

## **Cellarbrations Springwood PLSL Application Decision**

Drakes Supermarkets' subsidiary Finliq Pty Ltd (**the Applicant**) have applied for a Packaged Liquor Sales Licence (**PLSL**) in respect of a store proposed to be situated at Easton Drive, Gawler East, SA 5118 (**the Site**), to be known as Cellarbrations Springwood (**Cellarbrations Store**), that will be located within the Springwood Village Shopping Centre (The Village Centre, currently under construction), alongside a range of other tenancies, including a full-line supermarket.

Springwood is a new residential development described as an "aspirational village-style community" located in the foothills of Gawler East, encompassing an area of approximately 219 hectares. The Village Centre is said to be "at the very heart of life at Springwood – the place where locals and visitors gather, meet, shop, linger and socialize."<sup>1</sup>

As part of the application the Applicant has submitted a Community Impact Assessment Form (**CIAF**) and supporting attachments, prepared by lawyers acting on behalf of the Applicant. There are no objectors to the application.

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

- Applicant's Community Impact Assessment Form (**CIAF**)
- MasterPlan Report Annexure A to CIAF (**MasterPlan Report**)
- Letter from Mellow Olsson to Liquor & Gambling Commissioner clarifying discrepancy of total floor area, dated 15 August 2022 (**Letter to Commissioner**)
- 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**)

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
- 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

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<sup>1</sup> <https://myspringwood.com.au>

and competency in relation to the service of liquor; general description of facilities and services; relevant construction details (e.g. materials, finishes, acoustic treatment, etc.); details of any food, including menu; liquor services (e.g. bar) and range of liquor; types of entertainment; types of accommodation; a statement as to whether the community supports the proposed business, including providing evidence of such support; and a statement as to why the granting of the application is in the community interest.

Applicants are also required to provide, where applicable: a map and report regarding the locality generated through Consumer and Business Service's (**CBS**) Community Impact Portal; a business plan/plan of management; and a site or property plan, floor plan and/or photographs/artists impressions of the site/building.

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

Section 3(1) of the Act provides that:

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

The Applicant must also satisfy the Authority that the pre-requisites in section 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, 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)*”, and 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.

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.

Finliq Pty Ltd is a subsidiary of Drakes Supermarket Group representing the Cellarbrations brand, and operates 3 Cellarbrations packaged liquor outlets in South Australia.

Drakes Supermarkets is the largest independent grocery retailer in Australia, operating over 60 stores across South Australia and Queensland, with over 5,500 staff employed nationally and turnover in excess of \$1 billion per annum (3.2, CIAF).

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

The Applicant submits that the proposed liquor store will offer an extensive range of packaged liquor including Australian, imported and craft beers, along with Australian and imported red and white wines, but with an emphasis on quality South Australian wines, craft beers and micro distillery products (3.2, CIAF).

The Applicant further submits that, due to the lack of outlet of its kind in the locality, that it is likely to be a destination store. Additionally, the store will provide for additional convenience and one-stop shopping experience. Due to the walk-in nature of the premises rather than a drive-through, the proposed store will stock approximately (3.2, CIAF):

- 253 lines of beer including cartons, six packs and singles;
- 77 lines of cider;
- 250 lines of spirits;
- 338 lines of ready to drink spirits including cartons, six packs and ten packs;
- 565 lines of wine, including casks; and
- 55 lines of non-liquor products.

Additionally, the store will stock a small quantity of packaged food at the premises. The proposed trading hours of the outlets will be 9:00am to 7:00pm Monday to Saturday, and 11:00am to 5:00pm Sunday, and as such are consistent with trading hours authorised by the Act.

The main elements of the Springwood Village Shopping Centre will include: a full-line supermarket of approximately 2,600 square metres; 1,590 square metres of speciality shops adjacent to the Supermarket; 2 detached retail buildings further to the south; and parking for 217 cars. The tenancies with secure leases currently include the Drake’s Supermarket, barber, newsagency, laundromat, pharmacy, medical centre, real estate office, and 3 takeaway/fast food/café outlets.

The Cellarbrations store, if constructed as proposed, will be approximately 292.5 square metres. The floor area was originally stated to be 300 square metres in the CIAF but this was later clarified by way of letter dated 15 August 2022, requesting that the application to be assessed as such (Letter to the Commissioner).

