

Riverland Liquor Mart PLSL Application Decision

Domain Supermarket Pty Ltd (**the Applicant**) has applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at Shop 2, 229 Twentyfirst Street, Renmark (**the Premises**), to be known as Riverland Liquor Mart.

As part of the application the Applicant has submitted a Community Impact Submission (**CIS**), with supporting attachments, prepared by Russell Green of RG Strategic, a specialist consulting firm. It is the content of the CIS, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged by the Australian Hotels Association (**AHA**) opposing the grant, and submissions and evidence in reply by the Applicant, that my decision is based on.

For ease of reference the following submissions and documents are referred to throughout the decision with the abbreviations noted below:

- Applicant's Community Impact Submission dated January 2022 (**CIS**)
- AHA Submission, received 22 February 2022 (**AHA1**)
- Submission from Jarrad Skinner on behalf of the Paringa Hotel dated 25 February 2022 (**JS1**)
- Applicant's Submissions in Reply, dated 4 February 2022 (**A2**)

This application for a packaged liquor sales licence is a designated application under section 53A of the *Liquor Licensing Act 1997* (**the Act**) and so may only be granted if the licensing authority is satisfied that the grant is in the community interest. In determining this application under section 53A(2) of the Act, I must have regard to:

- the harm that might be caused (whether to a community as a whole or a group within community) due to the excessive or inappropriate consumption of liquor;
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact of the amenity of, the locality of the premises or proposed premises; and
- the nature of the business conducted or to be conducted under the licence (as prescribed)

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**), which state: *"The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus."*

The Guidelines generally impose an obligation upon an applicant to include with the application a community impact submission that, if relevant, is expected to address a range of matters, including: the applicant's products/services in terms of key features and potential customers; business/professional experience, in particular relevant knowledge, experience and competency in relation to the service of liquor; general description of facilities and services; relevant construction details (e.g. materials, finishes, acoustic treatment, etc.); details of any food, including menu; liquor services (e.g. bar) and range of liquor; types of entertainment; types of accommodation; a statement as to whether the community supports the proposed business, including providing evidence of such support; and a statement as to why the granting of the application is in the community interest.

Applicants are also required to provide, where applicable: a map and report regarding the locality generated through Consumer and Business Service's (**CBS**) Community Impact

Portal; a business plan/plan of management; and a site or property plan, floor plan and/or photographs/artists impressions of the site/building.

Pursuant to section 3(2) of the Act, when deciding whether or not to grant this application, I must have regard to the objects of the Act as set out in section 3(1) of the Act.

Section 3(1) of the Act provides that:

- (1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—
 - (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and
 - (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
 - (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
 - (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.
- (1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—
 - (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and
 - (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
 - (c) the adverse effects on a person's health; and
 - (d) alcohol abuse or misuse; and
 - (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

In *Liquorland McLaren Vale* [2022] SALC 53 (*Liquorland McLaren Vale*) Gilchrist J rejected the Applicant's submission that all of the Act's objects must be treated equally and held [at 133] that:

A Licensing authority plainly must have regard to all the objects in the Act in considering an application. But in my opinion, the Act now contemplates that harm minimisation has primacy over the other objects, especially in connection with a designated application.

And made the observation [at 135] that:

As has been observed in other jurisdictions, 'harm minimisation' is just that. Its focus is on 'minimising harm or ill-health, not preventing it altogether'.

His Honour referred to the case of *Kordister v Director of Liquor Licensing & Anor* [2012] VSCA 325 at [13] per Warren CJ and Osborne JA in holding [at 145] that:

In the end, a licensing authority must '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, recognising that harm minimisation is of prime importance.

The Applicant must also satisfy the Authority that the pre-requisites in s 57 of the Act have been met, in relation to matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions, in respect of the proposed premises have been obtained.

Additionally, s 53 of the Act gives the Authority "*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*", and s 53(1a) provides that the authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest.

Section 53(1b) requires that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

Nature of the proposed business

The Applicant's proposed business is a new packaged liquor store outlet to be located in a 50 square metre tenancy within an existing corner block of five shops. The Applicant currently operates a convenience store/mini supermarket in the largest of the five tenancies at Shop 1, and proposes to open the liquor store next door at Shop 2. There is a hairdressing business in Shop 3 and otherwise a number of vacant tenancies. The block is located at the junction of Twentyfirst Street and Sims Parade, Renmark with easy access and ample parking. The Applicant submits they are knowledgeable of the local spending habits and the requirements of their customers.

The Applicant has applied a 5km radius to determine the locality which comprises a number of local suburbs including Renmark, Crescent, Paringa, Mundic Creek, Old Calperum, Murtho and Pike River. The Applicant has identified a number of licensed premises within the locality, including four packaged liquor sales licences:

- Riverland Negotiants, located approximately 4.1km from the proposed site;
- Alex Russell Wines, located approximately 2.4km from the proposed site;
- BWS Renmark Square, located approximately 1.3km from the proposed site in a significant shopping complex; and
- Firehouse Liquor, located approximately 1.6km from the proposed site.

Riverland Negotiants and Alex Russell Wines sell only wine, and Firehouse Liquor is a specialist coffee liqueur business, although an internet search indicates this business may be closed. These three businesses do not sell the range of liquor products proposed to be sold

by the Applicant and I do not consider them to be particularly relevant in the context of this application.

