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### LOCAL CELLARS RENMARK PLSL DECISION

#### ***Application for a Packaged Liquor Sales Licence***

G & S Koch & Sons Pty Ltd (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at Shop 2, 25 -27 Ral Ral Ave, Renmark (**the Site**), to be known as Local Cellars Renmark.

As part of the application the Applicant has submitted a Community Impact Submission (**CIS**), with supporting attachments, and subsequent submissions (**A2**) both prepared by Mr Paul Tisato of Paul Tisato Management Services, as well as a statement from Grenfell Koch, director of the Applicant (**GK1**). It is the content of the report, and further submissions made to the Licensing Authority that my decision is based on.

This application for a packaged liquor sales licence is a designated application under section 53A of the *Liquor Licensing Act 1997* (**the Act**) and may only be granted if the licensing authority (**the 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 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:

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- (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.

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The Applicant must also satisfy the Authority that the pre-requisites in s 57 of the Act have been met, in relation to such 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.

### Locality

Consumer and Business Services’ (CBS) Community Impact Portal provides a locality guide for applicants which suggests they ought to adopt a 2km radius from the proposed premises for metropolitan areas and a 5km radius for regional areas to identify the locality. However, in this instance the Applicant is of the view that a 5km radius from the proposed premises is not sufficient to accurately capture the built up areas and remote population centres close to Renmark and Paringa.

The Applicant has therefore defined the locality to include the towns of Renmark and Paringa, (including the suburbs of Renmark North, Renmark South and Renmark West as well as the nearby towns of Chaffey, Coolong, Crescent, Murtho, Pike River and Wonuarra). The Applicant explains that these towns are included as Renmark is the nearest town centre that can service the retail needs of these communities (pg6, CIS).

The total population of the locality, as identified by the Applicant, based on 2016 ABS census data is 9036 (pg7, CIS).

The Applicant has also described a number of future developments planned for Renmark including:

- Jane Eliza Renmark Riverfront Estate, a mixed use residential and marina community, with over 450 residential allotments
- Bookmark Creek Restoration
- Taylor Riverfront Precinct, picturesque walkway with a river deck, sheltered barbeque area and upgraded houseboat moorings.

The Applicant submits that these developments are important to its application as it demonstrates the council’s commitment to reinvigorate the town centre. The proposed liquor store is also located in the town centre, and the nearest shopping precinct to where the expansion of the population base is occurring and riverfront access is available to those travelling by boat (pg9, CIS).

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### **Nature of the business**

The Applicant currently owns and operates the Renmark Foodland supermarket. The proposed liquor store will be located directly across the shopping mall from the supermarket in an existing tenancy of approximately 240 square metres in size (pg10, CIS).

The Foodland is a “full-line” supermarket with over 17,000 grocery lines and 970 square metres of trading area. The supermarket is described as a busy store with an average of 6,300 customer transactions per week (pg2,GK1). However, with the proposed redevelopment of the shopping complex, the supermarket will be expanded to cover an area of 1270 square metres (pg3, GK1).

The Applicant has advised that “Local Cellars” is the new retail liquor brand that will be available for use by Foodland Supermarket operators. This new liquor brand is available to operators that are either already licensed or are intending to apply for a liquor licence and meet certain criteria (including a focus on local products) (pg11, CIS).

The new brand will be committed to being “Hyperlocal, socially responsible, environmentally sustainable and ethically responsible”. The proposed store will carry a wide range of locally sourced liquor products and establish a “local artisans’ program which will give customers access to boutique and craft producers from the region (pg11, CIS).

The proposed liquor store will offer a wide range of products, including:

- 900-1000 wines - over 80% of these wines are produced in South Australia, and will be showcasing over 100 local Riverland boutique wines
- 200 -250 lines of spirits and liqueurs
- 250-300 lines of beer including over 150 craft beers
- Extensive range of ready to drink/premixed spirits
- Wide range of non-alcoholic beers, wines and spirits (pg7, GK1).

The Applicant submits that this will provide a far greater range than the Renmark Hotel bottle shop or the existing BWS store. Also, the focus on local, craft and boutique will add to the diversity of products currently available in Renmark, which is important for tourists and locals alike (pg7, GK1).