## 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 located within the Adelaide Metropolitan Areas will be the area within a 2km radius of the proposed offering:

**Adelaide Metropolitan Area:** The locality of a premises in the Adelaide Metropolitan Area is the area within a 2km radius of the site of the relevant premises. A list of the suburbs considered to be in the Adelaide Metropolitan Area can be found below. The list is intended to be used as a guide only.

The Applicant has defined the locality to incorporate a 2.0 kilometre radius to the west of the proposed outlet in a range north to south-west, and a 5.0 kilometre radius to the east in a range north to south-west. With respect to the locality, MasterPlan states that:

"the locality incorporates the characteristics of an 'Adelaide Metropolitan Area' centrally and to the west, and 'Outside the Metropolitan Area' further to the east (as described in the Community Impact Assessment Guidelines). Given these characteristics and the nominated localities broad consistency with the Primary Trade Area, the 2.0 kilometre radius to the west and 5.0 kilometres to the east is deemed appropriate" (Masterplan Report, 7.4)

There are no objectors to the application and as such, the locality as identified by the Applicant is not in dispute. Nonetheless, I must still be satisfied that the locality identified by the Applicant is correct. In this regard I note that had Masterplan applied a 5 Kilometre radius to the west, in conformity with the 5 kilometre radius that they applied to the east of the proposed PLSL outlet, that would have resulted in a number of additional General and Hotel Licence outlets being considered as part of the locality (discussed further below). The corollary of this is that the licence density for the locality would be higher. However, even if the higher licence density was applicable, I do not consider that this would change the outcome of this application given the other facts and circumstances applicable to the application, and consequently, little turns on this.

The population of the locality as derived from the CBS portal for a 2.0 kilometre radius is 22,490 persons. However, MasterPlan submit that this figure utilises total population of the large SA2 collector districts within the locality and, as such, have calculated a "*more refined and accurate locality population using smaller SA1 districts which also includes the 5.0 kilometre radius to the east*", which calculation produced a figure of 7,207 persons for the locality (7.10, Masterplan Report).

Of the persons recorded as residing within the locality, 1% of the population identify as Aboriginal or Torres Straight Islander peoples compared with 2% of the South Australian population or 2.8% of the Australian population identifying as Aboriginal or Torres Straight Islanders (9.2.14, Masterplan Report).

## Other Packaged Liquor Outlets in the Locality

The Applicant submits that only one licensed premises operates within the locality, the Sandy Creek Hotel, which is located 4.85 kilometres in a direct line to the east of the proposed outlet.

The Applicant asserts that “*the locality is poorly services for packaged liquor sales outlets and General and Hotel Licences, with the only licenced premises being the Sandy Creek Hotel.*” (10.3, Masterplan Report).

Vehicle access from the proposed outlet to the Sandy Creek Hotel can be undertaken via 2 alternative routes. The most direct involves a round trip of 12 kilometres. The less direct route involves a round trip of approximately 14.6 kilometres. Each requires traversing 3 busy intersections, which MasterPlan describes as “*representing an inconvenient and lengthy route for customers of the Springwood Village Shopping Centre to purchase licensed products*” (10.4, Masterplan Report). It is noted by the Applicant that whilst the Gawler Town Centre is situated outside the locality to the west, it incorporates the closest licenced premises to the proposed outlet. Masterplan notes that travelling via Mullamar Way and Calton Road would take a person to the intersection of Calton Road and Main North Road, which is an intersection centrally located within the Gawler Town Centre. This intersection is 2.4 kilometres from the proposed outlet, and the closest licenced outlets to the proposed outlet are the Golden Fleece Hotel, located 30 metres to the north of the intersection, and the Kingsford Hotel approximately 40 metres to the south (10.5, Masterplan Report).