The Applicant referred to the existing BWS liquor store but did not address in detail the nature and scope of BWS store or the shopping complex in which it is situated. The Applicant noted the BWS store is on the southern side of the Sturt Highway whereas the proposed Liquor Mart store would be located on the northern side of the highway. The Applicant's business would offer convenience and would be expected to attract customers from suburbs in the north, west and south of Renmark.

The Applicant proposes to offer a full range of liquor products including beer, cider, wine, spirits and premixed drinks, although has not specified the number of products which would be available. A range of pre-packaged snack style foods would be available to complement the liquor products. There would be no entertainment or accommodation provided on premises.

This Applicant's proposal is to provide a second bottle shop in a town of approximately 12,500 persons and a catchment area of 79 square kilometres. The Applicant has suggested this second bottleshop in the township would encourage fair and competitive pricing for the benefit of the community. The Applicant identified the Paringa Hotel as an additional licensed premises in the locality but did not specifically address the bottleshop operated by this venue. The Applicant failed to identify Hotel Renmark in their CI, which was an additional and highly relevant licensed premises in the locality. Hotel Renmark operates a large Sip'n Save bottleshop with drive through and walk in capacity. The BWS store and the Sip'n Save bottle shop are the two major existing liquor stores which service the town of Renmark.

The Applicant has suggested that given the location of the proposed store and the "low risk operations of the Packaged Liquor Sales", the adverse impact of the proposed bottleshop will be "nil" on the "at risk" groups and sub-communities if present (pg12, CIS). The Applicant submits that the proposed business was supported by the local community of Renmark and a number of submissions / letters in support of the application were provided by a number of parties.

Potential harm

As noted above, harm minimisation has primacy over the other objects in the Act, especially in relation to designated applications, and a PLSL application is a designated application.

The Applicant refers to having carried out a "desktop analysis", which did not identify any 'at risk' groups or communities within the locality, but submits that "*to ensure the potential harm or health impacts derived from the proposed bottleshop are minimised or avoided*" management will ensure the following is undertaken:

- An approved responsible person will be on duty whenever the venue is open to the public;
 - All staff will have obtained their Responsible Service of Alcohol (RSA) training;
 - All staff to act respectfully towards patrons at all times;
 - Minors, unduly intoxicated persons, and disorderly patrons when on the premises will be dealt with in accordance with the *Liquor Act 1997* (sic); and
 - Management will monitor external noise to ensure nil impacts are experienced by adjoining business or residential communities.
- (4.1, pg12, CIS).

Although applying for a PLSL for a take away liquor store outlet, the Applicant states “Whilst a Packaged Liquor Sales Licence restricted to direct sales licence is not required to have RSA qualified staff, Riverland Liquor Mart will ensure all staff are RSA trained” (4.1, CIS), which appears to indicate a misunderstanding by the Applicant as they have not applied for a PLSL (direct sale only), but rather have applied for PLSL for a takeaway liquor outlet.

The Applicant states that RSA training helps to control the negative aspects of alcohol and provides staff with an understanding of how to deal with such things as:

- Service of alcohol to minors (anyone under 18);
 - Alcohol-related violence and crime;
 - Drunk and disorderly patrons; and
 - Noise disturbances.
- (4.1, CIS).

The Applicant acknowledges that there are a number of community facilities within a 5 km radius of the proposed offering, but does not provide any discussion or analysis of these community facilities, and submits that:

The proposed bottleshop is located within existing commercial shop building, in the Township Activity Centre of Renmark, and it can be inferred that the venue would not exert any negative impact on the community. Given the location, and the low-risk operations of the Packaged Liquor Sales, it can be predicted that the impact of this proposal will be nil.

(4.2, CIS).

At 4.3 of the CIS the Applicant again notes that no ‘at risk’ groups and sub-communities have been identified within the locality, but notes that management will ensure “*the following procedures are upheld to ensure community safety and wellbeing:*

- The bottleshop is sufficiently well lit inside and outside and complies with all requirements of the Workplace Health and Safety Act and the Fire and Rescue Service Act;
- The main carparking utilised by the customers adjacent to the bottle shop is well lit;
- Management will monitor external noise to ensure nil impacts are experienced by adjoin business or residential communities;
- As all staff have completed RSA requirements Riverland Liquor Mart will have no need for security;
- Management constantly reinforce RSA principles and practices in everyday trade; Reasonable effort will be made to ensure unduly intoxicated patrons are dealt with in a safe manner and escorted from the venue safely; and
- Management do not support drinking practices which foster a culture of binge drinking.”

(pg13, CIS).

The Applicant ultimately contends that the proposed packaged liquor outlet would not exert any negative impact on the community.

Given the high number of packaged liquor sales licence applications currently before the Authority, I considered it was appropriate to call for general submissions on harm pursuant to s 78 of the Act from Associate Professor Michael Livingston (**Professor Livingston**), the Royal Australasian College of Surgeons (**RACS**) and Australia’s National Research Organisation for Women’s Safety (**ANROWS**). I summarise this research below.

Submission of Associate Professor Michael Livingston

Michael Livingston is an Associate Professor at the National Drug Research Institute, Curtin University. He says that he is currently one of the preeminent international researchers examining the relationships between the availability of alcohol, alcohol consumption and alcohol-related harm.

The aim of Professor Livingston's submission is *"to provide a broad overview of the best available current evidence on the links between alcohol-availability and alcohol-related harm to assist the Commissioner in making appropriate decisions."*

Professor Livingston notes that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets, with this figure steadily increasing. He submits that:

"Substantial international research literature links the density of alcohol outlets in a neighbourhood to the rate of alcohol-related problems experienced in that neighbourhood."

