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### **Fairview Park Cellars PLSL Application Decision (App. No.212559)**

Blue Sky Investment Holdings (SA) Pty. Ltd. (**the Applicant**) have applied for a packaged liquor sales licence (**PLSL**) in respect of a store proposed to be situated in the Fairview Green Shopping Centre located at 325 Hancock Road, Fairview Park, (**the Site**), to be known as Fairview Park Cellars - (**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 Golden Gateway Tavern Pty. Ltd. and Winona Way Pty Ltd opposing the grant (**the Objectors**), 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 Assessment Impact Report, (MasterPlan) dated October 2021 (**CIR**)
- Applicant's cover letter and Community Impact Submissions dated 2 November 2021(**A1**)
- Golden Gateway Tavern Pty. Ltd. and Winona Way Pty Ltd - submissions dated 10 December 2021 objecting to the application (**Ob1**)
- Applicant's Submissions in reply dated 27 January 2022 (**A2**)
- 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 28 February 2022 (**A3**)

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."*

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

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

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

Section 3(1) of the Act provides that:

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

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- (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 business**

The proposed business is a packaged liquor outlet to be located in the Fairview Green Shopping Centre at Fairview Park (**Shopping Centre**).

The Shopping Centre is located on Hancock Road adjacent to a fitness centre, Coles Express and the Blue Gums Hotel, and has approximately 420 car parking spaces over 2 levels. (3.2, A1).

The Shopping Centre currently comprises a full line independent Romeo’s Foodland Supermarket (Supermarket) of approximately 3835 square metres in size, as well as approximately 15 tenancies with a range of speciality stores including: a newsagent, pharmacy, bakery, health store, medical centre, massage, nail care and take away food outlets (3.2, A1).

If constructed as proposed the Store will be approximately 150 square metres in size and will provide approximately 1450 lines of liquor, comprising 510 lines of beer, 309 lines of spirits, 383 lines of wine, 207 lines of RTDs and 41 lines of cider. The proposed packaged liquor store will be immediately adjacent to the Supermarket and the Applicant contends that it will provide a convenient one stop shopping experience for customers using the facilities at the shopping centre (3.2, A1).

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 the *Planning and Design Code* which came into effect on 19 March 2021 (4.1-4.2, CIR).

### **Locality**

The Guidelines provide a guide for applicants in relation to the ‘locality’ applicable to their application, and states 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.

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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 within the metropolitan area will be the area within a 2km radius of the proposed outlet.

MasterPlan submit that the 2km radius does not accurately capture the extent of the proposed outlet’s locality, and that the locality is influenced by the location of other proximate liquor outlets and retail centres as well as natural and artificial barriers. (6.3, CIR).

On that basis, MasterPlan has determined that the locality (6.6, CIR) is defined by:

- Hanson Australia Golden grove Sands quarries to the north;
- The ridgeline of the Hills Face Zone to the east;
- Milne Road to the south; and
- Dry Creek Linear Reserve and Golden Grove Road to the west.

However, the Applicant further maintains that the redefined locality does not reflect the retail catchment of the proposed Packaged Liquor Store, but rather represents the area in which the outlet could impact on, or influence the surrounding community (6.7, CIR).

The population of the locality, according to the 2016 census is 17,672. MasterPlan calculated this figure through an aggregation of Statistical Area 1 (SA1s) (6.8, CIR).

The locality contains many bus routes. The Fairview Green Shopping Centre abuts one bus route, which connects the locality to the Tea Tree Plaza Shopping Centre and the Adelaide CBD via the O-Bahn busway (6.11, CIR).

This area was developed in the 1970s as part of the north-eastern suburban expansion of Adelaide. The locality is characterised by tree-lined streets and undulating terrain, as a result of its location in and near the foothills, there are also large open spaces, linear paths and recreational trails. (6.12, CIR)

There are two shopping centres within the locality: Fairview Green Shopping Centre and Surrey Downs Shopping Centre. These are ‘neighbourhood scale’ shopping centres, each with an independent supermarket (6.13, CIR). The St Agnes Shopping Centre, Tea Tree Plaza and the Grove Shopping Centre are nearby, but outside the defined locality (6.14, CIR).