However, in the Gawler Town Centre and along Main North Road/Murray Street in the heart of the Gawler Township, I also note the presence of several other General & Hotel Licences in addition to the Golden Fleece Hotel and the Kingsford Hotel, namely the Southern Hotel, the Prince Albert Hotel, Gawler Arms Hotel, and the Exchange Hotel. The Applicant submits that the closest Packaged Liquor Sales Licence outlet is Liquorland located at 4 Tulloch Road, Gawler (and incorporating a round trip of 9.8 kilometres) (10.8, Masterplan). However, in addition to the premises noted in Masterplan’s Report, I note the presence of a Dan Murphy’s Packaged Liquor Sales Licence outlet located a short distance to the south of the Calton Road / Main North Road Intersection, situated at 22 Murray Street, Gawler.

Whilst I note that the above General and Hotel Licence and Packaged Liquor Sales Licence outlets are outside the locality as defined by the Applicant, I consider it necessary to note them as they are located within a relatively close proximity to the proposed outlet.

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

The NSW Bureau of Crime Statistics and Research (**BOCSAR**) has studied the rate of domestic violence (**DV**) assault and non-DV assault in light of the concentration of liquor licences in an area, and considers that there is a correlation of an accelerated increase of both DV and Non-DV assault rates where the density of packaged liquor licences surpasses .75 outlets per 1,000 residents. The research cautions regulatory authorities on approving further outlets beyond that threshold.

In respect of the present application, MasterPlan observes that, if the application were to be granted, the liquor licence density in the locality would equate to 0.28 outlets per 1000 people (applying the 2016 Census data), which is a figure significantly less than the figure considered to be problematic by BOCSAR (.75 outlets per 1,000 residents)(10.16 – 10.19, MasterPlan Report)

It is clear from statistical perspective that the Locality cannot be said to be ‘awash’ with liquor, and that the application should not be refused on the basis of proliferation concerns.

### **Potential Harm**

The Applicant submits that Drakes is an experienced liquor retailer with comprehensive harm minimisation policies and procedures in place (4.3, CIAF).

Upon commencing employment, all team members will undergo rigorous training relating to the roles and responsibilities in relation to the safe sale of liquor (4.3, CIAF). The Applicant

has identified the following harm minimisation policies and procedures, which all team members are trained in:

- Responsible Service of Alcohol Policy;
- Social Media Policy;
- Handling an Aggressive Person Policy;
- Induction Checklist – Liquor; and
- Annual Induction Checklist.

The Applicant has identified various measures to be implemented if the licence were to be granted, including installing 8 CCTV cameras across the outlet. Additionally the outlet will have glazing to enable surveillance and the floor plan maximises lines of sight to maintain effective surveillance, which the Applicant submits will help increase the sense of safety and deter criminal activity (4.3, CIAF).

Drakes Supermarket Group's harm minimisation policies and procedures are comprehensive and are provided in Attachment K to the MasterPlan Report. The Applicant has developed a Liquor Licence Risk Assessment and Management Plan, specifically drafted for the Springwood Village Centre which records the details of staff members who have been trained in relation to the Management Plan. The plan stipulates the following operational policies (9.2.18, MasterPlan Report):

- Risk Assessment and Reasonable Steps;
- Required Training and Practices;
- Practices Relating to Minors;
- Practices Promoting a Responsible Attitude to The Consumption of Liquor on Licensed Premises;
- Practices Relating to Intoxication and Disorderly, Offensive, Abusive or Violent Behaviour;
- Practices Relating to Disturbances; and
- Induction and Refresher Training.

The Applicant has identified a number of 'at-risk' groups within the community. There are 3 schools, 1 pre-school and 2 childcare centres within the locality, which are listed at 9.2.2 of the MasterPlan Report. There are no places of worship identified in the locality (9.2.6, Masterplan Report). There are 4 aged care facilities within the locality, located between 1.34 kilometres and 1.95 kilometres in a direct line from the proposed outlet (9.2.7, Masterplan Report). MasterPlan submits that the separation distance of the aged care facilities do not represent a risk, and that the residents who are still active will be advantaged by having such a facility as the proposed outlet, and that it is further in the community interest that active and mobile retirees can safely and conveniently access the proposed outlet (9.2.8, MasterPlan).

The Gawler Health Service is 1.98 kilometres from the outlet (as the crow flies), and functions as a regional hospital which provides treatment for drug and alcohol abuse. Details of such service are limited beyond being listed as a meeting site for Alcoholics Anonymous. There are 2 further medical centres in the locality, the Springwood Family Medical Centre being 1.1 kilometres in a direct line and Gawler GP Inc located 2.0 kilometres from the proposed outlet (9.2.9 - 9.2.10, MasterPlan Report).

