Appendix B: A concise statement of the main factual or legal points that the appellant intends to argue on appeal or review

The information provided to the Authority was incorrect.	There is a place of religious worship within 100m of the proposed establishment. This is the Buddhist Meditation Centre on the corner of Nuttall and Trill Roads, which is located 70m metres away and will be adversely affected by the granting of the license. In terms of the Act, the granting of a license can only be done if the Tribunal is convinced that, on balance of probabilities, the application will not prejudice "the congregants of a religious institution located in the vicinity of the proposed licensed premises." Since the evidence presented in the reports to the Tribunal claimed that the nearest religious institution located in the vicinity was a church some distance from the property, it was not possible for the Tribunal to consider the balance of probabilities fairly and its decision must be flawed in process. In other words, this meant that the WCLA could not make an informed decision as to whether the license was in the public interest or not and should trigger a review.
The Liquor Tribunal applied unfair discrimination in the way it considered evidence at the Tribunal.	The Liquor Tribunal entertained a suggestion by the applicant that the report by Anine Kriegler was out of date but did not ask the applicant to provide alternative evidence to support his claim; there is no record that this suggestion was rebutted by the Tribunal. It is not clear if this suggestion influenced the Liquor Tribunal decision – if it is did, this is procedurally unfair since the same level of scrutiny of the I&Aps' arguments is not applied to the applicants' arguments. He should provide evidence if, as he suggests, the research is outdated. Since he did not, this is a procedural flaw.
The Liquor Tribunal did not assess the application reasonably when considering the balance of probabilities.	The Liquor Tribunal can only grant a license if it is persuaded, again, on the balance of probabilities, that the granting of the license "does not prejudice the residents of a residential area." It is unclear how the Liquor Tribunal could come to the conclusion that running an open-air establishment, notwithstanding proposed measures to mitigate outside noise, could, on the 'balance of probabilities' not prejudice a neighbour separated by a mere wall from a recreational area filled with patrons who have been drinking. The Sub-Council 16 recommendation was very clear – approve the license for indoor use only and there should be no outdoor use at all – for the very reason that on the balance of probabilities, it will very unlikely that noise and disruption can be controlled. How exactly will soundproofing of

	outside areas limit noise, how will rowdy patrons who exit to the back be kept quiet, and how will the Liquor Authority have the capacity to enforce such 'conditions'? All this is assumed as possible without any evidence presented. How exactly is the application providing potential benefits since the Tribunal notes that it weighed up and considered "the potential benefits of the granting of the application"? The Springbok would still be able to sell alcohol to its current patrons without the use of the rear facility so it is not disadvantaged if the license were not granted. The only benefits appear to be the proprietor, not to any prospective clients, unless one considers the right to get drunk and go outside for a smoke and have a rowdy natter in the courtyard with a friend a benefit. The balance of burdens on the nearby residents appears unreasonable in the extreme. It is not clear how the Liquor Authority could have arrived at the conclusion that the award of this license was "on a balance of probabilities that the granting … in the public interest." Two legal publications discuss the interpretation of 'public interest' and both make it clear that for a public interest to exist, there must be a public benefit, not a private benefit or a benefit to some people. Swanepoel, writing in the Journal of Juridicial Sciences in 2016[1], framed public interest as action "in the interest of the public generally, or in the interest of a section of the public, but not … in that representative's own interest." Similarly, Slade, in the journal PER in 2014[2], argues that "public interest probably refers to purposes that benefit the public." As summarised by Corruption Watch[3], public interest must, at its heart, have "idea of something being of benefit to the public – in other words, of benefit to all of us, rather than just to some individuals." It is unclear how the Liquor Authority could have interpreted the applicant's wish to extend his business into the space behind his bar as being a public interest, when he already has

