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### **BWS Colonnades Shopping Centre PLSL Application Decision (No.204465)**

Endeavour Group Limited (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated at 54 Beach Road Noarlunga Centre (**the Site**), within the Colonnades Shopping Centre, to be known as BWS – Beer Wine Spirits (**BWS Store**).

As part of the application the Applicant has submitted a Community Impact Report (**CIR**), with supporting attachments, prepared by expert town planner Graham Burns from MasterPlan. It is the content of the report and expert evidence, submissions made to the Licensing Authority (**the Authority**), along with submissions lodged on behalf of Re and Da Jones Investments Pty Ltd, who I note is the licensee of the Colonnades Tavern, and the Australian Hotels Association (**AHA**) opposing the application, 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 Report, dated 31 July 2020 (**CIR**)
- Applicant's Covering Letter and Submissions, dated 17 August 2020 (**A1**)
- Australian Hotels Association (**AHA**) undated submissions objecting to the application, received 29 October 2020 (**Ob1**)
- Applicant's letter applying to vary the application, dated 11 January 2021 (**A2**)
- AHA's further undated submissions objecting to the application, received 2 February 2021 (**Ob2**)
- RE and DA Jones Investments Pty Ltd undated submissions objecting to the application, received 18 November 2020 (**Ob3**)
- RE and DA Jones Investments Pty Ltd's Further Submissions dated 3 February 2021 (**Ob4**)
- Applicant's further submissions, dated 5 March 2021 (**A3**)
- Letter from the Australian Competition and Consumer Commission (**ACCC**) to the Liquor and Gambling Commissioner dated 23 June 2021 (**ACCC Letter**)
- Submission of Associate Professor Michael Livingston dated 5 July 2021 (**Professor Livingston Submission**)
- Submission of the Royal Australasian College of Surgeons dated 23 July 2021 (**RACS Submission**)
- Submission of Australia's National Research Organisation for Women's Safety dated 30 July 2021 (**ANROWS Submission**)
- Applicant's Submissions in reply to Professor Livingston, RACS, and ANROWS dated 25 February 2022 (**A4**)

This application may only be granted if the Authority is satisfied that the grant of the application 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 a 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 on the amenity of, the locality of the premises or proposed premises; and

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- 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 *Liquor Licensing Act 1997* (**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

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- (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.

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) of the Act 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.

### **Background/Nature of the Proposed Offering**

The Applicant has significant experience in operating liquor licences and packaged liquor outlets, and currently operates over 1500 licences across each State and territory in Australia. The primary brands of the business are BWS and Dan Murphy's packaged liquor outlets (4.1, CIR). The Applicant's various businesses serve over 900 million customers each year and Woolworths directly employs over 205,000 people, along with many thousands more indirectly through its supply chains (4.4, CIR).

The proposal is situated adjacent to the Woolworths Supermarket (**Supermarket**) within the Colonnades Shopping Centre (**Shopping Centre**), which is bounded by Burgess Drive, Goldsmith Drive, Alexander Kelly Drive and Beach Road. The shopping centre is classified as a Major Regional Centre in the Property Council of Australia Shopping Centre Directory.

The Applicant contends that the proposed offering will provide customers with a one-stop-shopping experience where they “*will be able to purchase their grocery and drinks needs in one convenient location*” (3.1, CIR).

If constructed as proposed the BWS Store will be approximately 202 square metres and will be a separate tenancy to the Supermarket, situated adjacent to the Supermarket and separated by a non-transparent partition wall, with a single entry and exit point located outside of the Supermarket trading area. There will be an operational link between the 2 land uses, with stock for the BWS store to be delivered to the Supermarket loading bay, which will then be distributed from the Supermarket's back of house via a roller door to the proposed outlet's liquor stock room (5.1 and Figure 1, pg6, CIR).

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I note that the AHA submitted that the application was in breach of section 38 of the Act insofar as the proposed premises were not sufficiently separate from the Supermarket in the sense that the plans as originally submitted required customers to access the proposed premises via the supermarket (Ob1). On 11 January, the Applicant applied under section 51(3) of the Act for approval to vary the plans for the proposed premises (A2). The amended plan displayed a new wall and corridor to be constructed in place of where the customer entry was initially proposed, and a new opening to be constructed that would enable customers to enter and exit the proposed premises via a common mall area within the shopping centre.

The application to vary was likely made in response to my decision in *BWS Cumberland Park* in December 2020 where I refused the application on the basis that the plans required customers to walk through the Woolworths' store past the checkouts. That floor plan, in my view, breached the requirement in s 38 of the Act that PLSL premises must be separate from other commercial premises.

The Applicant's request to vary the plans was allowed by the Authority.

I have reviewed the plans as amended and am of the view that the amended plans no longer 'offend' the physical separation requirements contained in s 38 of the Act, and consequently the application need not be refused on that basis.

The AHA filed submissions (Ob2) that take issue with the Authority's decision to allow BWS to amend the plans for a number of BWS PLSL applications before the Authority, submitting variously that there was a lack of procedural fairness afforded to the AHA to make submissions against the variations being permitted, that the applications should have all been readvertised, that there was a lack of any, or adequate, reasons to explain the decision to grant the variation, and that ultimately the decisions to permit the variations are void. I do not agree with these submissions.

It is clear that s 51(3) of the Act provides the Authority with the discretion to allow an Applicant to vary their application at any time before the application is decided, and that s 51(4) requires the Authority to ensure that other parties to the application and any person who made submissions are given notice of any variation permitted a reasonable time before the hearing or determination of the application. I do not consider that the application ought to have been readvertised, or that once varied by the Applicant that it should have been regarded by the Authority as a new application.

Colonnades Shopping Centre has recently been expanded and upgraded, with a \$51 million redevelopment being completed in March 2017. The redevelopment resulted in an expansion of the current Woolworths supermarket, the addition of an Aldi supermarket, 16 new speciality shops and an indoor alfresco dining area in addition to the anchor tenancies of Big W, Kmart, Coles, Harris Scarfe, Aldi, JB Hi-Fi, Best & Less and Cheap as Chips (8.0 – 8.7 CIR).