### **Other Packaged Liquor Outlets in the Locality**

MasterPlan have submitted that there are no other packaged liquor outlets in the locality and 2 General and Hotel licences.

The Blue Gums Hotel and Motel is 200 metres north of the proposed outlet and has a small Sip’n’Save drive-through bottle shop outlet which has direct vehicular access from Hancock Road with 2 drive-through lanes. There is a small walk in area, stocking a limited selection of beers, wines and ciders. MasterPlan submits that access to the outlet is quite steep for pedestrians and would not be easy to negotiate for elderly customers or those with mobility difficulties (5.3, CIR).

The Golden Grove Tavern is 1.6 kilometres west of the proposed outlet, adjacent to the Surrey Downs Shopping Centre. The Tavern has a Sip’n’Save drive through outlet with direct vehicular access from Grenfell Road and two drive through lanes. MasterPlan submits that the Sip’n’Save is well lit and well maintained and includes two walk-in areas (5.4, CIR).

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The Applicant has also noted 4 other packaged liquor outlets, just outside the locality:

- Liquorland St Agnes, 2.1km south of the proposed outlet, a well-appointed and maintained store providing the convenience of one stop shopping along with the Coles and Aldi supermarkets within the centre (5.5, CIR);
- Tea Tree Gully Hotel, 2.4m south-west of the proposed outlet. The Hotel operates a detached Thirsty Camel drive-through with a reasonable selection and access directly from North East Road (5.6, CIR); and
- Dan Murphy's and First Choice Liquor Market, more than 2.4km north west of the proposed outlet, both within the Grove Shopping Centre. These are 'destination outlets with large product lines and variety, and attract customers from a wide catchment area (5.7, CIR).

The Applicant notes that the existing two take away liquor facilities in the locality amount to approximately 1 packaged liquor store per 8,800 residents. This is well below the approximate State average of 1 liquor store per 2000 residents discussed in the *Liquorland Park Holme* decision (which Gilchrist J acknowledged as being a 'rubbery' figure), and well below the density of one outlet for every 454 people that has been identified as problematic by BOCSAR (7, A3). Given the low density of outlets in the locality, the Applicant contends that the proposed outlet is likely to provide a convenient service to those in the locality and will not cause any negative impact in terms of harmful outcomes from the sale of alcohol (8, A3). I note that in the event this application is approved that the licence density for the locality will increase to 1 packaged liquor outlet per 5,890 residents, which is around 3 times lower than the State average.

### Potential Harm

The MasterPlan report refers to educational establishments, places of worship, health related facilities and dry areas. The Applicant does not consider that the application "poses any significant degree of risk to any such 'at risk' groups in the locality." (4.1, A1), and notes a number of matters in support of this contention, as summarised below.

MasterPlan submits:

- that there is no evident concentration of schools, kindergartens or childcare centres within the locality, although the Fairview Park Kindergarten is adjacent to the shopping centre. It is not expected that the proposed liquor store will be a congregation area for school children, nor otherwise represent a risk to minors in terms of exposure to liquor products (7.2.4, CIR);
- that there are seven places of worship within the locality, but only one within 1km of the proposed premises. Due to the churches' dispersal and distance from the proposed outlet, it is unlikely to pose a cultural risk to any place of worship within the locality (7.2.6, CIR);
- that there are no hospitals, drug rehabilitation centres or aged care facilities within the locality. On that basis the proposed outlet does not pose an increased risk to vulnerable or elderly persons (7.2.7, CIR); and
- that there are no dry areas in the locality, as a result the proposed outlet does not pose a risk of harm to people congregating in the dry area (7.2.8).

South Australia Police (**SAPOL**) and the City of Tea Tree Gully have not objected to the application.

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The Applicant has identified a range of matters and risk mitigation measures to mitigate the risk of harm posed by the application, including: mandatory signage in place advising no service to minors;

- no id, no service, to patrons who appear under the age of 25 years and refusal of service if identification provided appears to be false;
- no advertisements or promotions targeted at minors;
- no service to persons in school uniform;
- all staff to undertake responsible service of alcohol;
- no discounted liquor at irresponsible prices;
- installation of video cameras; and
- design and layout of store to allow for clear line of sight to all public areas (4.3, A1).

