

# Decision Notification

## Application Details

Application no.	210401
Licence No.	57710290
Licence Class	Packaged Liquor Sales
Premises Name	The Smelly Cheese Shop
Premises Address	Stall 44 - Adelaide Central Market Gouger Street Adelaide SA 5000
Applicant	Alpage Pty Ltd
Application Type	Application for a Liquor Licence
Representative	Andrew Wong - Lion Consulting Group

## Outcome

Decision	Granted
Effective Date	02 Nov 2021

## Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- The application has been advertised
- All approvals, consents or exemptions have been obtained

## People

### Position of Authority

The following persons are approved to occupy any position of authority in the entity holding the licence:

- Valerie Henbest (168393)

## Premises

### New Premises

The licensed area is outlined in red on the approved plan.

An exemption is granted under section 38(6) of the Act from the requirements of section 38(3) of the Act as I am satisfied that it is in the public interest to do so.

## Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: Enzo Fantasia, Aces Bar & Bistro.

## Community Impact Assessment

The application is a designated application for the purposes of section 53A of the Act.  
I am satisfied that the granting of this application is in the community interest.

## Exemptions

The following exemptions are added to the licence

- Exemption from requirement that the licensed premises be physically separate from premises used for other commercial purposes
- Exemption from requirement that the licensed premises be devoted entirely to the business conducted under the licence

## Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	-	-
Tuesday	-	8:00 am to 5:30 pm
Wednesday	-	9:00 am to 5:30 pm
Thursday	-	9:00 am to 5:30 pm
Friday	-	8:00 am to 9:00 pm
Saturday	-	8:00 am to 3:00 pm
Sunday	-	-

## Reasons for Decision

Alpage Pty Ltd (**the Applicant**) has applied for a Packaged Liquor Sales Licence in respect of its existing store situated at Stall 44, Adelaide Central Market, 44 – 60 Gouger Street, Adelaide SA 5000, known as The Smelly Cheese Shop.

In order for this application to be granted I must be satisfied that the granting of the application is in the community interest. In making this determination, under section 53A(2) of the *Liquor Licensing Act 1997* (**the Act**), I must have regard to:

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

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**) when making a determination on the application. Importantly, the Guidelines state that: *“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.”*

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.

As part of the application, the Applicant has provided a community impact assessment submission. It is the information provided in this submission, the application material itself, and a submission from Young Street (No 118) Pty Ltd and Bratcas Pty Ltd opposing the grant, that my decision is based on.

### Nature of the business

The Smelly Cheese Shop is a premium cheese retailer located in the Adelaide Central Market, which the Applicant describes as “*Adelaide’s premier food destination for multicultural cuisine and fresh produce.*”

Customers are able to purchase cheeses from a wide range of Australian local suppliers as well as imported artisanal cheeses. The store offers customers a cheese tasting experience to educate customers and give them an opportunity to sample different cheeses prior to purchase.

The Smelly Cheese Shop intends to sell matched liquor and wine to a customer’s cheese purchases “*to enrich their cheese experience.*” The Applicant advises that there will be a small area dedicated to the display of liquor that will be available for purchase only, and provides the following information in relation to the proposed liquor products:

*“The business will offer a small range of high end wines with a maximum of 20 to the enthusiast foodies. The liquor will focus on hard to find wines and a select list of spirits from France, Spain, Italy and the United States of America as well as a small local range from South Australia. The products will be from Champagne, Burgundy Pinot, Cote du Rhone, Bordeaux, Sancerre, Chablis, Sauternes, Prosecco, Nebbiolo, Barbera, Barolo, Sangiovese, Tempranillo, Cava, Mencia, Pedro Ximenes, Nappa Valley and Sonoma. Local products will be from Murdoch Hill, Howard’s Vineyards, SC Pannell, Hugo Wines, Maxwell Wines, Shaw & Smith and Ashton Hills.”*

The Applicant sent a letter to local vendors and customers on 6 May 2021 to advise them of the application for a Packaged Liquor Sales Licence, and to seek any feedback as part of the Applicant’s community consultation.

The Applicant provided a copy of a petition signed by 15 people, predominately stall holders from the Adelaide Central Market. The Applicant also provided letters of support from the following people:

- Michael Downer, Chief Winemaker of Murdoch Hill
- Mikael Gillard, Founder of Mind Spirits & Co
- Jodie Kannane, General Manager of the Adelaide Central Market Authority
- Nick Stock, Wine Critic and Beverage Director of Tasting Australia
- Claire Wald, Wine Course & Event Coordinator of the National Wine Education & Training Centre and the South Australian Wine Industry Association

## **Potential Harm**

The Applicant has obtained the Area and Location Reports from the Community Impact Portal to identify communities and facilities within the locality.