MasterPlan note that the tenancy operates as a 'shop' within existing use rights relevant to the original development of the Shopping Centre, and that the packaged liquor sales licence outlet is defined as a 'shop' in accordance with Schedule 1 of the *Development Regulations 2008* and that consequently "no further consents or approvals required under the *Development Act 1993* because there will be no change in the use of the site as a shop" (7.1 – 7.2, CIR).

The Applicant has provided an indicative Stock List Summary and notes that BWS Stores have an average of approximately 1800 lines of liquor, with customers having access to standardised products in the market, in addition to imported and local brands (4.2 to 4.3, CIR).

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The Applicant submits that the proposed BWS Store will be a new, modern, safe and clean store with a comprehensive range of quality liquor and associated products and services, including an extensive range of beer, wine and spirits (9, A1).

### Locality

The Guidelines provide a guide for applicants in relation to the 'locality' applicable to their application, and state that applicants are required to identify the geographic area from which they expect to draw customers having regard to the intended nature of the business of the licensed premises.

The Guidelines speak of the locality as referring "*to the area surrounding the licensed premises / proposed licensed premises and is the area most likely to be affected by the grant of the application*".

The Guidelines suggest as a guide that the locality of licensed premises outside the Adelaide metropolitan area will be the area within a 5km radius of the proposed offering:

**Outside the Metropolitan Area:** With regards to country cities, town or communities, unless remotely located, the locality of the premises is the area within a 5km radius of the site of the relevant premises (pg6, Guidelines).

Expert evidence in this matter, provided by MasterPlan on behalf of the Applicant, states that the locality may generally be defined by a radius of 3 kilometres centred on the Colonnades Shopping Centre. The population of the locality, as per the CBS portal is 57,053 persons. This figure utilises larger SA2 collector districts, whereas Masterplan provide a more accurate population figure for the locality of 34,633 persons by utilising ABS data comprising SA1 districts (9.0 – 9.6, CIR).

MasterPlan identifies the immediate locality as containing the suburbs of Christies Downs, Christies Beach, Hackham West – Huntfield Heights, Morphett Vale – West, Seaford, Hackham – Onkaparinga Hills, Lonsdale and Morphett Vale – East (Attachment G, Location Report, produced from CBS' Portal).

MasterPlan goes on to note the regional status of the Colonnades Shopping Centre, as confirmed by the City of Onkaparinga Development Plan, that designates the centre and surrounding area within a Regional Centre Zone. Consistent with its regional status, the City of Onkaparinga Development Plan Desired Character Statement envisages a redevelopment of the Regional Centre Zone (surrounding the Colonnades Shopping Centre) into an area containing "*a mix of high rise high intensity business, government and residential uses*", and the built form of the area will comprise "*high-density, medium-rise and [a central] high-rise core*" (8.9, CIR).

Further to the Centres' regional status, the South Australian Government's 30-Year-Plan for Greater Adelaide, designates Colonnades Shopping Centre as a regional transit-oriented development activity centre. A transit-oriented development comprises mixed use, higher density development which is centred on a major public transport access point. A transit-oriented development typically accommodates high density residential, a large retail service centre, employment activities, and high-quality open space (8.10, CIR).

MasterPlan identifies the immediate locality as containing various civil and entertainment facilities and notes that it comprises various commercial, institutional, and educational land uses.

### Other Packaged Liquor Outlets in the Locality

MasterPlan have provided analysis in relation to the current availability of take away liquor in the locality as follows:

- 1 PLSL
- 5 General and Hotel Liquor Licences (10.3.15, CIR and Attachment N).

MasterPlan note that the packaged liquor outlet currently operating in the locality is a Dan Murphy's store that is located within the Colonnades Shopping Centre, approximately 230 metres west of the proposed offering. The Dan Murphy's operates as a standalone building separated from the remainder of the Centre tenancies by the outdoor carpark. MasterPlan submit that the operating model of Dan Murphy's is more conducive to being a single purchase destination shopping experience, as opposed to a one-stop-shopping experience that the proposed outlet seeks to establish (10.3.17, CIR).

MasterPlan submits it is unusual given the size and major regional status of the Shopping Centre to have only one packaged liquor outlet in the Centre, and note that Endeavour Group have conducted research into the number of shopping centres throughout Australia that incorporated two or more PLSL outlets, finding it was a common occurrence across Australia with over 270 centres identified as having two or more PLSL outlets (10.3.19, CIR and Attachment O).

One of the 5 General and Hotel Licences within the locality, the Colonnades Tavern, is also located within the Colonnades Shopping Centre, and has an associated drive through bottleshop. MasterPlan submit that this venue is poorly positioned in relation to the supermarkets within the centre at approximately 190 metres from Coles, 530 metres from Aldi, and 460 metres from Woolworths, and thus does not provide a convenient one-stop-shop for supermarket customers within the Colonnades Shopping Centre (10.3.21, CIR).

Masterplan submit that the absence of a conveniently located packaged liquor outlet within the Colonnades Shopping Centre means that customers seeking the convenience of purchasing liquor as part of the daily or weekly shop, cannot do so at this large-scale centre as part of a 'one stop shop' experience. MasterPlan submit that there is a community interest benefit in enabling the purchase of household groceries and items and liquor supplies in one location, which would be realised by this proposal (10.3.22, CIR).

The other 4 General and Hotel Licence outlets are each located on the periphery of the locality:

- Christies Beach Hotel (2.5 kilometres northwest – 3.6 kilometres via car);
- Port Noarlunga Tavern (2.45 kilometres west southwest – 2.9 kilometres via car);
- Aussie Inn (2.52 kilometres east southeast – 3.8 kilometres via car); and
- Mick O'Shea Irish Pub (2.56 kilometres southeast – 3.5 kilometres via car).  
(10.3.23, CIR).

The Objector notes the Thirsty Camel and Dan Murphy's in the area and states that it is 'notorious' that Dan Murphy's and BWS are commonly owned, and refers to *Hove Sip n Save* [2021] SALC 7 (**Hove**), where Gilchrist J 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*' (Ob2).

MasterPlan addressed the operating model of both of these liquor outlets, with Dan Murphy's having a large floor area and a range of beverages which enables a marketing focus on product discounting and the opportunity for customers to bulk purchase. The drive through

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bottleshop associated with the Colonnades Tavern incorporates a sales model that is focused on high turnover stock lines and a limited range of licensed products.