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 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.

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- 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.”*

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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.



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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.

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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.”*

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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 Further Submissions dated 24 February 2022 (A3).

The Applicant has stated that the Harm Submissions do not deal with specific local issues relevant to this application, nor to the South Australian market generally (25, A3). As there is no consideration of the particular circumstances the Harm Submissions have limited general or specific relevance in the determination of this application (26, A3).

The Applicant confirms that its application is a proposal for a modest sized bottle shop in an existing shopping centre in Fairview Park, and submits that the information provided, specific to this application “makes it clear that there will be no detriment to the local community and the proposed outlet will have a net positive effect in terms of convenience, choice and economic impacts (both from direct employment opportunities and the likely net positive impact on the other businesses in the centre from increased trade)” (27-28, A3).

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

The proposed liquor outlet is likely to employ three to five staff members. MasterPlan does not expect that other nearby liquor stores would need to reduce the number of hours employees are engaged to work, and on that basis maintains that the proposed outlet will result in a net benefit in relation to the total number of employment hours available to job seekers in the locality (7.4.1-7.4.4, CIR).

MasterPlan submit that establishing a liquor outlet in the Fairview Green Shopping Centre directly opposite the Romeo’s Foodland is a benefit to the community as “it will provide customers of the shopping centre with the ability to purchase their weekly grocery and drink requirements from one location under one roof with ease of access and convenience” (4.5, CIR).

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I am satisfied that if the application were to be granted it will likely result in a small increase in employment in the locality and that most of the benefits of this increase in employment will go to those residing within the locality. However, I place limited weight on this benefit given that if the application is refused the tenancy may be used by another tenant/ business (non PLSL outlet) that could conceivably also result in additional employment in the locality.

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

MasterPlan state that the locality has a significantly lower crime rate across almost every recordable offence type compared to the State average (7.3.2, CIR).

The most common offence within the locality is 'other theft' with 56.6 offences recorded for every 100,000 people. This is much lower than the State average of 96.7 offences for every 100,000 people. "Other theft" includes the theft of household goods, bicycles, electricity, gas or water, and petrol drive-offs, and is therefore not particularly relevant to the proposed PLSL outlet. (7.3.3, CIR)

The eighth most common offence recorded for the locality is 'theft from shop', with 11.3 offences for every 100,000 people, which is a more relevant category of offending. This category is much lower than the State average of 47.4 offences for every 100,000 people, and as a result the Applicant does not consider theft from shop offences to be a prevalent issue for the proposed outlet (7.4.4, CIR).

The Applicant notes that there is no evidence for the locality that identifies what proportion of crime is related to the consumption of alcohol nor any evidence to suggest that opening this packaged liquor outlet would lead to increased crime levels in the locality (7.3.5, CIR).

MasterPlan submit that whilst consideration of the relevant statistics is relevant to my consideration of the present application, "*caution must be exercised when assessing statistics, particularly SAPOL crime statistics. No set of statistics can or should be viewed in isolation, and in this regard it is unlikely that crime statistics for example will necessarily apply to the proposed premises if the operator acts diligently and responsibly to address any number of social impacts that may eventuate on a daily basis*" (7.3.13, CIR).

The Applicant has provided evidence from the CBS Community Impact Portal showing the unemployment rate in the locality as approximately 3 percent. This is significantly lower than the unemployment rate for greater Adelaide during the same time period of 6 percent. MasterPlan considers unemployment is a not prevalent concern in the locality (7.3.12, 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 categories such as 'relative socio-economic disadvantage', 'index of relative socio-economic advantage and disadvantage', 'economic resources' and 'education and occupation' which can be compared to either the national averages or to South Australian averages.

MasterPlan states that the SEIFA Indexes of the locality are comparable to those of Greater Adelaide and higher than the national average across all four measurable criteria. This indicates that the locality has an average socio-economic status standing (7.3.7, CIR).

The highest scoring SEIFA index for the locality is the 'Index of Relative Socio-Economic Disadvantage' at 6.82 (out of a possible 10). This score is both higher than the national average (5.00) and Greater Adelaide (6.25). MasterPlan suggests that the high score could

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be due to a combination of factors such as; few households with low incomes, few people with no academic qualifications and few people in low-skilled occupations (7.3.8, CIR).