Of the 7,207 persons recorded as residing within the locality according to the 2016 Census, 71 persons identify as Aboriginal or Torres Straight Islander, representing 1% of the population, which is relatively low compared to 2% of the population of South Australia and 2.8% of the Australian population (9.2.14, Masterplan Report). There are no Aboriginal or

Torres Strait Islander community support facilities or cultural centres identified in the locality (9.2.13, Masterplan Report).

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**) in respect of those applications. The submissions received in reply are quite general and I consider that I should also have regard to them in this matter. The Applicant was provided with a copy of these submissions and an opportunity to file submissions in reply.

### ***Submission of Associate Professor Michael Livingston***

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

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

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

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

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

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

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

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

Professor Livingston then refers to Melbourne studies and submits that:

- There is growing local evidence linking the density of packaged liquor outlets to heavy drinking and alcohol problems.
- Longitudinal analysis of some studies showed positive associations over time between the density of packaged outlets and rates of domestic violence, general assaults and alcohol-specific disease.
- In an average postcode, a 10% increase in the density of packaged liquor outlets would lead to approximately:
  - 1% increase in assaults recorded by police and a 0.5% increase in hospitalisation due to assault;
  - 3.3% increase in family violence incidents recorded by the police;
  - 1.9% increase in hospitalisations due to alcohol-specific chronic disease.
- The density of packaged liquor outlets at the local level was positively associated with rates of episodic risky drinking.
- Each individual outlet does not contribute to major increases in harm, however, the cumulative effects of increasing availability can be substantial.

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

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

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

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

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

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

In conclusion, Professor Livingston submits that:

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

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

### ***Submission of the Royal Australasian College of Surgeons***

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



Referring to statistics provided by the Australasian College for Emergency Medicine, they submit that *“Overall, the estimated one in eight hospitalisations relating to alcohol misuse continue to represent a significant and concerning proportion of health system workload.”*

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

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

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

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

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

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

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

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

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

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

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

- about half the reported cases of interpersonal violence, domestic violence and sexual assault are related to excessive alcohol consumption;

- alcohol use is often associated with more severe acts of violence reported to the police; and
- the severity of violence has been shown to increase with the amount of alcohol consumed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms Padma provides the following summary and recommendation:

Alcohol does not, in itself, cause DVF, and cannot be used to excuse violence. However, alcohol is connected to the perpetration of violence in a number of ways – for example, alcohol use can increase the severity of violence. When examining the sale and supply of alcohol, consideration should be given to the complex relationship between alcohol consumption and violence against women. This consideration should also recognise other contributing factors, including the impact of disasters like bushfires and the COVID-19 pandemic, as well as the links between alcohol consumption and problem gambling.

### **Submission of the Applicant in response to harm submissions**

The Applicant submits that whilst the harm submissions offer important summaries of potential harm arising from the sale and supply of alcohol generally, they do not consider the circumstances in the context of the South Australian market, or more specifically in the context of the locality identified as applicable to this application, nor evidence of any

unacceptable increase in the risk of harm in the locality in the event the application was to be approved. Therefore, the Applicant submits that the harm submissions have limited general or specific relevance (pg7, CIAF).

More specifically, the Applicant submits that if one were to take the comments of RACS and Professor Livingston's submissions 'literally', the consequence would be that no application could ever be granted as they would inevitably increase the density of licensed outlets and therefore increase the risk of harm, and that if this was the intention of Parliament then the legislation would have made this position clear, but it did not.

Having considered the submissions by RACS, ANRWOS and Professor Livingston, I do not agree with the submissions of the Applicant and consider that I can place some weight on these submissions, at least at a general level. Alcohol causes significant harm in the community, and it is for this very reason that alcohol is a highly regulated product.