[1] See http://scholar.ufs.ac.za:8080/bitstream/handle/11660/5159/juridic_v41_n2_a3.pdf?sequence=1&isAllowed=y
[2] See http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812014000100005
[3] See https://www.corruptionwatch.org.za/what-constitutes-public-interest-2/

	the capacity to serve patrons in his premises without extending into an area that will cause hardship to neighbours.
The Liquor Tribunal decision fails to take into account the Western Cape Alcohol Harms Reduction Policy	A White Paper is a broad statement of government policy*. While it may not yet be translated into law, a White Paper must be considered as the current state of government policy intent while new legislation is being drafted. For that reason, when interpreting public interest, the factors that led to the White Paper must be considered when the Liquor Authority is faced with a regulatory decision. Specifically, given that the White Paper encourages the reduction of liquor outlet density in the interests of public health, and that the White Paper specifically recognizes the role of communities, civic organisations and community police forums in informing decisions on problematic liquor outlets and on the licensing application process, it disputed that the Liquor Authority cannot take liquor outlet density into account when considering the 'public interest'. Moreover, it is incumbent on the Liquor Authority not to trivialize the evident concerns of the community that this application is not in the public interest.
The Liquor Tribunal decision does not recognise the health impacts of its decision	It is well recognised that smoking and liquor consumption are correlated. In the absence of strong legislation and enforcement restricting smoking, it is very likely that the exposure to neighbours across the wall will not only involve noise, but likely cigarette smoke and debri that patrons might decide to throw over the wall. These are not behaviours that can be effectively policed. Rather, they should be prevented at source by restricting any social activities in the back yard of the Springbok Pub – as recommended by the Sub-Council.
The Liquor Tribunal decision does not recognise the problems in the business model of the applicant	The White Paper on Alcohol-Harms Reduction makes the point that "In South Africa low pricing, volume-based trade practices and a large poorly regulated and poorly enforced retail trade are important supply-side drivers of consumption and harmful drinking patterns." Attached is a photo of an advertisement for a regular (Thursday nights) event at the existing Springbok Bar under the rubric of "Mischief and Mayham" with an invitation to "Beer Pong Chaos" and a prize of a R 200 bar tab for the wining team. The proprietor of the Springbok Bar is also the holder of a license of another establishment listed in Loop Street called "The Drunken Springbok." It is clear that his business model is one that relies on identification with extreme behaviours – extreme drinking, extreme drunkenness and extreme mayhem. It is unclear how such a business model for a bar should be regarded as being 'on the balance of probabilities' in the public interest.

The Liquor Tribunal decision trivialises the risks to nearby residents	The evidence provided in the 2017 report by Anine Kriegler is compelling. However, the Tribinal appeared to disregard her research on the basis that there have been many developments in Observatory and that it is no longer accurate. This is hearsay and no evidence was presented to the Tribunal by the applicant to this effect. It is true that the population of Observatory has grown since Ms Kriegler did her research but this would not explain away her finding that Observatory has a liquor density 5 times higher than the rest of Cape Town. Even if one were to use the population estimate quoted in the 2019 Two Rivers Local Spatial Development Framework it would still place Observatory's liquor outlet density as 3.4 times higher than the Cape Town average. How much more evidence does the Tribunal require to recognise that there are too many outlets in Observatory for a safe and untroubled community? It is unacceptable that an applicant can dismiss a thoroughly researched report without themselves presenting any evidence.
The conditions imposed by the Liquor Tribunal are not effective measures to address the risks to nearby residents	The Tribunal appears to rely on the notion that dedicated personnel employed by the proprietor will ensure that the 'outside area do not cause a disturbance to neighbours.' This a wholly fallacious argument that runs counter to the Western Cape Alcohol Harms Reduction White Paper and contrary to abundant evidence that self-regulation by industry in the alcohol context is ineffective. To quote from the White Paper, in discussing advertising restrictions, it argues that "The alcohol industry often suggests self-regulation as an alternative to advertising policies. However, these codes can become weakened over time and audits show that the industry frequently does not conform to self-imposed standards." Similarly, "alcohol industry self-regulatory codes do not sufficiently protect children and adolescents from exposure to alcohol promotions, especially through social media". For these reasons, voluntary or self-regulation is not recommended." The WCLA certainly does not have the enforcement capacity to see that the owner complies with these conditions, which means the responsibility to monitor and report infringements falls to the neighbours affected by the activities of the establishment. In what way is this 'in the public interest'?
The conditions imposed by the Liquor Tribunal are unlikely to be implemented effectively and	The conditions imposed by Liquor Tribunal rely on enforcement to control transgressions but we know that the capacity of the WCLA, the SAPA and municipality law enforcement is extremely limited. Rather than fixing the problem after it occurs, preventing mayhem and drunkenness would be eminently more efficient.

impose obligations on residents to solve the problem	

* see https://www.parliament.gov.za/how-law-made.