The lowest scoring SEIFA index for the locality is the 'Index of Education and Occupation' at 5.29. This score is higher than the national average (5.00) but lower than Greater Adelaide (6.85). MasterPlan contends that this score shows that the population of the locality is made up of people in low-skilled occupations (on average) compared to Greater Adelaide (7.3.9, CIR).

In the event the application is approved, the proposed offering will provide greater convenience to those who shop at the Shopping Centre who wish to purchase packaged liquor at the same time and location when purchasing their groceries. 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. Approximately 60 patrons of the Blue Gums Hotel, were asked 2 survey questions, with an overwhelming 92% of respondents support the proposal to open a Cellarbrations retail liquor store within the Fairview Green Shopping Centre. Approximately 82% of respondents stated that it would be more convenient to be able to do their grocery and liquor shopping in one location (3.6, A1).

The Applicant engaged in community consultation by writing to 12 tenants of the Fairview Green Shopping Centre as well as SAPOL, the City of Tea Tree Gully and 3 State Government Departments. It was submitted that no negative responses were received (3.6, A1). The only response was from Drug and Alcohol Services South Australia (the Department of Health and Wellbeing) which the Applicant states was simply an acknowledgement of the application (3, A2).

### **Submission by the Objectors opposing the application (Ob1) and the Applicant's submissions in reply (A2)**

A submission opposing the grant of the application was received from Golden Gateway Tavern Pty Ltd and Winona way Pty Ltd, which is summarised below, together with the submissions in reply received from the Applicant.

The objectors make various submissions opposing the grant of the application, including:

- that the Applicant has not fully considered the potential for harm to the community nor provided complete details of proposed measures to minimise harm; that the Applicant has not provided a list of persons or organisations it consulted with, nor indicated what if any responses were received;
- the Blue Gums Hotel is within walking distance of the proposed premises, it is on the same side of the street, and only separated from the premises by an open air car park and gym, and on that basis it is a very convenient method of purchasing packaged liquor;
- that it is not in the community interest for a further liquor outlet to be located in such close proximity (as the Blue Gums Hotel) and the community interest test requires greater consideration than mere convenience;

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- the suggested increase in employment (3 people) is not so significant as to justify the grant of the licence;
- the existing packaged liquor outlets in the locality adequately meet the needs of the community;
- the proposed trading hours are outside the general shopping centre trading hours;
- there is no indication that there will be any difference in product range or price, given that both the Blue Gums Hotel and proposed outlet will operate under the Sip'n'Save banner;
- the Commissioner should use his absolute discretion to refuse the application as it is not in the public interest; and
- the grant of this licence would set an undesirable precedent and could lead to the undue proliferation of licences as it could result in a retail liquor outlet located at every shopping centre.

The Applicant submits that the Objector's position is "akin to a pseudo needs test" and that much of the Objector's submission is based on the outlet not being needed in the locality. In *Liquorland (Australia) Pty Ltd (Parkholme) [2020] SALC 37* Gilchrist, J held at [46]:

It must be firmly understood that the issue in this case is not whether the grant of this application in respect of the proposed premises is necessary to service the public's needs. That is no longer the test that the Court must apply and to continue to apply that test, or something like it, would be to ignore the clear directive of the parliament to apply a new test, and would lead to error.

Further to the Objector's submissions, the Applicant maintains that it will exceed the minimum requirements under the Act in respect of responsible service of alcohol, and has implemented measures which go well beyond the requirements of the Code of Practice.

The Applicant disagrees with the Objector's assertion that the Blue Gums Hotel is in comfortable walking distance from the shopping centre. The Applicant refers to order B235409 in respect of an earlier application by the licensee of the Blue Gums Hotel, where the Delegate found that the Hotel and tenancy within the shopping centre were not within close proximity, but rather that the two locations were separated by significant distance and infrastructure (5, A2).

The Applicant also notes that car parking for the shopping centres is located in an undercroft car park to the south of the shopping centre, there is no pedestrian link or connection between the Hotel and Shopping Centre. On that basis the Applicant states that it is unlikely that patrons of the shopping centre will walk to the Blue Gums Hotel, particularly with a trolley full of groceries (5, A2).