Whilst the Applicant has no experience in liquor retail, nor managing licensed premises, the supermarket does hold a Tobacco Retail licence, so staff members are trained and have experience in operating under strict licence conditions. The applicant has also indicated that it will employ a manager and staff for the proposed store that have relevant experience in liquor retail (pg10, CIS).

The Applicant has engaged in some level of community consultation, and has written letters explaining the proposal to SA Police (Berri), SA Ambulance Service (Berri), Renmark Paringa Council and Renmark Paringa Hospital. The Council and Police have provided letters of support for the proposal (pg12, CIS).

The fit out of the proposed store will include a 16 camera digital CCTV system and a multi zone monitored security alarm system. The CCTV system will include internal and external cameras and digital long term data image store which will hold a minimum of 2 weeks footage for review (pg21, CIS).

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### 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 did not identify any at risk groups or sub-communities that would be adversely affected by the grant of this licence and further states that there are no drug or alcohol treatment clinics or 'sobering up' centres in the Renmark Paringa district (pg12, CIS).

There are 5 schools in the locality, 2 childcare centres, 1 hospital and 3 recreational facilities. The Applicant has also identified 3 dry areas, but states that the possession and consumption of liquor is prohibited only between the hours of 7pm and 7am (pg14, CIS).

The Applicant submits that despite the increase in availability of liquor over the last ten years, both in retail stores and online, there has been an overall decrease in the consumption of liquor over the same period (pg14, CIS). According to the Applicant the per capita consumption of liquor is currently at its lowest level in 50 years, with a significant shift away from beer toward wine, cider and spirits.

The Applicant accepts that there is an inherent risk of harm associated with the sale and supply of liquor, and has therefore developed (and provided a copy) of a comprehensive risk management plan for the operation of the proposed new store (pg15, CIS).

The Risk Management Plan covers a range of measures the Applicant will put in place including:

- a CCTV system;
- monitored alarm;
- design and layout of the premises to minimise security risks and reduce blind spots;
- responsible service of alcohol policies; checking identification for customers who appear under the age of 25 years, training of staff to be alert to secondary supply;
- practices to prevent the consumption of liquor in the car park or other adjacent areas; and
- participation in the local liquor accord.

There are no objectors to this application and I note that Gilchrist J held in *Liquorland McLaren Vale* [at 148] that Liquorland was entitled to place reliance on the fact that SAPOL and the local council had not objected to the application, and that DASSA made no more than a general statement of the Government's commitment to reducing the impact of alcohol and drugs, but made no observations in relation to the community in the locality under consideration in that case:

Collectively these matters supported the inference that the relevant community did not have a particular problem with alcohol related harm.

Given the lack of objection from SAPOL, the local council, or from any other organisation or entity, the same inference arises in respect of this application.

Given the high number of packaged liquor sales licence applications currently before the Authority, I considered that 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**).

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### **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:

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- 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.*

.....

*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:

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*“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.

.....

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:



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- 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.

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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

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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.

The Applicant submits that the harm submissions are general in nature and centred around the availability of alcohol in metropolitan suburbs surrounding capital cities with high population densities. On that basis the Applicant is of the view that the harm submissions are not directly relevant to this application, given the location of the proposed premises and the 'local' focus of the liquor offering. In any event, the Applicant submits that the issues raised will not be of concern given the Applicant's strict Licensee Management Plan and strong community ties.

The Applicant has also provided a more detailed response to specific parts of the harm submissions which can be summarised as follows:

- "Big Box" retailers such as Dan Murphy's and First Choice Liquor have had the biggest effect on driving down retail liquor pricing on the most popular brands across all categories.
- The aggressive discounting of 'known products' and the number of conversions from small stores to larger stores has had a significantly increased the availability of liquor in the community.
- The proposed Local Cellars store will be neither a chain nor the size of a 'Big Box' store.
- Given that the span of trading hours must be a key consideration in the availability of liquor in the area, it is important to note that the proposed store would trade less hours per week than the existing liquor stores in the locality
- The grant of this licence could not of its own be considered a dramatic increase in the availability of liquor in the locality, and there is no evidence to suggest that a small or gradual increase in outlet numbers will lead to any increase in the risks associated with excessive consumption of liquor.
- The Applicant accepts that there may be a number of vulnerable people that may be affected by the increased availability of liquor in the locality, however it submits that the application will have no material effect on availability as its range and promotional focus will be on the types of products that are not generally associated with problem drinking.
- The Applicant notes that the effects of alcohol abuse and associated violence dealt with by RACS are concentrated in high density areas and large hospitals in major cities, and the Applicant is confident that these matters are not a concern in this locality.