Professor Livingston refers to the book *Alcohol: No Ordinary Commodity* released by the World Health Organisation which provides a general summary of the international research literature, and notes that policies aimed at regulating the physical availability of alcohol are considered to be some of the most effective policy options available to governments trying to limit or reduce harm from alcohol.

Professor Livingston sets out the findings of various international studies that focus on packaged liquor including:

- The density of packaged liquor outlets matters significantly, especially where changes in availability are dramatic, such as the introduction of beer to grocery stores in Finland and the introduction of wine to supermarkets in New Zealand.
- Episodic heavy drinking and heavy drinking by young people occur more frequently in neighbourhoods with higher densities of packaged liquor outlets.
- Packaged liquor density is associated with higher rates of public violence and other crime as well as higher rates of less visible harms including partner violence and child maltreatment, and chronic disease.

In terms of findings on the impact of packaged liquor outlets taken from Australian studies, Professor Livingston notes that: *"it is assumed in most cases (especially for off-premises outlets) that increased density means increased availability, which means increased consumption (and thus harm)."*

Professor Livingston then refers to Melbourne studies and submits that:

- There is growing local evidence linking the density of packaged liquor outlets to heavy drinking and alcohol problems.
- Longitudinal analysis of some studies showed positive associations over time between the density of packaged outlets and rates of domestic violence, general assaults and alcohol-specific disease.
- In an average postcode, a 10% increase in the density of packaged liquor outlets would lead to approximately:

- 1% increase in assaults recorded by police and a 0.5% increase in hospitalisation due to assault;
- 3.3% increase in family violence incidents recorded by the police;
- 1.9% increase in hospitalisations due to alcohol-specific chronic disease.
- The density of packaged liquor outlets at the local level was positively associated with rates of episodic risky drinking.
- Each individual outlet does not contribute to major increases in harm, however, the cumulative effects of increasing availability can be substantial.

In relation to the influence of neighbourhood characteristics Professor Livingston says:

There is growing evidence that the relationships between outlets and harms vary across neighbourhood types. Studies from the USA have shown larger effects for outlet density in socio-economically disadvantaged areas, in areas with low levels of social disorganisation and in neighbourhoods with higher levels of public housing or industrial areas.

He goes on to say that similar evidence is being developed in Australia, with a suggested 2% increase in assaults and a 12% increase in family violence following a 10% increase in packaged liquor outlets in disadvantaged suburban postcodes of Melbourne.

Professor Livingston discusses 4 Australian studies that consider the influence of outlet characteristics, and summarises the evidence as follows:

Taken together, the evidence here is suggestive that granting licences for large chain outlets, which are likely to sell more alcohol at cheaper prices than smaller outlets will increase the risk of negative consequences in a neighbourhood more substantially than other kinds of packaged liquor outlets, although the evidence is relatively limited and remains contested.

Professor Livingston also considers casual pathways and notes that recent data may suggest that: *“expanding alcohol availability affects the consumption of only a small number of marginalised or heavy drinkers, while the impact on the majority of the population is limited.”*

In conclusion, Professor Livingston submits that:

There is a wealth of high-quality, peer-reviewed research that demonstrates significant positive associations between the density of packaged liquor outlets at the local level and a wide range of negative outcomes.

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Where other neighbourhood characteristics have been examined, researchers generally find that outlets have larger impacts in areas of socio-economic disadvantage than in more advantaged neighbourhoods. There is suggestive evidence that big-box liquor stores may contribute more to alcohol problems than smaller stores, on the basis that they will sell more alcohol.

Submission of the Royal Australasian College of Surgeons

Dr John Crozier, Chair RACS (Australia and New Zealand) Trauma Committee, and Mr Peter Bautz, Chair RACS SA Trauma Committee provided a submission on behalf of RACS.

Referring to statistics provided by the Australasian College for Emergency Medicine, they submit that:

“Overall, the estimated one in eight hospitalisations relating to alcohol misuse continue to represent a significant and concerning proportion of health system workload.”

Details of the detrimental effects caused by alcohol related harm as witnessed by South Australian surgeons are provided as follows:

Orthopaedic surgeons repair shattered limbs, and general surgeons operate on internal organs smashed in car crashes – many of which are alcohol related. Faciomaxillary surgeons repair shattered faces from acts of alcohol fuelled (65 per cent) interpersonal violence.

Neurosurgeons perform time critical surgery draining blood from the skulls of inebriated patients following low energy falls or coward punched victims. South Australian surgeons also treat and manage the chronic medical aspects of primarily preventable alcohol related harms. Alcohol misuse is a casual factor in more than 200 diseases and injury conditions, including cirrhosis of the liver, inflammation of the gut and pancreas, heart and circulatory problems, sleep disorders, male impotency and eye disease. Excessive alcohol consumption also raises the overall risk of cancer, including cancer of the mouth, throat and oesophagus, liver cancer, breast cancer and bowel cancer.

They discuss research and studies conducted in relation to alcohol harm and injury, and submit that:

There is a positive relationship between alcohol outlets (general, on premise and packaged) and increased rates of violence. Additionally, there is a sharp increase in domestic and non-domestic violence where there are more than two hotels and one bottle shop per 1,000 residents with licensed premises being the third most common Australian setting for assault leading to hospitalisation.

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There is also substantial evidence in Australia and internationally that regulating the physical availability of alcohol, through outlet density restrictions, is one of the most effective ways to reduce its negative impacts.