In terms of liquor licence density in the area, the Applicant does not concede that the existing packaged liquor outlets adequately meet the needs of the locality. There are currently 2 General and Hotel licences, but no Packaged Liquor Sales licence outlet in the locality. The Applicant submits that the Blue Gums Hotel is a small outlet with limited pedestrian access and a small range of liquor products (approximately 950 lines), and that it is more of a drive through outlet than a stand alone bottle shop (7, A2).

The Applicant has confirmed that, in accordance with s58 of the Act, all the relevant approvals, consents or exemptions that are required under the law to permit the use of the proposed premises for the sale of liquor have been obtained.

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### Decision

The expert engaged by the Applicant has adopted a 2-kilometre radius in determining the locality, as the area most likely to be affected by the granting of the application. I am satisfied that the Applicant has correctly identified the locality.

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

It is very likely that the majority of people who shop at the Shopping Centre live in the locality. The range of products the Applicant is proposing to provide is significant and granting the application would be likely to result in an increase in convenience for those shopping in the locality who wish to purchase packaged liquor products when shopping at the Fairview Green Shopping Centre. Many of the local community can be expected to take advantage of the proposed premises, and many will find it to be very convenient, although convenience alone is not determinative of the application and is only one factor to be considered, and this needs to be balanced against potential harm. Additionally, given the limited number of tenancies in the Fairview Green Shopping Centre, I consider that Gilchrist J's observations in *BWS Seaford* [2015] SALC 19 [at 79] are apposite and I cannot approach the determination of this application from the premise that granting this application will, for most, provide for one-stop-shopping for those residing in the locality.

I note that SAPOL and the City of Tea Tree Gully have not objected to the application.

I have considered and have had regard to the Objects of the Act, as required by section 3(2) of the Act, in determining the application. I have also considered the Objectors' submissions in light of the recent decisions in *Liquorland Park Holme* and *Hove Sip N Save*.

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 in *Liquorland Park Holme* at [43] – [44] 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."

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The CIR indicates that the population profile of the locality enjoys a lower level of crime when compared to South Australia as a whole.

It is clear from the 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, considering that at present the licence density for the locality is approximately 1 packaged liquor outlet per 8,800 residents, and that in the event this application is approved the licence density for the locality will increase to 1 packaged liquor outlet per 5,890 residents (approximately 3 times lower than the State 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.

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

The proposed premises will likely provide some employment opportunities, and it is likely that some of these opportunities will be for the benefit of members of the relevant community. As stated earlier, I place limited weight on this given that in the event the application is refused, some other business would likely be established and operate out of the premises which could also provide additional employment opportunities in the locality.

The Applicant has provided some evidence of community support for the application, consisting of the results from a small survey in which over 90 percent of the people surveyed would support an application to establish a PLSL outlet at the Site, and over 80 percent considered it to be more convenient to be able to do their grocery and liquor shopping in the one location.

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 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 relevant consents and development approvals are in place to permit development of the proposed premises.

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.



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There is no evidence before me that suggests the locality in question is particularly vulnerable, or that the present application poses anything but a low risk of harm to the community, particularly in light of the Applicant's experience as a liquor retailer and stated intention to appropriately train staff and to adopt sound policies and procedures to manage and mitigate the risk of harm to its customers and the community. It is also clear from the liquor licence density calculations that the locality is not 'awash' with packaged liquor outlets, and that in fact, the packaged liquor outlet density ratio in the locality is well below the state average. On that basis the application need not be refused on the basis of any proliferation concerns.

In circumstances where there are no stand-alone packaged liquor sales outlet in the locality, the grant of this application would not set an undesirable precedent that would support the wholesale alignment of packaged liquor and shopping centres. Additionally, the grant of this application will provide a 'point of difference' for those who would prefer to obtain their packaged liquor from a stand-alone store, rather than from a hotel, as observed by Gilchrist J in *Cellarbrations Mannum* [2021] SALC 42 [at 112 and 116]

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

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

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

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

**Dini Soulio**  
**Liquor and Gambling Commissioner**