I am concerned about the issue of proliferation and do not see it as desirable from a public policy perspective for there to be a packaged liquor store aligned with all (or most) shopping centres across the State. That said, each application must be assessed on its own merits. The locality cannot presently be said to be awash with packaged liquor outlets, and I am of the view that the application should not be refused on the basis of licence density alone.

However, I am mindful of Gilchrist J's observations in *Hove* at 139, that:

The legislature has made a clear policy decision not to go down the path that other jurisdictions have taken in connection with allowing the wholesale alignment of take away liquor facilities with supermarkets. In conformity with this, and the views previously expressed by this Court and the Supreme Court that it is not in the public interest for there to be an over-supply of retail liquor outlets...

### Potential Harm

The Applicant has submitted that there are "*little (if any) negative impacts associated with this application*", and that it has adequate policies and procedures in place to address any perceived harm associated with the application (17, A1).

MasterPlan do not consider:

- that the proposed site would be a congestion area for school children (10.2.4, CIR);
- that there is any risk of minors being exposed to licensed products, noting that Woolworths' policies require any person in a school uniform to be refused service even if they have valid identification (10.2.4, CIR);
- that there are any cultural risks associated with the application or that it will result in harm to places of worship (10.2.5 – 10.2.7, CIR); or
- that there are any risks to aged care residents, given there are no aged care facilities in close proximity to the site, and assert that to the contrary, the proposed offering will benefit certain residents of aged care facilities who have poor mobility (10.2.8 – 10.2.9, CIR).

MasterPlan submit that there are no drug and alcohol treatment centres within the locality.

I note that South Australia Police (**SAPOL**) and the City of Onkaparinga Council have not objected to the application.

The Applicant wrote to 65 potential stakeholders and interest groups. Only Drug and Alcohol Services SA (**DASSA**) responded. DASSA's letter did not raise specific concerns regarding the application other than highlighting the existence of certain schools, kindergartens, and aged care facilities in the locality. The Applicant responded to DASSA indicating that they had written to all of the mentioned schools, kindergartens, and aged care facilities as part of the community consultation process without any response or concerns being raised. The Applicant also provided details of its comprehensive range of policies and procedures aimed at mitigating against the risk of the proposed offering causing alcohol-related harm (17.5 – 17.6, A1).

The Applicant notes that it is not aware of any infringements, disciplinary action or prosecutions in relation to the operations of the Dan Murphy's outlet at the centre.

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In addition, the Applicant submits that in relation to BWS stores generally the Licensing Court has accepted on a number of occasions that: there are no issues under s 57 of the Act as to the suitability of the premises; the potential of them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or any prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted (17.1, A1), and cites the following cases in support: *BWS Seaford* [2015] SALC 19 at [6]; *BWS Mt Barker* [2016] SALC 33 at [7], *BWS Woodcroft* [2016] SALC 35 at [11], *Woolworths Liquor BWS Arndale* [2014] SALC 14 at [11], and *Woolworths Limited* [2013] SALC 23 at [7].

The Applicant states that in relation to its commitment to compliance issues generally, Gilchrist J made the following finding in *BSW Woodcroft* [2016] SALC 35 at [101]:

*I need not take that evidence any further. There has been consistent evidence placed before this Court to the effect that Woolworths is a very good operator of retail liquor facilities.*

Additionally, the Applicant notes that it has not been involved in legal proceedings in South Australia involving the sale of liquor to minors (17.3.3, A1).

The Applicant has identified a range of matters and risk mitigation measures to mitigate the risk of harm posed by the application, including:

- The Endeavour Group Limited's harm minimisation policies and procedures are well documented within the business's Quality Management Systems, and apply to every store nationwide (10.2.15, CIR).
- The Applicant has hundreds of cumulative years of experience in operating liquor licence outlets, which has involved the formulation and implementation of internal policies and procedures in the responsible service of alcohol, detailed staff induction and extensive training on their roles and responsibilities (17.3.1, A1 and 12, CIR).
- BWS staff will be trained in and required to adhere to Endeavour Group's policies and procedures, in addition to other materials in relation to the operational standards of the business, including: Best Practice policies and Interventions; ID 25 Policy; Secondary Supply Policy; Responsible Buying Charter; Intoxication Policy; and School Uniform Policy (10.2.16, CIR).
- The proposed BWS Store will be designed and constructed pursuant to the Crime Prevention through Environmental Design (**CPTED**) principles of surveillance and lighting, territorial reinforcement, space/activity management and access control (10.2.17, CIR).
- MasterPlan submit that careful consideration is given to the design and layout of the store to foster natural surveillance, in order to help deter criminal activity. Additionally, the store will be fitted with a sophisticated CCTV system that incorporates up to 8 high-definition cameras and a back to base security alarm system. This system will have remote accessibility to allow compliance and loss prevention teams to access the system off site as well as enabling local approved store management access. Footage can be transferred to a USB on request from SAPOL or Licensing Inspectors (10.2.18, CIR).
- Internal reporting systems are in place to ensure that if there are any incidents, concerns or threats, that corrective action can be taken quickly, and Endeavour Group conducts regular internal security and safety audits to ensure all stores adhere to the

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business' policies and procedures. If there are concerns, remedial action is taken immediately (10.2.18, CIR).

- The BWS Store will not stock items that have any special appeal to minors nor will it involve the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking (17.3.5, A1).
- Incident registers are maintained in each BWS store so that any incidents are recorded and dealt with efficiently and appropriately (17.3.6, A1).

The State total crime rate is significantly higher than that experienced in the locality, at 36 percent higher in March 2020 (10.3.2, CIR). The most common offence within the locality is 'Other Property Damage or Environmental'. This offence includes damage other than by fire, explosion, or graffiti with the intent to destroy or damage property; for example, vandalism or illegal interference of a vehicle, and is not particularly relevant to the proposed PLSL Outlet (10.3.3, CIR).

The fourth most common offence recorded in the locality was 'Theft from Shop', which is an offence that is clearly more relevant to the proposed PLSL outlet, with 45 offences recorded for the month of March 2020. Masterplan note that 28 of these 45 offences were recorded in the Noarlunga Centre, presumably within the Colonnades Shopping Centre (10.3.4, CIR).