In *Liquorland McLaren Vale* [2022] SALC 53 (*Liquorland McLaren Vale*) the Applicant in that matter, Liquorland, challenged the relevance of the submissions by Dr Livingston, RACS and ANROWS (the harm submissions) on a number of grounds. Gilchrist J observed that 'harm minimisation' is just that, with the focus being on minimising harm or ill-health, as opposed to eliminating it altogether, and noted [at 136]:

The connection between violence and excessive alcohol consumption is self-evident. One does not need evidence from organisations like the RACS to know that alcohol is a major health problem in this country and is responsible for many hospital admissions, chronic disease, and early death. Common experience informs us of the devastation that alcohol dependence can cause to individuals and their families.

Ultimately, in *Liquorland McLaren Vale*, Gilchrist J rejected Liquorland's submission that the harm submissions were of no probative value and that I erred in acting upon them, holding variously [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 (See, for example: *H v Schering Chemical Ltd* [1983] 1 All ER 849 at 853 per Bingham J).

Gilchrist J was also of the view that based on the ANROWS' submission and to a lesser extent the RACS' submission, I was entitled to find that there had been, at least for a time, an increase in alcohol consumption since the commencement of the impact of the Covid-19 pandemic; that the pandemic has been a matter of considerable social significance; and that the changes to alcohol consumption that it may have led to, might have increased the risk of harm to families; but was concerned, noting the date the submissions had been received, that the

evidence in respect of the impact of the COVID-19 pandemic on alcohol consumption and alcohol-related harm could be out of date, holding [at 184 - 185] that:

I am mindful that each case must be decided on its own facts and caution needs to be exercised in what is to be made of broad evidence and sweeping submissions that express general issues of concern in connection with applications for new packaged liquor sales licences. But even with that caveat, I think there is little doubt that the Covid-19 pandemic has caused considerable social disruption and stress, and based on the submissions made by RACS and ANROWS about the social implications of the Covid-19 pandemic, I am prepared to accept that it might have influenced drinking behaviour and that in turn might be adding to alcohol related harm. Where this takes us remains to be seen. My difficulty is the lapse of time since the submissions about the implications of the Covid-19 pandemic were made, bearing in mind the speed with which circumstances related to it can change. For example, the free access to interstate and international travel that we now enjoy would have been unthinkable, less than a year ago. I think that there is a real risk that the evidence that I am being asked to evaluate in respect of this issue might be out of date.

This application was made on 6 November 2020. Part of the ANROWS' submission was based upon a study conducted in May 2020. RACS' submission was made in July 2021. It is now nearing the end of July 2022. In the intervening periods relevant research may have progressed and may paint a different picture as to the potential impact of the Covid-19 pandemic on drinking patterns and its relationship with alcohol related harm. In the period since submissions were received by the Commissioner, stress associated with the Covid-19 pandemic may have abated. Drinking patterns may be returning to normal. The incidence of domestic violence might have diminished. That said, it is possible that the latest research might point in the opposite direction. My difficulty is that I do not know.

This remains a live issue in *Liquorland McLaren Vale* which may be resolved at hearing subject to the receipt of further expert evidence by the Court. Consequently, for the purposes of deciding this application, I place no weight on the harm submissions to the extent that they refer to or draw any conclusions in relation to the impact of the COVID-19 pandemic on the consumption of alcohol or alcohol-related harm.

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

The Applicant submits that a typical Cellarbrations store of this size employs 2 full-time and 5 part time or casual employees, which the Applicant submits is a direct employment benefit realised by the grant of this application (11.1, MasterPlan Report).

The Applicant further submits that there will also be new employment opportunities through the internal works and store fit out associated with the proposal, and that the co-location of the proposed store will provide greater convenience to those in the locality to those who prefer to do all of their grocery and liquor shopping in the one location and under the same roof in the same trip (11.3 - 11.5, MasterPlan Report).

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

The Applicant refers to the crime statistics in the locality and submits that the locality has a lower crime rate than the State average in all but 3 reporting categories. Theft from shop is a category of offending relevant to the consideration of the proposed offering. MasterPlan note that the rate of offending for 'theft from Shop' for the locality was approximately 25% of the rate for South Australia, which shows that this is not a prevalent crime for the locality (9.3.3, MasterPlan Report). Assault is also lower than the State average, which the Applicant submits is relevant to the correlation between assault and licence density (9.3.4, MasterPlan Report).