### **Social impact and amenity**

The Applicant is of the view that the addition of the proposed store will improve the amenity of the Renmark shopping precinct. A well-stocked, well-ranged contemporary liquor store in an upgraded shopping centre will improve the amenity of the area. The planned upgrade of the shopping centre, the expansion and renovation of the Foodland supermarket, and addition of a BCF store is likely to attract more shoppers to the new "Renmark Village" (pg15, CIS).

The Applicant maintains that 'houseboating' is still one of the most popular tourist activities in Renmark. The houseboat moorings are only a short walk from the Foodland supermarket and it is a popular stop for tourists to purchase grocery items. The Applicant would like to provide a one stop shopping experience to enable those living in or travelling by houseboat to purchase liquor products when they stop in for their groceries. These customers do not have

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access to a car and so would unlikely be able to travel 1.5kms to the BWS liquor store at the Renmark Square shopping centre (pg3, GK1). The Applicant also notes that the Foodland Supermarket is the preferred choice for the older demographic and those living in the 'older part of town' who would prefer not to travel to Renmark Square for their liquor needs (pg2, GK1).

### Other liquor outlets in the locality

The Applicant has considered the other licensed premises in the locality with a focus on 'traditional' bottle shops and liquor stores, and on that basis has identified 3 licensed premises within the locality selling take away liquor from a physical store (pg16, CIS):

- Sip'n'Save drive through bottle shop at the Renmark Hotel. It is a large two lane drive through bottle shop, separated from the hotel by Fifteenth Street. Most of the sales occur through the drive through, and there is no access to the store other than via the drive through lanes.
- BWS Renmark – typical BWS store, presumably offering the 'usual range' of liquor products available at other BWS stores across the country. However, the BWS store is located externally in the shopping centre with no internal access to the mall or Woolworths supermarket, this is different to the more common arrangement where the BWS store is located adjacent to the Woolworths supermarket which enables convenient one stop shopping for customers to purchase their groceries and liquor products in the same shopping trip
- Paringa Hotel – this is described as a single lane 'drive up' bottle shop which does not provide driveway service. It is approximately 20 square metres in size and offers a small product range.

Based on data from the 2016 census, the population for the locality is 9,036 and consequently the density of liquor stores in this locality is currently 1 store per 3,012 persons. If this application were granted and the number of liquor stores in the locality increased to 4, then the density would increase to 1 store per 2,259 people (pg16, CIS).

In *Liquorland Park Holme* the Court considered the licence density for the locality in light of the approximate State average density figure of around one 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 once facility for (approximately) every 2,000 residents.

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 in respect in licence density in *Liquorland McLaren Vale* [at 186]:

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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.

These figures are generally consistent with the present application and it is clear that the locality is not 'awash' with liquor and the application need not be refused on the basis of proliferation.

The Applicant has made its own density calculations in order to distinguish between the overall State average, regional areas and metropolitan area. According to the Applicant's calculations, the liquor outlet density in regional areas of South Australia is one outlet per 992 people, compared to the overall density of one outlet per 1901 people. On those numbers alone, it is the Applicant's submission that even if this application were granted, the density would still fall way below the average for regional areas (pg18, CIS).

Whilst there may be some merit in distinguishing between density figures for metropolitan and regional areas, there is such a vast difference in population, area and other characteristics of this State's regional centres, that in my view it would be unreliable to place much weight on a 'regional average'. In any event, it is of little relevance in this application as the determination above which relies on the *Liquorland Parkholme* decision shows that the grant of this application would still keep the outlet density in Renmark below the State average and as stated above, no issue of proliferation arises.

I note that in *Cellarbrations Mannum* the Court observed that having three 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.

### **Cultural, Recreational, Employment and Tourism Impacts**

According to the Applicant, Renmark remains a popular tourist destination and it is expected that the grant of this licence will greatly improve the convenience for visitors to Renmark (particularly those travelling by boat). The Renmark Foodland supermarket will have a strong focus on local products, featuring a boutique, artisan and in-house deli, butcher and baker, the focus on local products will further enhance the tourist experience (pg23, CIS). The Applicant submits that this local focus on craft and boutique producers will be extended to the proposed liquor store should the application be granted (pg22, CIS).