The Applicant submits that it is very well placed to address any theft issues by virtue of its policies and procedures and the technology it utilises (20.7, A1). Masterplan note that the Applicant makes use of CPTED to reduce opportunities for theft in its stores and that this is particularly relevant given the theft from shop offences in the Noarlunga Centre, and also note that each BWS store is fitted with an electronic article surveillance ("EAS") system, "*which permits specific electronic bottle caps to be affixed to identified higher priced and (attractive to their type products)*". If a product has not had this bottle cap removed crosses the exit 'checking' point, an alarm will sound (10.3.5, CIR).

MasterPlan states that there is no evidence for the locality that identifies what proportion of crime is related to the consumption of alcohol and that there is no evidence to suggest that an additional packaged liquor sales outlet in the locality would lead to increased crime levels (10.3.6, CIR).

With regard to groups deemed to be 'at risk' for the purposes of the Guidelines: Tafe technical school is located adjacent to the Colonnades Shopping Centre, and a childcare centre is located within the Centre. Cardijn College is approximately 20 metres to the south of the proposed outlet, a kindergarten approximately 580 metres to the west and Christies Beach High School approximately 660 metres to the north. The remainder of the schools, kindergartens and childcare centres are spread evenly across the locality, with a greater concentration north of Beach Road (10.2.3, CIR). There is no concentration of places of worship or aged care facilities within or adjacent to the Colonnades Shopping Centre and as such, the proposal is not considered to be a cultural risk or to present a risk to aged care residents in this regard and Masterplan assert that older residents with mobility issues will benefit from the one-stop-shopping opportunity the proposed offering will provide (10.2.7 – 10.2.9, CIR).

MasterPlan investigations show no drug and alcohol treatment centres within the locality (10.2.10, CIR).

The Minister and Commissioner have declared 2 dry areas within the locality, but MasterPlan do not expect the proposed packaged liquor outlet to provide any undue impact on the dry areas given its relative separation distance (10.2.11 – 10.2.13, CIR).

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The Objector, in relation to the MasterPlan report, asserts that *“the author of that report has qualifications in planning, but not specifically social planning, which is a more relevant area of expertise in such matters, and any opinion expressed as to the important issue of liquor related harm is of limited value”* (39, Ob3).

In my view the Applicant has appropriately engaged with and consulted with at-risk groups within the community, and I am satisfied that I can consider and place some weight on the opinions expressed by Mr Burns of MasterPlan.

The Applicant submits that it takes its social responsibilities very seriously and that if operational concerns are brought to its attention, management works to resolve those concerns quickly and professionally (17.3.2, A1).

The Applicant invests in employee management and training, and MasterPlan notes that *“BWS team members undergo rigorous induction and training as to their role and responsibilities. This includes aligning with the expectations of BWS in the responsible service of alcohol, the law, internal policies and procedures and other aspects associated with working in the drinks industry”* (4.7, CIR), and that *“team members receive regular training reminders on the responsible service of alcohol, as well as product knowledge and customer service training. All team members receive on the job training and supervision to enable growth in their capabilities”* (4.8, CIR).

I have reviewed the policies contained in the CIR, including: House Policy; Management Responsibility - SA; ID 25 Policy; Intoxication Policy; School Uniform Policy; Secondary Supply Policy; and the Endeavour Drinks Group Responsible Buying charter (Attachment J, CIR).

Given the high number of packaged liquor sales licence applications by Liquorland and BWS 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**).

### **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

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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:

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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:

*“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-

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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:

- 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

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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.

The Applicant has addressed the submissions of Professor Livingston, RACS and ANROWS, which it refers to collectively as the ‘Harm Submissions’ in its Submissions dated 25 February 2022 (A4). The Applicant maintains the position it has adopted in a number of other PLSL applications, submitting that I should not place any weight on the Harm Submissions, but having noted that I have placed some weight on the Harm Submissions in another decision, submits that “such weight ought to be limited and only at a general level, consistent with the approach adopted in *Liquorland Mount Barker*” (pg1, A4).

The Applicant advances a number of reasons in support of their contention that little to no weight should be placed on the Harm Submissions, which are summarised as follows:

- the Harm Submissions do not deal with specific local issues relevant to the applications (1.1, A4), and are not “locality specific” (2, A4);
- there is nothing in the Harm Submissions of assistance to me as the decision maker in relation to locality-specific matters relevant to the application (2.1, A4);
- each of the Harm Submissions fail to address the core function of the community impact test which is based on an assessment of the impact of the supply and sale of liquor within the relevant locality (2.3, A4);
- consideration of the application involves an evaluative exercise that weighs the positives and negatives that will come with the grant of the application and it is unclear

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whether Dr Livingston, RACS or ANROWS actually reviewed any (or all) of the material that was lodged in support of the application and none of them have commented on that material (4-5, A4), and none have produced any evidence to contradict various matters relevant to their harm submissions that were contained in the material lodged in support of the application in relation to such things as: the significantly lower liquor licence density in the locality (5 - 5.1, A4); Masterplan note comments of the licensing authority in NSW that high licence density may increase regulatory concern as to overall social impact if the proposed offering is likely to contribute to relatively challenging circumstances in the locality or the broader community and do not consider that the grant of this application would lead to 'relatively challenging circumstances' in the locality as the outlet density is very low (10.3.30, CIR and 5.2, A4); notes that URPS acknowledged that there is "*no conclusive evidence to indicate a negative or positive impact due to alcohol density*" (5.3, A4); there is no evidence for the locality identifying what proportion of crime is related to the consumption of alcohol, nor any evidence as to how the grant of the application would exacerbate existing crime levels (5.4, A4);

- the locality has a lower total crime rate compared to the State average (10.3.2, CIR and 5.5, A4);
- whilst the locality records lower socio-economic indexes compared to the South Australian average, the locality benefits from lower living costs (10.3.9 - 10.3.10, CIR and 5.6, A4);
- there is no BWS outlet in the locality and the proposed offering will offer a 'point of difference' (5.7, A4);
- the proposed offering is not a larger store, but rather a modest store in a standalone tenancy adjacent to a popular Woolworths supermarket and other specialty tenancies, operated by an experienced liquor retailer with extensive policies and procedures (5.8, A4);
- the proposed site is not considered a congregation area for school children, nor is there considered to be any risk of minors being exposed to licensed products (5.9, A4);
- there are no cultural risks associated with the application or harm to places of worship (5.10, A4);
- there are no aged care facilities in close proximity which may give rise to risks to residents of those facilities (5.11, A4);
- there are no known drug and alcohol treatment centres adjacent to the proposed offering or within the locality (10.2.10, CIR and 5.12, A4);
- aside from DASSA (whose response was only advisory in nature), none of the potential 65 interest groups and stakeholders who were notified of the application responded or raised concerns in relation to the application (5.13, A4); and
- SAPOL and the local council of Onkaparinga did not object to the application (5.14, A4).