The Applicant submits that the residents within the City of Adelaide are mostly employed on a full time basis, with a high percentage working in professional and managerial fields. The Applicant says that the statistics taken from the 2016 Census relating to the City of Adelaide suggest that there is a low percentage of at-risk groups within the locality.

The Applicant goes on to say:

*“By granting The Smelly Cheese Shop their liquor licence we cannot specifically identify any harm or risk to a particular group or to any sub-communities. The premises has been operating for years as a stall in the markets that specialises and sells cheeses. Their customers predominately go there to buy mainly cheese and if they are recommended a wine/liquor paring they wish to purchase they can but they are not a liquor only destination.”*

In order to minimise any potential harm to at-risk groups and sub-communities the Applicant will ensure all staff undertake the requisite Responsible Service of Alcohol training. The Applicant submits that there is no risk of excess

consumption on site as there will be sampling of liquor only and no consumption on premises. Identification will be checked for any individuals that appear to be under the age of 25 years old.

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

The Applicant submits that the City of Adelaide is at the heart of the South Australian Economy, contributing to almost 20% of the state's gross domestic product. The Adelaide Central Market is a business hub in the city providing local producers and suppliers with a retail space to serve customers under one convenient roof.

The Applicant says:

*“The Smelly Cheese Shop is one of many local businesses that trade in the area that not only enrich customers with a knowledgeable food experience but also supplies jobs/income to its suppliers and staff. They are part of a larger picture that contributes to the enrichment of the state economically as well as culturally.”*

### **Social Impact and Amenity**

The Smelly Cheese Shop is located in the heart of the Adelaide Central Market, which operates predominately as a fresh produce market. The Adelaide Central Market Authority hires security to prevent crime and ensure that the markets operate safely for customers. The South Australian Police also monitor the area.

The Applicant has used the Area Report to identify a number of premises with a Packaged Liquor Sales Licence within the 2km radius of The Smelly Cheese Shop, as well as a number of premises with a General and Hotel Licence. The Applicant notes that there are a total of 586 licenced premises in the locality.

### **Request for exemption**

The Applicant is seeking an exemption from the requirements of section 38(3) of the Act, which provides:

38—Packaged liquor sales licence

(3) In addition, it is a condition of a packaged liquor sales licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

The Applicant provided the following reasons for requesting the exemption:

*“The premises will sell a very small range of liquor from the cheese shop as an add on service to the sale of liquor. The range is far to [sic] small to have a physically separate store.”*

### **Submission from Young Street (No 118) Pty Ltd and Bratcas Pty Ltd opposing the application**

Mr Frank Fantasia has provided a submission opposing the application on behalf of Young Street (No118) Pty Ltd as the Licensee of Aces Bar & Bistro (**Aces Bar**) and Bratcas Pty Ltd as the Licensee of The Olive Tree Fine Food & Wine (**The Olive Tree**). Both licensed premises are located in the Adelaide Central Market.

Mr Fantasia submits that:

*“licences should only be granted to applications that fulfil the criteria of advancing the interests of the community and the interests of the public. This application does neither.”*

The first issue Mr Fantasia raises relates to the proposed display of liquor, which he says is an important factor when considering exposure to children and vulnerable groups.

Mr Fantasia objects to the request for an exemption from the requirement for the licensed premises to be devoted entirely to the sale of liquor and physically separate from premises used for other commercial premises. Mr Fantasia points out that there is no physical barrier between The Smelly Cheese Shop (Stall 44), Dough (Stall 45) and Say Cheese (Stall 46), and says it is possible for staff and even members of the public to walk directly from Stall 44 to Stall 46. Mr Fantasia submits that in light of this “*the complexities of displaying liquor so that it cannot be accessed by children multiply.*” He further submits that the Applicant has not provided any reason for the request for the exemption from section 38(3) of the Act.

The second issue relates to existing licensed premises within the Adelaide Central Markets, which Mr Fantasia submits “*is in essence a large supermarket.*” He lists two existing liquor retailers within the market, Provenance South Australia (General and Hotel Licence) and The Olive Tree (Packaged Liquor Sales Licence), and makes the point that it is the intention of Parliament that there should be physical separation between supermarkets and liquor stores.