The crime statistics do not identify what proportion of crime, if any, directly relate to the consumption of alcohol. Furthermore, 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 (9.3.4, MasterPlan Report).

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.

The 'Index of Relative Socio-Economic Advantage and Disadvantage' and the Index of Relative Socio-Economic Disadvantage both rank higher than the national average but slightly lower than Greater Adelaide. The highest scoring index for the locality is the 'Index of Economic Resources', which scored higher than both the national and state averages. The lowest scoring Index for the locality was the 'Index of Education and Occupation', which is lower than both the national and state averages.

The Applicant submits that, overall, the locality enjoys a socio-economic profile that is generally higher than the national average and slightly lower than that of Greater Adelaide (9.3.9, MasterPlan Report).

In the locality identified by the MasterPlan Report, there is only 1 licensed premises operating, being the Sandy Creek Hotel located 4.85 kilometres in a direct line to the east of the proposed outlet. MasterPlan go on to state that in order to get to the Sandy Creek Hotel via road incorporates a round trip of at least 12 kilometres, requiring the traversing of three busy intersections, rendering this premise an inconvenient and lengthy route to purchase liquor (10.4, Masterplan Report).

MasterPlan consider that the Gawler Town Centre is situated outside of the locality but note that it incorporates the closest licensed premises to the proposed outlet, including the Golden Fleece Hotel and the Kingsford Hotel. Vehicular access to these outlets would require a round trip of 4.8 kilometres, and the Applicant submits that a round trip of 4.8 kilometres is "*considered to be beyond the convenient customer catchment of the proposed area*". Masterplan further notes that to the south, the closest packaged liquor outlet is the Liquorland situated at 4 Tulloch Road, Gawler, incorporating a round trip of 9.8 kilometres (10.4 – 10.5, Masterplan Report).

I do not accept that travelling a distance of 2.4 kilometres in a car to purchase liquor and then travelling 2.4 kilometres back is 'beyond the convenient customer catchment of the proposed area'. I further note that the Applicant has failed to mention that Dan Murphy's is situated at 22 Murray Street, Gawler and is closer to the proposed outlet than the aforementioned Liquorland.

As noted above, the locality identified by the Applicant extends 5 kilometres to the east, but only 2 kilometres to the west. I note that the 2km radius to the west narrowly cuts out the Gawler Town Centre. The Exchange Hotel, the Gawler Arms Hotel, the Prince Albert Hotel, and the Southern Hotel are all situated on the main strip of Gawler, in addition to the Dan Murphy's and Liquorland packaged liquor outlets.

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

The Applicant wrote to key stakeholders and interest groups notifying them of its intention to lodge an application for a Packaged Liquor Sales Licence. The letter was sent to the following stakeholders:

- Department of Aboriginal Affairs;
- Department of Health and Wellbeing;
- Department of Human Services;
- Department of Education;

- Gawler Police Station; and
- CEO of the Town of Gawler.

An example of the letter sent is Attachment M to the MasterPlan Report. The Applicant also wrote to the schools and childcare centres listed at 9.2.2 of the MasterPlan Report, and additionally the Gawler Health Service (12.2, MasterPlan Report).

Only the Department of Education responded to this letter, advising that they had no comment on the application (12.3, MasterPlan Report).

Customers of the Drakes Supermarket on the corner of Reid Street and Jacob Street, Gawler were provided with a survey requesting a response on whether customers lived / worked / studied within 5 kilometres of the supermarket and their thoughts on a Cellarbrations Bottleshop opening at Springwood Village Shopping Centre. Their responses are attached at Attachment N to the MasterPlan Report (12.4, MasterPlan Report). Of the 75 completed responses received, 67 support the application, 5 oppose the application, and 3 had no opinion (12.5, MasterPlan Report).