Dr Crozier and Mr Bautz note the 2017 amendments to the Act relating to harm minimisation, and refer to the Object of the Act under section 3(1)(a) which states that the sale and supply of liquor is to occur in a manner that minimises harm and the potential for harm caused by the excessive or inappropriate consumption of liquor.

They point out the lack of publicly available crime data available in South Australia relating to the involvement of alcohol in criminal offending (unlike other jurisdictions such as New South Wales) and suggest that this is a barrier to rigorous evidence-based policy.

Dr Crozier and Mr Bautz submit that in light of the amendments to the Act relating to harm minimisation:

the onus should not be placed upon opponents to demonstrate why the overwhelming national and international empirical evidence base is relevant and should be applied to the specific local context. Instead the onus should be placed upon the applicant to demonstrate via independently verified research (not industry funded and developed) why the local context should be considered differently to the empirical evidence base.

Citing a number of Australian studies, Dr Crozier and Mr Bautz submit that in Australia:

- about half the reported cases of interpersonal violence, domestic violence and sexual assault are related to excessive alcohol consumption;
- alcohol use is often associated with more severe acts of violence reported to the police; and
- the severity of violence has been shown to increase with the amount of alcohol consumed.

Following the outbreak of COVID-19, there were reports from those on the front line of an increase in incidents of domestic violence, which led the United Nations to declare a 'Shadow Pandemic' *"to describe how the epidemic of domestic violence exists simultaneously with, but in the shadow of and obscured by the COVID-19 pandemic."* Figures released by SAPOL indicate that the incidence of domestic violence in South Australia increased by 11% in 2020 compared to 2019. Dr Crozier and Mr Bautz report that the increase in domestic violence also coincided with an increase of \$3.3 billion in turnover in the Australian alcohol retail sector in 2020.

Dr Crozier and Mr Bautz make the following submission in conclusion:

Therefore, at a time of increased stress, pressure and uncertainty placed upon individuals and families, further saturation of outlet density across Adelaide and South Australia is the wrong move and sends an incorrect message to the community. It also stands in stark contrast to the harm minimisation of the object of the Act and sets a dangerous precedent for future applications.

Submission of Australia's National Research Organisation for Women's Safety

Ms Padma Raman PSM, Chief Executive Officer, provides a submission on behalf of ANROWS, which is an independent, not-for-profit company established under Australia's *National Plan to Reduce Violence Against Women and their Children 2010-2022*. The primary function of ANROWS is to provide an accessible evidence base for developments in policy and practice design for prevention and response to violence against women in Australia.

Referring to a report of the Foundation for Alcohol Research and Education released in 2015, Ms Padma advises that:

"In Australia, alcohol is involved in around half of all domestic and family violence (DFV) assaults reported to police, with incidents of violence increasing on days when male partners were drinking."

ANROWS conducted research in 2017 and released a report on the links between alcohol consumption and domestic and sexual violence against women, finding that this link can manifest in a number of ways such as:

- perpetration of violence against women;
- the use of alcohol to victimise women; and
- women using alcohol as a coping strategy to deal with violence, which has a range of flow-on effects including an increased risk of further violence, a reduced ability to engage in treatment programs and an increased likelihood of losing custody of children.

In 2017, ANROWS conducted and reported on the *National Community Attitudes towards Violence against Women Survey* to examine people's understanding of the role of alcohol and other drugs in excusing men's violence or victim-blaming women. The results showed that *"a small and declining proportion of Australians believe in these notions of alcohol use to excuse or blame women."*

The research conducted by ANROWS in 2017 recommended *"that any alcohol-specific interventions (at government, community or individual levels) designed to reduce violence against women need to reflect the complexity of the connection between alcohol consumption and violence against women."*

In 2015 ANROWS produced a collaborative report entitled *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* that made specific recommendations on improvements around the regulation of alcohol including its availability and pricing and the culture around alcohol, as well as *"cross-sector collaboration with DFV response services, peak policy agencies, mental health, and other drug services to facilitate a holistic approach to overcome the harm caused by alcohol consumption."*

Ms Padma submits that *"planning for the geographic location of the sale and supply of alcohol should be considered and developed in collaboration with Aboriginal and Torres Strait Islander peoples and organisations."* Responses to violence against women in these communities *"need to be holistic and community driven."* A research report conducted in 2020 suggested that *"responses should be led by local Aboriginal and Torres Strait Islander organisations such as healing, trauma counselling and alcohol and other drug rehabilitation."*

In a study conducted in May 2020 by the Australian Institute of Criminology examining the impacts of the COVID-19 pandemic on DFV, women reported increased alcohol consumption in the three months from February 2020. Another study on the impact of alcohol-related harm in families and alcohol consumption during COVID-19 *"highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families."*

In relation to gambling and increased alcohol consumption, a study funded by ANROWS in 2020 *"found that violence was more likely to escalate where there was problem gambling present, whether by the man or the woman."* It was reported that alcohol or drug use by a partner dramatically increased their gambling activities and that women were fearful of their safety and the safety of their children where gambling losses led to alcohol and drug fuelled violence.

Looking at the correlation between major sporting events and alcohol, a recent UK study found that *"alcohol consumption following football matches coincided with increased DVF in the hours after a game."* It also found that DFV increased in areas where a match was scheduled for midday or the afternoon as it gave perpetrators an opportunity to drink for a longer period after the game.