The Applicant submits that it is an experienced operator of licensed premises and notes that the Authority has previously acknowledged this in Order Number B233449 in *BWS Mount Gambier*.

The Applicant is an experienced and reputable licensee who operates an established business, with well-trained staff and a comprehensive range of policies and procedures, which I consider would adequately mitigate the risk of harm to vulnerable members of the community.

The Applicant also refers to the site-specific security measures it will put in place (at 5.17, A4), and notes that it has committed to a Sustainability Strategy which sets out various goals and commitments it seeks to achieve in relation to the responsible service and consumption of

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alcohol, and cites statements by the Applicant's CEO and managing director Mr Stephen Donohue in support of this (5.18, A4).

The Applicant submits that in light of the matters above that there is no evidence that: the proposed BWS store will negatively impact on the activities in community buildings or facilities; the application will result in an unacceptable level of increased harm due to the excessive or inappropriate consumption of liquor, whether by the relevant community as a whole, or to any group within the community; or would result in a change in existing customer behaviour or would introduce new drinkers to the market; and that the risk posed by the proposed offering is therefore very low (6.1-6.4, A4).

The Applicant makes a number of comments about Dr Livingston's submission and the research he has relied upon (7 – 7.8, A4), and refers to the conclusion of Dr Henstridge that one of the papers relied on by Dr Livingston "*Disaggregating relationships between off-premise alcohol outlets and trauma (Canberra, FARE)*" was not reliable and should be disregarded, as considered in the BWS Mount Gambier decision, where it was accepted that the paper should be disregarded.

The Applicant notes that RACS refers to the emphasis on harm minimisation in the amendments to the Objects of the Act but submits that it has addressed the significant harm minimisation measures that it will undertake at length (7.9, A4). The Applicant also takes issue with RACS objecting to the application "*without RACS having had regard to the particular circumstances of the application. The effect of RAC's submission is one of general opposition to any new licence*" (7.10, A4).

The Applicant notes that the ANROWS submission does not mention anything about packaged liquor, but rather focuses on the harm associated with alcohol consumption generally. While the Applicant accepts that any liquor application may pose some risk of harm, it contends that a balanced assessment of the evidence shows that there are a substantial number of positives, and little (if any) negatives associated with the application, and that the risk posed by the grant of the application is low, such that it is in the community interest for the application to be granted (7.11, A4).

Finally, the Applicant submits that there is no reason why I should exercise my discretion to refuse the application under the broad discretion available to me under s 53 of the Act (8, A4).

### **Liquor Licence Density in the Locality**

MasterPlan provide analysis of the licence density of the locality vis-à-vis South Australian averages per 100,000 persons (Table 7, 10.3.26, CIR), which shows that the rate of General and Hotel licences plus Packaged Liquor Sales Licence outlets for SA of 1001 equals a rate per 100,000 people of 59.70 for SA as a whole, compared to a rate of 17.32 for the Colonnades Shopping Centre locality. MasterPlan submit that "*the average State density for General and Hotel Licence outlets is over three times greater and Packaged Liquor Sales Licences are over four times greater than that of the locality, relative to a rate of 100,000 persons*" (10.3.27, CIR).

Further, MasterPlan submit that not only is the number of licensed outlets in the locality significantly lower than the State average relative to population, but that the existing licensed outlets do not provide a one-stop-shopping experience, particularly in relation to the Colonnades Shopping Centre. MasterPlan are of the view that the locality is poorly serviced in terms of take away liquor outlets (10.2.28, CIR).

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Consequently, whilst there are a number of take away packaged liquor options in the locality, from a statistical perspective, the locality cannot be said to be 'awash' with liquor.

### **Cultural, recreational, employment or tourism impacts**

The Applicant submits that a BWS store typically employs 1 to 2 full time and 3 part time or casual employees. MasterPlan concedes that there is a counter argument that that there will be no net benefit to employment due to job losses at other licensed premises but contends that "*this is not the experience of BWS generally in other similar locations*" (10.4.1, CIR).

MasterPlan submits that they do not believe that the approval of another PLSL outlet within the Colonnades Shopping Centre will result in an expansion of the market, and suggests that the sales generated by the proposed outlet are likely to be in lieu of purchases that otherwise would have been made at another licensed outlet within the centre, Dan Murphy's. MasterPlan further submit that the Dan Murphy's outlet is not likely to lose significant market share as it is much larger in scale than the proposal, and therefore stocks a larger range of products (10.4.8, CIR)

MasterPlan are of the view that even if some competing stores choose to reduce the number of hours that employees are engaged due to reduced sales, that there will be an overall net benefit of total employment hours available to job seekers (10.4.3, CIR).

### **Social Impact and impact of the amenity on the locality**

MasterPlan state that State total crime rate is significantly higher than that experienced in the locality, at 36% higher in March 2020 (10.3.2, CIR).

MasterPlan observe that 'Theft from Shop' is the fourth most common offence in the locality but, as discussed above, note the measures, policies and technology that will be utilised by the Applicant to reduce opportunities for crime and theft (10.3.4 – 10.3.5, CIR).

MasterPlan submit that there is no evidence that identifies what proportion of crime, if any, is related to the consumption of alcohol, and that "*there is no evidence to suggest that the addition of a new Packaged Liquor Sales Licence outlet in the locality would result in increased crime levels*" (10.3.6, CIR).

Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the Australian Bureau of Statistics (**ABS**) that ranks geographic areas in Australia according to relative socio-economic advantage and disadvantage. The indexes are based on information from the five-yearly Census and include indexes such as 'relative socio-economic disadvantage', 'index of relative socio-economic advantage and disadvantage', 'economic resources' and 'education and occupation'.