## **Decision**

### *Locality*

The expert engaged by the Applicant has adopted a 5-kilometre radius to the east and a 2-kilometre radius to the west as the area most likely to be affected by the grant of the application. Even in the absence of objections to the identification of the locality, I am not satisfied MasterPlan (on behalf of the Applicant) has correctly identified the locality. The locality adopted by the Applicant does not include the Gawler Town Centre, which is situated less than 3 kilometres to the west. I consider that the township of Gawler, which would take between 5 and 10 minutes to reach via car if travelling along Calton Road, will be impacted by the proposed outlet and does not fall outside of the 'convenient customer catchment'. As noted above, if the main street of the Gawler township had been included in the locality, it would have included a number of General and Hotel Licence outlets and an additional Packaged Liquor Sales Licence outlet. However, I accept that the proposed outlet is an offering that differs in nature to the existing offerings within the Gawler Town Centre and otherwise within the locality, and as noted earlier in my decision, even if the higher licence density was applicable, I do not consider that this would change the outcome of this application given the other facts and circumstances applicable to the application, and consequently, little turns on this, and I need not resolve this issue.

### *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.

The range of products the Applicant is proposing to provide is significant (approximately 1,500 lines of stock) and granting the application would likely result in an increase in convenience for some people residing in the Locality who wish to purchase packaged liquor products when shopping at the Springwood Village Shopping Centre, although convenience alone is not determinative of the application and is only one factor to be considered.

The Applicant is an experienced licensee that operates an established business that has a history of compliance with the law in this State.

The Applicant wrote to various stakeholders to ascertain their position in relation to the Packaged Liquor Sales Licence application. None of these stakeholders objected to the application, and I further note that SAPOL have not objected to the application either.

I am generally 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. I note however, being a new development, which is only partially complete in terms of business and residential development, this is difficult to assess.

I accept that the proposed premises will provide employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the relevant 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.

I have considered the measures, policies, procedures and staff training that the Applicant has identified to reduce the risk of alcohol-related harm to vulnerable members of the community, and am satisfied that the risk posed by this application is fairly low and will be appropriately mitigated by the risk mitigation measures, policies, procedures and training identified by the Applicant.

It is clear from the expert evidence put forward by the Applicant that the liquor licence density for the Locality (notwithstanding my above comments regarding the identification of the locality) is lower than the State average and that the Locality is not ‘awash’ with take away liquor facilities.

I have 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.

Given the socio-economic profile of the relevant community and the absence of any other take away liquor facilities in the immediate vicinity, I think it is unlikely that the grant of this application will result in a concerning level of increased harm due to the excessive or inappropriate consumption of liquor, either to the relevant community as a whole, or to any group within that community.

Having made the evaluative judgment that the Act requires, I am satisfied that it is in the community interest to grant this application.



### *Section 57*

There is no reason why the application should be refused on the basis of the matters outlined in section 57 of the Act, such as: 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(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.

The object of the Act is to regulate and control the promotion, sale, supply and consumption of liquor. This includes 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. Relevantly, harm includes adverse effects of a person's health and alcohol abuse or misuse.

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 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.

### **Certificate of Approval granted**

The application by Finliq Pty Ltd for a Packaged Liquor Sales Licence in respect of premises that are constructed but not yet completed and are to be situated at Easton Drive, Gawler East SA 5118 is granted, but given the extent to which the proposed premises are uncompleted, I grant the Applicant a Certificate of Approval pursuant to section 59 of the Act, subject to the following conditions:

- 1) The Applicant shall notify the Authority within 7 days of any changes to the approved plans submitted with this application;
- 2) The applicant obtaining any necessary approvals for the fit out of the premises from the local Council (if required);
- 3) The Applicant must provide a copy of the Certificate of Occupancy to the Authority, prior to commencing trade from the premises;
- 4) On providing the Authority with a copy of the Certificate of Occupancy, the Authority will grant the Applicant a Packaged Liquor Sales Licence in accordance with section 59 of the Act;
- 5) The Certificate of Approval shall lapse on 2 July 2023 if the premises are not completed by this date (consistent with Development Application Number 490/E006/19), or on such later date as approved by the Authority.

The following trading rights will be conferred if/ when the Certificate of Approval converts to a Packaged Liquor Sales Licence:

- 1) Sale of liquor for consumption off premises from 9am – 7pm, Monday – Saturday and 11am – 5pm, Sunday; and
- 2) The following persons are approved to occupy any position of authority in the entity holding the licence: Robert Edmond Soang (54320); and Philip Shayler (172825).

**Dini Soulio**

**Liquor and Gambling Commissioner**

11 October 2022