Ms Padma provides the following summary and recommendation:

Alcohol does not, in itself, cause DVF, and cannot be used to excuse violence. However, alcohol is connected to the perpetration of violence in a number of ways – for example, alcohol use can increase the severity of violence. When examining the sale and supply of alcohol, consideration should be given to the complex relationship between alcohol consumption and

violence against women. This consideration should also recognise other contributing factors, including the impact of disasters like bushfires and the COVID-19 pandemic, as well as the links between alcohol consumption and problem gambling.

Applicant's response to harm research

The Applicant noted Professor Livingston's research is based on overseas or interstate data and the outcomes are more applicable to 'big-box' liquor stores rather than the Applicant's proposal. Similarly, the Applicant has not put much weight on the submission by RACS, suggesting it relied too heavily on concerns around the Covid-19 pandemic.

The Applicant made some general comments in respect of stakeholder involvement in harm minimisation, suggesting that rural communities are at higher risk, and their needs should be prioritised. The Applicant also provided some general information on ways in which the risk of harm may be reduced, without providing any specific examples of the steps to be implemented at the proposed premises.

Cultural, recreational, employment or tourism impacts

The Applicant submits that the additional proposed packaged liquor store in Renmark will provide a number of direct and indirect economic benefits for the community such as employment for new staff members and ancillary business services.

Social impact and impact on the amenity of the community

The primary industries in Renmark include construction and agriculture as well as tourism and retail. The proposed bottleshop will provide employment opportunities for locals as well as an alternative retail outlet (5.1, CIS).

The Applicant has identified 22 other licensed premises in the locality across a range of licence categories including liquor production and sales, restaurant and catering and general and hotel. The Applicant maintains that the only licensed premises of a similar nature is the BWS outlet in the nearby shopping centre (5.1.1, CIS).

The Applicant advised they are committed to maintaining a good working relationship with any group who may be affected by their trading activity and will make available to any concerned person, the name and contact details of the business owners and duty managers.

Submissions/ letters received in support of the application

A number of submissions/letters of support were received in relation to the application, as extracted below.

Mr Neil Martinson – Mayor of Renmark Paringa Council

I support the Liquor License application and it is my opinion that the submission from the agent of the Renmark Hotel has tried to belittle and disparage the application of Domain Supermarket Pty Ltd with the photos provided, the reference to the size of the proposed premises, the description of the business in reference to the number of stock items for sale, and the outside condition of the bicycle rack and the car park area.

I believe The non listing of the Renmark Hotel and bottle shop and others was due to the lack of information provided on the website of the Office of Consumer and Business Services.

It is my opinion that one of the reasons for applying for the Liquor License is because they have lost income due to a lottery license being issued to a business approximately 200 metres from their shop for Cross Lotto.

It is essential that small business is given the same opportunities that are provided to large businesses and corporate conglomerates.

Mr Tusharkumar Patel

I believe that having a liquor store is very necessary at the premises. There are several stores in the shopping complex that are just making it through. Having a liquor store in the shopping complex will increase foot count and therefore improve customer number. During the peak COVID outbreak a few stores have been affected and were forced to close down. With the establishment of liquor store the other stores will also benefit from it. Apart from this, the resident will have a more convenient and easily accessible liquor store away from busy roads making it safe for everyone. Moreover, having a liquor store in the requested area will not be a competition to any other store nor will it affect any store negatively. I kindly request to kindly approve the request for liquor license.

Mr Geoffrey Meaney

I reside approximately 300 metres from the proposed Liquor outlet. Although now retired I have worked for the Renmark Paringa Council for the past 20 odd years. My position with Council was as Manager for Council infrastructure. The Managers role involved being aware of residents needs and future planning. This required talking and meeting with many ratepayers over a long period.

The proposal for a retail Liquor outlet on Twentyfirst Street is not new and has be spoken about by previous owners

Understanding the practicality of having the outlet at the proposed site, I fully support the application.

The area North West of Renmark Ave is rapidly expanding in housing developments like Blueskies Estate.

Twentyfirst street also is a busy road providing for a large rural community who may wish to take advantage of the convenience of the location and easy parking to purchase goods.

I believe the proposed new outlet should been seen as a convenience for all and not as a threat to the existing Liquor outlets.

Ms Sandra Ceracchi

I Sandi Ceracchi, owner of shop 3/229 Twentyfirst St, Renmark , I have been in my business [hair dressing salon] for twenty years plus. I have seen businesses come and go in this area. The street which is main thoroughfare going past our shops is very busy when other all shop full occupant with different businesses. We would like this to encourage new businesses to open in our shopping complex. There are many people living in this area and new housing estates going up very quickly. A liquor shop in our complex will [be] superb and great attribute for our existing business and local community.

Mr Ben Liebich

Establishing a new liquor store next to a long established Mini mart will add value to the neighbourhood and promote an image of success, restoring confidence in the area.

In these unprecedented times the new liquor store will bring much needed foot traffic to the local shop precinct. In return the vibrancy will attract more business's creating a convenient shopping area for the newly establish residential are located in walking distance.

*The liquor store will change the image of empty shops and give increased value to the homes that surround it, which means that this project is a win-win for everybody.
I express my support for the liquor store to open in our neighbourhood.*

Mr Peter Morrison

I feel no reason why we should not be able to have to travel to buy what we want when the opportunity to get just down road and to support a business is a problem to a larger company.