The Renmark community has a strong sports culture and Renmark Foodland is a strong supporter of many of Renmark's community clubs and associations. The Applicant has suggested that the proposed liquor store (operated by the current operator of the Foodland Supermarket) will generate further funds to be distributed to clubs and associations in the local community (pg22, CIS).

The Applicant anticipates that the proposed store will provide employment for up to 5 full time staff members, as well as a number of local tradespersons involved in the fit out (pg23, CIS).

The Applicant submits that the application should be granted for the following reasons (pg24, CIS):

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- No “at risk groups” or sub-communities have been identified within the locality
- No community buildings within the locality are located within close proximity to the proposed store site
- The proposed store would meet the contemporary expectation of consumers and shoppers to complete a “one stop shop” for their food and alcoholic beverage needs
- The community of the district of Renmark Paringa and Surrounds would benefit economically, socially and culturally to the addition of a contemporary, well ranged and well stocked liquor store with a hyperlocal focus at the Renmark Village
- The amenity of the area of the proposed location would be improved, particularly given that the subject site is current untenanted
- That residents and visitors to Renmark would be able to increase the basket of goods purchased locally, and that “retail leakage” out of the centre of town would be further reduced
- That a high level of support for local producers who are themselves (and their employees) an integral part of the local community, would be of benefit to this community

### **Decision**

#### *The relevant locality*

The expert engaged by the Applicant has defined its own locality, an area larger than the 5km radius suggested by the Community Impact Portal, 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.

#### *The community interest test*

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 note that SAPOL and the Renmark Paringa Council have not objected to the application, and no other submissions were lodged opposing 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 His Honour Judge Gilchrist at [43] – [44] in the *Liquorland Park Holme* decision 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.*”

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*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."*

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 evidence<sup>1</sup>.

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.

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

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I have considered the harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor, and I am satisfied on the material before me that the risk of harm posed by the proposed application is relatively low.

The proposed premises will likely provide some employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the local community.

I am satisfied that the proposed liquor store if approved will not negatively impact the activities conducted on any community buildings and facilities that are situated within the locality.

There is no reason why the application should be refused on the basis of the matters outlined in s 57 of the Act in relation to the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or prejudice to the safety or welfare of children attending nearby kindergartens and schools.

### *The Public Interest discretion*

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 am satisfied that the grant of this application is not inconsistent with the objects of the Act and is not contrary to the public interest.

There is no evidence before me that suggests the locality in question is particularly vulnerable, or that the present application poses anything but a low risk of harm to the community. It is also clear from the liquor licence density calculations that the locality has a lower density of packaged liquor options, is not ‘awash’ with liquor, and that the application need not be refused on the basis of any proliferation concerns.

The soon to be redeveloped Shopping Centre will be much larger and is expected to attract a larger customer base. I consider that it can accommodate a liquor outlet such as the one proposed by the Applicant, in light of the low liquor licence density in the locality.

The grant of this application will provide one stop shopping convenience for customers of this larger shopping centre, including those residing in or holidaying on house boats. Whilst I accept that convenience is not the only factor to weigh in favour of the community interest, it is important to note that customers previously has access to an independent liquor store in this shopping centre which has since been relocated to Renmark Park as a BWS store.

I also have regard to the Court’s decision in *Cellarbrations Mannum* and find that given the proposed range of liquor products offered, particularly the focus on local and boutique producers. The Applicant has clearly established a point of difference from the other take away liquor options available in Renmark.



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Having considered the evidence and performing evaluative exercise that the Act requires, I am satisfied that the positive aspects of the application identified by the Applicant and in particular the focus on local products, support for the local community and additional convenience that will flow from the grant of this application, outweigh the potential negatives aspects of approving the application, namely, the risk of alcohol-related harm, and that the grant of the application is in the community interest.

I do not consider that there is any other reason why I should refuse the application under the broad public interest discretion available in s 53 of the Act.

The onus is on the Applicant to satisfy the Authority that the grant of the application is in the community interest. I am satisfied that the grant of this application is in the community interest.

Accordingly, under section 53A(1) of the Act, the application is granted.

Zoe Thomas

Assistant Director, Licensing

**Delegate for the Liquor and Gambling Commissioner**

5 August 2022