MasterPlan note that all indexes in the locality score lower compared those of Greater Adelaide, which indicates that the locality, on average, has a lower socio-economic profile compared to the broader metropolitan area (10.3.8, CIR).

The highest scoring index for the locality is the 'Index of Economic Resources' at 2.56 (out of a possible 10). This score indicates that the majority of households in the locality have lower incomes compared to the national average (of 5.00), as well as greater Adelaide (at 5.07).

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The lowest scoring index for the locality is the 'Index of Relative Socio-Economic Advantage and Disadvantage' at 2.05. MasterPlan observe that this low score can indicate various socio-economic characteristics, such as a low-skilled workforce, or that many households have low incomes (10.3.11, CIR).

MasterPlan submit that the locality has a significantly lower median monthly mortgage repayment rate than the Greater Adelaide average and the median weekly rent is either lower or comparable. MasterPlan submit that the reduced household income as reflected in the low Index of Economic Resources rate is to be considered in the context of lower housing costs (10.3.10, CIR).

The unemployment rate within the locality ranged from 8.0 percent at Seaford and 20 percent at Christies Downs and Hackham West – Huntfield Heights in the September 2018 quarter, and is significantly higher than the Greater Adelaide average of 6.5 percent in the Sep 2018 quarter (10.3.13, CIR).

Whilst the locality experiences a high unemployment rate, MasterPlan submit that the approval of an additional PLSL outlet in the Colonnades' Shopping Centre is not considered to provide an additional risk factor, as unemployed people in the locality are currently able to purchase liquor products. Masterplan suggest that the proposed additional outlet in the Centre "*is not anticipated to increase that occurrence in providing the convenience of a one-stop shop for supermarket customers*" (10.3.14).

Additional convenience for some members of the community, whilst not sufficient to satisfy the community interest test on its own, is a factor that may be considered by the Licencing Authority when performing the evaluative exercise of determining whether or not it is in the community interest to grant the application.

### **Community support for the proposed business and community consultation**

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey provided to customers via Woolworths online portal system. Responses were received from 362 people to the first three questions, and 289 people to the fourth question. 79.8% responded 'yes' to the third question, which asked "*Would you support an application for Woolworths Group to open a BWS liquor retail store, which would be located in the Shopping Centre right next to the existing Woolworths Supermarket?*" (11.2 – 11.3, CIR and Attachment R).

MasterPlan acknowledge that the survey has inherent limitations in applying the statistical findings, due to the relatively small sample size and design, but submit that the response from existing Woolworths' customers to a proposed PLSL outlet in the Colonnades Woolworths were "*resoundingly endorsed*" and that the results of the survey "*suggest strong and favourable responses in relation to the 'community interest' test for Woolworths' customers.*" (11.5, CIR).

The Applicant engaged in community consultation by writing to a total of 65 key stakeholders and interest groups relevant to the locality notifying them of the intention to lodge an application for PLSL outlet at the site. At the time of MasterPlan preparing its report, one response had been received from Drug and Alcohol Services South Australia (on behalf of SA Health), which MasterPlan describe as being "*advisory in nature*" (11.1, and Attachments P and Q, CIR).

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### **Submissions by the objectors opposing the grant of the application (Ob1, Ob2, Ob3 and Ob4) and the Applicant's submissions in reply (A2, A3 and A4)**

The AHA and the licensee of the Colonnades Tavern have objected to the grant of the application, for a variety of reasons, as summarised below, along with the submissions received in reply from the Applicant.

#### **AHA Submissions**

The AHA filed a submission objecting to the application (**Ob1**), followed by a further combined submission objecting to the application and five other BWS applications (**Ob2**). The AHA's grounds of objection can be summarised as follows:

- the initial application could not have been granted as it was contrary to section 38 of the Act;
- the subsequent granting of permission to vary the application by the Authority under section 51(3) is void for a variety of reasons (as discussed above in more detail on pg4);
- the development approval from the City of Onkaparinga dated 8 March 2016 (Attachment C, CIR) is in fact a variation of an earlier development approval 145/2361/2014 which is not provided. The AHA note that the variation gives approval to:

Variations to precinct one and precinct 3B, including variation to detention basins, alterations to shopping centre, specialty shops, entrances, advertising signage and reductions in size of bulky goods building-Stage 3 balance of works.

The AHA assert that this is "mere gibberish" and that the full approvals are required in order to be able to determine whether any further development is approved.

Additionally, the AHA note that the Development Plan consent was extended for 3 years only for works to substantially commence from the operative date, which period expired no later than 8 March 2019, and consequently, whatever the approval means "*no commencement work regarding the BWS has occurred within the 3-year window, and substantial completion before 8 March 2021 (the 5 years referred to in the approval) is plainly unachievable as well*" (Ob2);

- no landlord consent has been provided, and that in the event the landlord leases the premises, consent is required by s 72 of the Act;
- the application offers little by way of anything other than the same range that is already available from the same ultimate owner within the locality (Ob2);
- the AHA relies on the Decision in *Hove* and refers to Gilchrist J's observation 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*" (Ob2); and
- the AHA submits that the application offers little by way of anything other than the same range that is already available for the same ultimate owner within the locality (Ob2).

#### **Colonnades Tavern**

RE and DA Jones Investments Pty Ltd, the licensee of the Colonnades Tavern, lodged submissions opposing the application (**Ob3** and **Ob4**). The Colonnades Tavern's grounds of objection can be summarised as follows:

- there is no evidence of planning or building approvals for the proposed works as required by s 57 of the Act (18, Ob3);
- the expert evidence provided by MasterPlan in relation to liquor-related harm is of limited value as the author of the report has qualifications in planning, but not

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specifically social planning, which the Objector suggests is a more relevant area of expertise (39-40, Ob3);