Mr Dimitrios Moraitis, Rector of Greek Orthodox Community

*I live 200m from proposed liquor store to open on Shop 2/229 Twentyfirst Street Renmark and I don't have any objection with opening liquor store on that premises.
And it wont affect on local communities and any other businesses in Renmark and I express my support for this liquor application.*

AHA Submission

A submission opposing the grant was received from the AHA and can be summarised as follows:

- The Applicant's description of other licensed premises in the locality failed to consider the Renmark Hotel, which has a large bottle shop offering more than 1400 lines of liquor products, a walk in and a drive through facility;
- The Applicant operates a convenience store rather than a small supermarket;
- The shopping complex is made up of only 5 tenancies, 2 of which are vacant;
- The Applicant will offer a range of liquor but has not specified the number or origins of the products, price points or marketing strategy or target market. (3.2, AHA1);
- The proposed store is only 50 sqm in size, given that a BWS or Liquorland store are typically 180-220 sq. in size, this store may be unable to stock more than 200-300 product lines. (3.2, AHA1);
- The Applicant has not engaged in any level of community consultation (3.6, AHA1);
- The Applicant has referred to a licence restricted to direct sales transactions when addressing harm, which the AHA contends shows the Applicant has little understanding of the operation and requirements of the *Liquor Licensing Act 1997* (4.1, AHA1) and has merely stated the law;
- The applicant refers to 'no consumption on premises' and 'no drive through' which are simply restrictions on this category of licence imposed by the Act. (4.2, AHA1);
- The Applicant has suggested it will employ 2 full time staff and up to 10 part time staff, which appears excessive and unlikely given that BWS and Liquorland stores (up to 4 times the size of the proposed store) typically employ only 3-4 part time staff; and
- The Applicant has no experience in the sale of liquor, and the 'supermarket' is not such as to raise an expectation of one-stop-shopping.

Submission from Jarrad Skinner on behalf of the Paringa Hotel

A submission opposing the grant was received from the Paringa Hotel and can be summarised as follows:

- The Applicant's Community Impact statement failed consider the Renmark Hotel or Paringa Hotel bottleshops.
- A fourth bottleshop is not necessary for the benefit of a community of approximately 10000 people.

The Applicant responded to these two submissions objecting to the grant of the application, however, other than providing the additional letters of support extracted above, failed to substantively address the concerns raised, other than by reiterating parts of the original CIS.

Decision

The Applicant has adopted a 5 kilometre radius in determining the locality as the area most likely to be affected by the granting of the application. I am satisfied that the Applicant has correctly identified the locality.

Undertaking the evaluative exercise that the Act requires involves weighing the positive aspects of the proposed application with the negative aspects in order to determine whether granting the application is in the community interest.

I have considered and have had regard to the objects of the Act, as required by section 3(2) of the Act, in determining the application. I have also considered the objectors' submissions in light of Gilchrist J's decisions in *Liquorland (Australia) Pty Ltd (Parke Holme)* [2020] SALC 37 (**Liquorland Park Holme**) and *Hove Sip N Save* [2021] SALC 7 (**Hove**).

I note that SAPOL and the Renmark Paringa Council have not objected to the application.

Harm minimisation is a key component of the community interest test, underpinned by the first object of the Act: "*to ensure the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.*"

The observations of Gilchrist J at [43] – [44] in the *Liquorland Park Holme* matter are applicable and relevant to this application and the questions of risk and harm that it poses:

.....common experience informs us that for many in the community, alcohol is a problem. Excessive consumption of alcohol carries with it serious health risks. It can fuel domestic violence. It can shatter relationships and cause families to become dysfunctional. It can cause social problems and result in violent and anti-social behaviour. It can cause financial problems and result in people making risky and poor decisions.

It can be assumed that some of the relevant community will be afflicted by these issues. It can be assumed that some will be alcohol dependent and that some of these will be attempting to abstain from drinking or reduce their consumption. The addition of another take away liquor facility will increase the opportunities for such persons to obtain alcohol. Passing an attractive liquor outlet when walking in and out of a supermarket increases the risk for those for whom alcohol is a problem, to succumb to the temptation to buy it. If there was evidence that there were a greater number of such vulnerable persons in this community as opposed to the general population or that this locality was already awash with take away liquor facilities, such matters might tip the balance in determining that it is not in the community's interest to grant the application.

The Applicant submitted copies of the Area and Location Reports as generated by CBS' Community Impact Portal, however did not provide any analysis or explanation of the data contained therein. Given that there are 4 other packaged liquor stores within the locality with a population of 9753, I find that the licence density for the locality is somewhat less than the

State average, and in the event the application is granted the licence density will be around the State average.

This is of some relevance to my consideration of whether the grant of the application is in the community interest (and public interest), in light of what the Court has said in relation to proliferation, as observed by Gilchrist J in *Hove* [at 135]:

In the past, this Court has said that it is not in the public interest for there to be a proliferation of bottle shops selling essentially the same range of liquor within short compass of another. (Nuriootpa Cellars [2009] SALC 12 at [198] per Judge Rice. See also, albeit in connection with a hotel licence: Jackpots on Flinders [2006] SALC 18 at [54] per Judge Rice.)

In *Liquorland Park Holme* the Court considered the licence density for the locality in light of the approximate State average density figure of around 1 take away liquor facility for every 2000 residents (which was calculated based on the numbers in the Review carried out by the Hon Tim Anderson QC in 2016 when South Australia had a population of a little over 1.6 million, and there were over 800 facilities that could or were selling take away liquor; which his Honour acknowledged as being a 'rubbery' figure). In respect of that review by the Court, there were 3 take away liquor outlets servicing a population of approximately 48,000 residents, which equated to a density of one facility for every 16,000 residents. With the approval of that application the density changed to one facility for every 12,000 residents, which was 6 times lower than a State average density of 1 facility for (approximately) every 2,000 residents (and even lower again if a figure of 1,675 people is adopted as the average per outlet, as discussed below).

