figures and extract from submission by M Livingston to the Liquor and Gambling Commissioner of South Australia regarding packaged liquor applications dated 5 July 2021;
- (aaaa) Presentation slides of Cr Bray received on 8 November 2023;
- (bbbb) Presentation slides of Dr Beacham received on 20 November 2023;
- (cccc) Documents received from Cr Hewitt on 20 November 2023:
- a. Australian Institute of Family Studies paper entitled “Alcohol-related harm in families and alcohol consumption during COVID-19”;
 - b. Australian Institute of Health and Welfare news release dated 15 March 2019;
 - c. Australian Institute of Family Studies website;
 - d. Department of Education and Early Childhood Development Early Childhood Community Profile: Grampians Region 2010;
 - e. 2017 paper by M Livingston entitled “Packaged liquor in Victoria: 2001 to 2016”;

- f. Hepburn Shire Council: Baseline data report;
- (dddd) Email communication from Licensee received on 24 November 2023 containing information from Ms Peterson and attaching:
 - a. List of schools and proximity to licensed premises;
 - b. Victorian Alcohol and Drug Association 2011 position paper entitled “Preventing alcohol related violence”;
- (eeee) Documents received from Ms Stephenson on 27 November 2023:
 - a. Women’s Health Atlas Victoria: Hepburn, Grampians Region: Violence Against Woman Fact Sheet dated 27 February 2023;
 - b. Hepburn Shire Council Community Reference Group Welcome pack dated February 2022;
- (ffff) Documents received from Mr Moore on 27 November 2023:
 - a. Email communication from Paul Anderson, Secretary/Treasurer, Daylesford Fire Brigade dated 31 August 2023;
 - b. Email communication from Gary McIntosh, Musk Country Fire Authority Brigade Member dated 27 November 2023;
 - c. Document entitled “Attendance at Littles Supper Club aka The Spa Bar ex Horvats”;
- (gggg) Documents submitted by Counsel Assisting the Commission on 27 November 2023:
 - a. Extract from Review of the South Australian Liquor Licensing Act 1997 dated 29 June 2016 (an additional page was relied on by the Licensee on 30 January 2024);
 - b. Extract from *BWS Cumberland Park* [2022] SALC 70;
 - c. Extract from *Dan Murphy’s South Fremantle* (Liquor Commission of Western Australia, 13 October 2011);
 - d. Extract from *Liquor Control Reform Act 1998* (Vic);
 - e. Extract from *Liquor Licensing Act 1997* (SA);
- (hhhh) Socio-Economic Indexes for Areas maps prepared by Ms Peterson and received from Licensee on 28 November 2023;
- (iiii) Documents submitted by Counsel Assisting the Commission on 28 November 2023:
 - a. Extract from Preventative Health Taskforce 2009 report entitled “Preventing alcohol-related harm in Australia: a window of opportunity”;
 - b. Extract from Department of Human Services and Health 1995 report entitled “The quantification of drug caused morbidity and mortality in Australia”;

- (jjj) Email communication from Licensee received on 5 December 2023 containing information from Mr Scott-Mackenzie and attaching:
 - a. Document entitled “PCM ESG Analysis - DM Daylesford (Vic)” dated 7 October 2021;
 - b. Australia Post, Delivery of parcels containing alcohol;
 - c. Data Analysis Australia report entitled “Review of a Study of the Effects of Liquor Outlet Density and Other Factors in Western Australia” dated November 2010;
 - d. Data Analysis Australia report entitled “A Study of the Balga, Albany and Mandurah Dan Murphy’s Outlets in Western Australia” dated November 2010;
 - e. Document entitled “Our Sustainability Strategy and the IPR”;
 - f. Document entitled “Price Override - EG”;
- (kkkk) Letter from Ms Emma Johns, General Manager, Springs Medical dated 11 December 2023, submitted by Ms Poke;
- (llll) Submissions of Counsel Assisting the Commission dated 13 December 2023;
- (mmmm) Submissions of Mr Moore dated 28 December 2023;
- (nnnn) Submissions of Hepburn Shire Council dated 15 January 2024;
- (oooo) Submissions of Ms Stephenson dated 15 January 2024;
- (pppp) Submissions of Mr Dickenson received on 15 January 2024;
- (qqqq) Submissions of Cr Bray received on 15 January 2024;
- (rrrr) Submissions of Ms Poke dated 15 January 2024;
- (ssss) Submissions of Licensee dated 15 January 2024;
- (tttt) Email communication from Cr Bray received on 30 January 2024 containing transcript references;
- (uuuu) Email communication from Mr Moore received on 30 January 2024 attaching 2009 article by Andrew W Ellis et al, entitled “Age of acquisition and the recognition of brand names: On the importance of being early”.