- the plans and Masterplan (5.4, CIR) refer to a roller door between the proposed liquor store and the supermarket, which the Objector says cannot amount to a “permanent barrier” for the purpose of s 38(4)(a), and the location of the store within the confines of the existing supermarket breaches s 38 of the Act (19-22, Ob3);
- the Applicant provides little by way of assessment of at-risk groups within the community;
- “public” consultation data is of limited value as only Woolworths’ customers were surveyed (23-27 and 71, Ob3);
- the Applicant is not likely to provide anything that is not already available in the locality and is simply proposing to provide “convenience” for a number of supermarket patrons who already have one-stop-shop in and about the locality (72, Ob3);
- there is no suggestion that the existing outlets in the locality do not provide an adequate range and variety of liquor and shopping experiences, consistent with contemporary expectation and the “*expectations and aspirations of the public*” as per the Object in s3(1)(c) of the Act (35, Ob3);
- the suggestion by Masterplan that there is no “one stop shop” in the Centre (see 10.2.28, CIR) is erroneous as shoppers can already buy liquor and groceries in the Centre (36, Ob3);
- another Woolworths Group licence is likely to be “*contrary to the balance of the industry*” (*BWS Seaford* [2015] SALC 19 at 89, and 44, Ob3);
- the licensee chose to establish a “big box” Dan Murphy’s type business and should not now be allowed to argue that the community now wants a convenience type store as well (74, Ob3);
- the Applicant has provided little if any real assessment or analysis of the ‘at risk’ groups or sub communities within the locality and how they may be impacted (69, Ob3);
- the Applicant has provided little evidence of net employment benefit, net community benefit or evidence of matters ensuring no harm or negative outcomes will result (75-76, Ob3);
- on balance there is no net community benefit likely to arise from the application and the community is likely to be worse off (79, Ob3);
- any suggested additional convenience of another Woolworths Group licence does not equate to community of public interest (80, Ob3);
- the potential for harm to the local community from this application is high;
- despite whatever management policies the applicant may have, it cannot control the potential harmful impacts of liquor once it is taken from its premises (83, Ob3);
- this is anything but the “*unexceptional, non-descript locality*” considered by the Court in *Liquorland Park Holme* (84, Ob3);
- the Applicant has not provided evidence of lessor consent in respect of the revised plans (1, Ob4);
- the corridor adjacent to the supermarket checkout of approximately 20 metres in length which is to form part of the licensed area is completely artificial (5, Ob4);
- the Objector relies on the Decision in *Hove*, noting the concerns Gilchrist J had in relation to the potential for proliferation (6, Ob4), and submits that the comments of His Honour at [141] of that judgement are also apposite to this application:

If it succeeded, other like cases would be difficult to refuse and this could lead to an oversupply of take-away liquor facilities. It would not be in the public interest to allow that to occur.

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- for these reasons the application should be refused.

Re and DA Jones Investments Pty Ltd also attempted to file an expert report prepared by URPS at a late stage of the proceedings, which I declined to accept or have any regard to.

### **The Applicant's Submission in Reply**

The Applicant filed further submissions in reply (**A3**), as summarised below:

- The Applicant rejects the assertion by the AHA that the variation to the proposed licences plan approved by the Authority is void, and rejects the various other submissions advanced by the AHA in relation to this (1 – 3.2, A3);
- with regard to development approval relied upon and queries by the AHA and the Tavern in relation to it, the Applicant submits that Mr Burns is fully aware of the varied plan approved by the Authority and draws attention to s 58(2) of the Act. Mr Burns is of the view that the proposed works will attract building rules consent only in due course and that “*no further planning consent is required over and above what is already in place*” (4.2.3, A3);
- with regard to landlords' consent, the Applicant enclosed confirmation of same;
- with regard to the decision in *Hove*, and the Objectors' assertions as to an oversupply of take away liquor and perceived harm, the Applicant submits that: licence density for the locality will remain well under the State average; there is no basis to assert that there will be an oversupply of proliferation of take away liquor facilities; there is no evidence as to any perceived harm arising from the application and the only objection is from the Tavern seeking to protect its commercial interests; the comments of Gilchrist J were made having regard to the “*relatively small number the local community who visit the Hove Shopping Centre*” which is in stark contrast to the Colonnades Shopping Centre where huge numbers of the community visit the centre every day, and in any event were made in *Obiter*, and in light of the peculiar facts in *Hove* which is distinguishable from the present application (4.4 – 4.4.4, A3);
- The Applicant submits that the decision in *Hove* can be distinguished for a number of reasons, including: general quality of the application; size of the proposed store; petition evidence; experience in selling take away liquor; the policies and procedures; the range of product lines to be stocked; the size of the adjacent supermarket; the number of specialty tenancies (6 at *Hove* vs 152 at Colonnades); the carparking available (54 at *Hove* vs thousands at Colonnades); and other matters such as the lack of attention to detail by the Applicant in *Hove*, which is not an issue with the present application (4.4.5, A3);
- the submission raised by the Colonnades Tavern that the roller door would not satisfy s 38 separation issues fails to take into account the decision in relation to “physical separation” as set out in the BWS Cumberland Park decision of 11 December 2020, where I considered *BWS Walkerville* and *Bennie's Cellars* authorities and concluded that a roller door would not breach the requirements of s38(4) of the Act, subject to an appropriate condition on the licence re same;
- the Authority must only exercise its discretion for a purpose consistent with the current legislation and such discretion should not be used to provide protection to existing licensees, or to penalise an applicant for making shrewd commercial decisions. The discretion should not be used to bring back the ‘needs’ test, and there is no reason for any adverse exercise of the discretion against the grant of the application 4.4.7, A3); and

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- the Applicant rejects the assertion that the application should be rejected on account of the layout of the proposed premises. The proposed layout is not artificial (5.1.2, A3).

### **Decision**

The expert engaged by the Applicant has adopted a 3 kilometre radius in determining the locality, as the area most likely to be affected by the grant 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.

It is clear from the MasterPlan CIR that many of the people who shop at the Colonnades Shopping Centre live in and around the locality. The range of products the Applicant is proposing to provide is significant (approximately 1,800 lines of stock) and granting the application would be likely to result in a slight increase in convenience for those in the locality who wish to purchase packaged liquor products when shopping at the Shopping Centre specifically from a BWS outlet, although convenience alone is not determinative of the application and is only one factor to be considered.

The number of people who will benefit from the convenience of the proposed offering is analogous to the situation in the *Liquorland Park Holme* matter, as opposed to *Hove* where the supermarket under consideration was considerably smaller and less busy, although in this instance there is already an existing Dan Murphy's located only 230 metres from the proposed offering and the Colonnades Tavern is also only a short walk or drive away.