In several BWS PLSL applications recently decided by the Authority, expert evidence from Masterplan was put forward by the Applicant which calculated the number of General and Hotel licences plus Packaged Liquor Sales Licence outlets for SA of 1001 which equals a rate of 59.7 outlets per 100,000 people for SA as a whole, which equates to approximately 1 takeaway liquor outlet for every 1,675 people in the State of South Australia (which is a slightly higher licence density than the 'rubbery' figure of 1 per 2,000 people adopted in *Liquorland Park Holme*).

That said, I am also mindful of Gilchrist J's comments with respect to licence density in *Liquorland McLaren Vale* [at 186]:

As for liquor premises density, the submissions by Liquorland, AHA and others focussed on relative ratios. I think that the measure of licensed premises density is much more nuanced than simply adding up the number of licensed premises and dividing the overall relevant population by that number to arrive at a ratio.

Ultimately, each application turns on its own facts and the Authority needs to consider whether any issues of proliferation are likely to arise in the event an application is granted by considering the existing licensed premises already operating in the locality.

In *Cellarbrations Mannum* [2021] SALC 42 (***Cellarbrations Mannum***) the Court observed that having 3 take away liquor facilities in a fairly small country town raises legitimate issues of concern, but ultimately held, amongst other things, that it provided a point of difference from the other take away liquor options that were available in that locality, and was satisfied that the grant of the application was in the community interest. It must be noted however that the licence density in *Cellarbrations Mannum* was higher than the licence density in the present application. In any case, it is clear that the locality is not 'awash' with liquor and that this application need not be refused on the basis of proliferation alone. That said, unlike the situation under consideration by the Court in the *Cellarbrations Mannum* appeal, the proposed

offering will provide no point of difference, given the current offerings in the locality, and in particular the existing BWS in Renmark Square and the Sip N' Save. I agree with the AHA's observation that "*the proposed premises are tiny and would offer nothing that is not available a few minutes away*" (AHA1).

I have carefully considered the submissions by RACS, ANROWS and Professor Livingston, and consider that I can place some weight on these submissions, at least at a general level, despite the submissions to the contrary by the Applicant. Alcohol causes significant harm in the community and it is for this very reason that alcohol is a highly regulated product.

Additionally, I note that in *Liquorland McLaren Vale* [at 162] Gilchrist J rejected Liquorland's assertion that the submissions of Professor Livingston, RACS and ANROWS were of no probative value and held at [163] – [167] that:

Professor Livingston's submissions were based upon research that he examined as part of his doctrinal thesis. I am permitted to know that his thesis would have been subjected to considerable scrutiny by eminent academics.

RACS is a highly regarded organisation that can be taken to adhere to rigorous standards of ethics and integrity. It asserted that there was substantial evidence about the connection between limiting the physical availability of alcohol and reducing the negative effects of alcohol.

I think it can be inferred that in both cases the research relied upon was reputable. There could be no serious challenge that Professor Livingston and the RACS are experts.

ANROWS is a research organisation established as an initiative of Australia's National Plan to Reduce Violence against Women and their Children 2010–2022 by the Commonwealth Government and all state and territory governments garnishing and analysing evidence to inform policy and practice on women's and children's safety. It can be taken to adhere to rigorous standards of ethics and integrity. I think it can be inferred that the research that it relied upon was reputable.

There is clear authority that when an expert gives opinion evidence based on reputable research the evidence is probative and inferences can be drawn from that evidence¹.

Gilchrist J concluded that it was open to the Commissioner to rely upon those submissions as evidence that having regard to existing liquor premises density, the grant of the Liquorland application would add to the availability of liquor in the relevant locality, that it might have the potential to cause increased harm, and that this was a relevant consideration. [170]

Accordingly, it is relevant for the Authority to consider in this matter that the increased availability of liquor in the locality identified in this matter may have the potential to cause increased harm. That factor must be weighed against other relevant factors in considering whether the application is in the community interest. It is also a factor relevant to public interest.

I turn now to consider the applicant's knowledge and experience relevant to operating a packaged liquor store.

I note the comments of Gilchrist, J in *Hove* at [105 -106]:

Operating a take away liquor facility is a serious business. Much of the alcohol that is consumed in this State is purchased from such facilities. Thus, there is a significant potential for the products sold in them to cause harm to members of the community.

¹ See, for example: *H v Schering Chemical Ltd* [1983] 1 All ER 849 at 853 per Bingham J

Harm minimisation is a key component of the community interest test. In conformity with this, there is a heavy burden on the proposed operators of take away liquor facilities to demonstrate the steps they will take to ensure that liquor is not sold or supplied to minors or intoxicated persons and that their sale and supply of liquor will not promote harmful drinking practices.

And particularly at [109]:

In this case the applicant has no experience in selling take away liquor. That is not to say that only an experienced retail liquor seller can be granted a packaged liquor and sales licence. But what it does mean is that applicants for such a licence need to be able to demonstrate to the licensing authority that they have a thorough understanding of what the responsible sale of alcohol entails, and demonstrate that they have policies and plans in place to ensure that they, and those who will work for them, will do all that is reasonably possible to minimise the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.

The Applicant has no experience in selling take away liquor and this much was clear from their initial application and the material provided in support of same. For example, the proposed signage to be used depicted an image stating: "WARNING: Drinking Alcohol beverages before pregnancy can cause pregnancy."