I note that SAPOL and the City of Onkaparinga council have not objected to the application.

The Applicant is an experienced and reputable licensee who operates an established business, with well trained staff and a comprehensive range of policies and procedures.

The Applicant, through its lawyers, wrote to various (65) stakeholders and interest groups advising them of the intention to lodge a PLSL application and inviting comment on the proposed application. One response in reply was received from DASSA, and this response was largely advisory in nature.

The Applicant has provided some evidence of community support for the application, consisting of the results from a survey of Woolworths' customers in which over 79 percent of the people surveyed would support an application to establish a BWS store at the Site. Given the small sample size of the survey, the fact that only Woolworths' customers were surveyed, and the inherent limitations conceded by Masterplan, I do not place a significant amount of weight on the survey results.

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 such as the suitability of the premises; the potential for them to cause undue

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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.

I note that whether or not the development consent relied on by the applicant is sufficient to permit the development of the proposed premises, is in dispute between the parties. That said, Mr Burns is an expert town planner and he has advised that “*no further planning consent is required over and above what is already in place*”. I am prepared to accept his evidence on this point, and in any case, given my decision as set out below, I need not resolve that issue.

I have considered the potential for harm of granting the application in light of the risk mitigation policies, procedures and staff training the Applicant has identified that it will put in place to mitigate the risk of harm to the community.

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.*

It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the locality is significantly lower than the State average and that the locality is clearly not ‘awash’ with take away liquor facilities.

The locality records lower SEIFA indexes across all measurable criteria compared to Greater Adelaide and has significantly higher unemployment than the Greater Adelaide average.

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.

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I consider it is relevant that nearly 80% of alcohol consumed in Australia is sold at packaged liquor outlets and this proportion has been steadily increasing.<sup>1</sup> I also consider that the following submission from ANROWS has general application and relevance:

Other recent research into the impact of alcohol related harm in families and alcohol consumption during the COVID-19 pandemic highlighted that the changes to alcohol consumption during large-scale disasters may increase harm in families (Farrugia & Hinkley, 2021). For example, women with carer responsibilities were found to be at greater risk of increasing alcohol consumption and alcohol-related harm. The findings indicate that there is a need for greater community awareness of the connection between alcohol consumption due to COVID-19 and the risk of alcohol-related harm.<sup>2</sup>

I agree with the conclusion drawn by Dr Crozier and Mr Bautz in the RACS Submission:

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.

In my view, the observations above are relevant to highlight that as Liquor and Gambling Commissioner, I must proceed with extra caution when considering packaged liquor store applications co-located with supermarkets which would have the effect of increasing the accessibility and exposure of alcohol to residents in that locality.

For those reasons, I consider that the considerations of harm are not only relevant to community interest (that is, affecting the locality), but also the public interest as to grant this application, would in my view, create an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores with supermarkets. As noted by the Court in *Hove*, the legislature has made a clear policy decision not to go down this path.

The proposed premises may provide some employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the relevant community. However, I place limited weight on this given that the grant of this application may result in reduced hours of employment for staff at other packaged liquor outlets in and around the locality.

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. The remarks of King CJ in

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<sup>1</sup> Professor Livingston submission at p. 1 citing Euromonitor International (2019) Passport: Alcoholic drinks in Australia (London, Euromonitor).

<sup>2</sup> ANROWS Submission at pp. 2-3.

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*Lovell v New World Supermarket Pty Ltd* applied by Gilchrist J in *Hove Sip n Save* [2021] SALC 7 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.

The Objectors have referred to *Hove* where Gilchrist J indicated that the public interest discretion and concerns as to proliferation would have resulted in the *Hove* application being refused, in support of their submission that the present application should also be refused.

I have considered the Applicant's submissions in reply addressing *Hove* (A3), and agree with the Applicant that in many ways the factual circumstances under consideration by the Court in *Hove* are readily distinguishable from the present application in respect of such things as the quality of the application; the size of the proposed liquor store; the petition evidence; the experience of the respective applicants in selling takeaway liquor; the policies and procedures; the product range; the size of the supermarkets and the number of stores located at the sites; the car parking available; and lack of attention to detail by the applicant to certain matters in the *Hove* application compared to the almost forensic attention to detail apparent in the present application.

Irrespective of these differences, there are some matters of public interest that arise that are arguably similar to those arising in *Hove*. In my view *Hove* is relevant and analogous to the present application in relation to the public interest considerations and the risk of setting an undesirable precedent. I consider that the grant of this application would be contrary to the community interest and the public interest and would set an undesirable precedent likely to result in the wholesale alignment of packaged liquor stores and shopping centres. As noted above and in *Hove*, Parliament has chosen not to go down this path. There is already a large PLSL outlet in the shopping centre, Dan Murphy's, which is only a short walk from the proposed offering (approximately 230 metres), as well as the Colonnades Tavern drive through bottleshop which is also located within the Colonnades Shopping Centre on the northern edge of the centre (approximately 190 metres from Coles, 530 metres from Aldi and 460 metres from Woolworths), which are ample to provide convenience and one-stop-shopping for those customers wishing to purchase liquor at the same time as doing their grocery shopping.

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 Objector's submissions in light of Gilchrist J's decisions in *Liquorland Park Holme* and *Hove*.

In my view granting this application is not in the community interest, as the main benefit that the grant of the present application would appear to confer (other than some employment, which may be offset by reduced employment hours elsewhere in the locality), is some additional convenience to some members of the locality who shop at the Centre and may

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desire to purchase packaged liquor from the proposed BWS offering whilst doing their grocery shopping, as opposed to purchasing it from either Dan Murphy's, or the Colonnades Tavern or from one of the other take away liquor options in and around the locality.

Consequently, the grant of the application could only provide (some) shoppers with yet even more convenience in circumstances where they already enjoy significant convenience.

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. Rather, granting this application would be a further step towards proliferation and would provide a precedent that would support the wholesale alignment of packaged liquor and shopping centres, which is not desirable in circumstances where the approval of this application will provide little more benefit to the community than providing even more convenience in a locality where consumers already have one-stop-shop options and enjoy significant convenience.

Accordingly, BWS' application for a Packaged Liquor Sales Licence at Colonnades Shopping Centre is refused.

Dini Soulio  
**Liquor and Gambling Commissioner**