The Authority then provided the Applicant with an opportunity to revise their application and to seek professional assistance. The Applicant subsequently engaged RG Strategic to prepare the CIS on their behalf. The CIS ultimately provided in support of the application does not provide me with confidence that the Applicant has a thorough understanding of what the responsible sale of alcohol entails, the risk of harm posed by the sale of packaged liquor to vulnerable members of the community, or that the Applicant will do all that is reasonably possible to minimise the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.

While I accept that a lack of experience in selling take away liquor alone does not mean that an inexperienced retailer cannot be granted a packaged liquor sales licence, or that their application is bound to fail, it is of great concern that the Applicant has not adequately addressed harm minimisation principles, has failed to identify any vulnerable groups or sub-communities in the locality, has not provided or referred to a risk management plan or any policies and procedures it will put in place other than what is already required by the Act, such as responsible persons on duty and ensuring all staff have undertaken RSA training.

I also find it concerning that the Applicant on several occasions throughout its submissions, referred to the sale of take away liquor as 'low-risk':

Given the location, and the low-risk operations of the Packaged Liquor Sales, it can be predicted that the impact of this proposal will be nil, and thus the local community of Renmark would be supportive of an additional bottleshop located in the area. (3.6, CIS)

Given the location, and the low-risk operations of the Packaged Liquor Sales, it can be predicted that the impact of the proposed bottleshop will be nil on the 'at risk' groups and sub-communities, if present. (4.1, CIS)

The proposed bottleshop is located within existing commercial shop building, in the Township Activity Centre of Renmark, and it can be inferred that the venue would not exert any negative impact on the community. Given the location, and the low-risk operations of the Packaged Liquor Sales, it can be predicted that the impact of this proposal will be nil (4.2, CIS)

Even though the Applicant was provided with several submissions from experts on the harm associated with alcohol consumption, the Applicant appears not to fully appreciate the risk of harm posed by the sale of packaged liquor or to have adequately considered the role it could play in reducing the risk of potential harm to the community, but rather maintains that the licence should be granted as the store will operate within the appropriate land use and permitted trading hours, and it will provide an alternative premise for residents to purchase liquor. As Gilchrist J remarked in *Hove* at [113], there are people who are vulnerable to the adverse effects of alcohol in any community.

The effect of all of this is that I have real concerns as to whether the applicant has sufficient awareness, knowledge, experience and competency in relation to the appropriate conduct of a packaged liquor sales licence. I note that I would refuse the application on this basis alone, however for completeness I will address other concerns relevant to public interest.

The Applicant has provided some evidence of community support for the application, consisting of a number of letters of support from local residents, business owners and the Mayor of the town. Other than a letter of support provided by the local council it does not appear that the applicant has engaged with any stakeholders and interest groups in respect of its application.

Section 53 of the Act gives the Authority “*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*”.

Section 53(1a) provides that the Authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest, and section 53(1b) provides that the Authority must refuse an application for a licence if it is satisfied that granting the application would be inconsistent with the objects of the Act.

I accept that general convenience and the desire for “one-stop shopping” is a factor to weigh in the balance of whether an application might be in the community interest, however in my view, convenience does not equate to elimination of all inconvenience. In any case, given the small size of the proposed liquor store and the range of products available, and given the nature of the adjoining convenience store, I cannot proceed on the basis that granting this application would provide a one stop shopping experience for customers. In any event, the remarks of King CJ in *Lovell v New World Supermarket Pty Ltd* applied by Gilchrist J in *Hove* at [136] are apposite:

Inconvenience in gaining access to the required liquor is undoubtedly relevant to the determination of the question whether the public demand for liquor in the locality cannot be met by the existing facilities but it is not of itself decisive. If, for example, there existed an accessible first grade bottle shop at a distance of, say, 200 or 300 metres from the shopping centre, it would be absurd to suggest that the demand for liquor by customers of the shopping centre could not be met simply because they would have to drive their cars a short distance from the general shopping centre in order to obtain their liquor. To attempt to provide access to a full range of liquor for everybody who is without the use of a motor car would result in a wholly undesirable proliferation of liquor outlets with consequent deterioration of the standards in the service of liquor which are necessary in the public interest. It is, however, a matter of degree.

Also ‘on point’ was the observation by His Honour in *Hove* at [128]-[129] that:

The application is in respect of proposed premises contained in a small shopping centre. There would not be a contemporary community expectation that within the retail offerings contained within that centre there would be a take away liquor facility.

In my view *Hove* is relevant and analogous to the present application in relation to the public interest considerations. I consider that the grant of this application would be contrary to both the community interest and the public interest as it would set an undesirable precedent. If this application was to be approved it would be difficult to refuse other similar applications, would set the 'bar' too low, and would be likely to result in the undue proliferation of takeaway liquor outlets.

I am also mindful of the Objects of the Act, including the object to "*facilitate the responsible development of the licensed liquor industry...*" In my view, granting this application would not be consistent with the responsible development of the licensed liquor industry. The proposed premises is in a small group of shops, some of which are currently vacant, and there would not be any community expectation that a takeaway liquor store would be provided within a very small retail complex such as this. Local residents can already conveniently combine their liquor shopping with their supermarket shopping at the nearby Renmark Square shopping centre.

For the reasons above I am not satisfied that the grant of this application is in the community interest, and also consider that the application should be refused on public interest grounds.

Accordingly, the application for a PLSL is refused.

Zoe Thomas

Assistant Director, Licensing

Delegate for the Liquor and Gambling Commissioner

5 August 2022