The third issue raised in the submission relates to the liquor products which the Applicant proposes to sell. Mr Fantasia says that “*the application is unclear and inconsistent in the description of the small range of wines it will offer.*” He argues that the wines and spirits have not been adequately identified, and goes on to say that:

*“There is no evidence of a particular liquor having a particular affinity for a particular cheese, and no evidence that such “pairings” will be available.”*

The fourth point Mr Fantasia raises relates to harm minimisation. He refers to the decision of *Hove Sip n Save* [2021] SALC 7 and quotes a number of paragraphs from Judge Gilchrist to support his submissions in relation to harm caused to minors and the need for an Applicant to demonstrate that it has policies in place to ensure that all staff will, as far as reasonably practicable, minimise the potential harm caused by excessive or inappropriate consumption of liquor.

Mr Fantasia also refers to the decisions of *Cellarbrations Walkley Heights* and *Cellarbrations Hove* to further support his concerns relating to the Applicant’s potential to cause harm.

Finally, Mr Fantasia refutes the Applicant’s submission that major retailers in the area provide a very basic and traditional range. Mr Fantasia advises that The Olive Tree was granted an extension to its licence on the basis that it is a specialist retailer: *Bractas Pty Ltd* [2019] SALC 71. He notes that there are 2 BWS stores in the CBD carrying more than 1,600 lines. The Vintage Cellars Store in the Victoria Square Arcade is an upmarket bottle shop carrying an extensive range of high end wines, and Aces Bar carries an extended range of European and other international wines.

Mr Fantasia concludes his submission with the following comments:

*“Even if it were in the community interest, discretionary considerations regarding the public interest and the character of the Adelaide Central Market as a large supermarket would mean that it should be refused. It presents risks that are not acknowledged, let alone ameliorated. It is a bad look for the Market. It would set an undesirable precedent.”*

#### **Response to the objections of Young Street (No 118) Pty Ltd and Bratcas Pty Ltd**

The Applicant’s representative, Mr Andrew Wong of Lion Liquor Licensing Consultants, provided a response to the objections of Young Street (No 118) Pty Ltd and Bratcas Pty Ltd on 13 September 2021. Mr Wong begins by saying:

*“The owner of The Smelly Cheese Shop is fully aware of the importance and responsibility of the requirement to sell liquor for takeaway.*

.....

*She plans to advance the community and public interest by providing an experience and teaching clients how to fully experience the magic of cheese with the proper wine pairing.”*

Mr Wong advises that the liquor will be displayed discretely next to the cheese recommended for pairing. Mr Wong submits that The Olive Tree store operates in the same way as The Smelly Cheese Shop intends to operate, therefore the arguments relating to the display of liquor and its potential adverse effect on children and vulnerable groups, and the need for physical separation from the rest of the store are null and void.

Mr Wong explains that his client is seeking an exemption from the requirements of section 38(3) of the Act because she operates a very small shop and the primary purpose of the business is to sell cheese rather than liquor. Mr Wong submits that the same public interest benefit would apply to The Smelly Cheese Shop as currently applies to The Olive Tree.

I note that The Smelly Cheese Shop will hire Ms Meira Harel as the new store manager. Ms Harel has 12 years' experience as a sommelier and was awarded The Age Good Food Guide Sommelier of the Year in 2016. Ms Harel will train staff members, as will the business owner, Ms Valerie Henbest, who is also suitably experienced with extensive knowledge of wine and liquor.

Mr Wong submits that the objections made by Young Street (No 118) Pty Ltd and Bratcas Pty Ltd are "*nothing short of an attempt to protect their own business interests in reducing competition in the Central Market.*" He concludes by saying:

*"It would be in the Community's interest to have an experienced Wine Connoisseur provide the opportunity to educate and teach the community how to appropriately match wine with Cheese and provide the Central Market with yet another exciting and different venue to visit."*

## Decision

This application is based on the desire to offer customers a unique experience by educating them on the most appropriate liquor to be paired with cheese.

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.

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.*"

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

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 licence is low.

The Act requires an evaluative exercise that involves weighing the positive aspects of the proposed application with the negative aspects in order to determine whether granting the application is in the community interest. I agree with the Applicant's submissions that pairing select wine and liquor with the cheese being sold will enhance a customer's shopping experience at The Smelly Cheese Shop. I also agree that the proposed business model will not put at-risk groups at greater harm given the types of liquor being offered and the purpose of the liquor being sold. I disagree with the Objectors' submission that the application is "*a bad look*" for the Adelaide Central Market and that to grant the application would set an undesirable precedent.

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.

There is also no basis for refusing the application under the broad discretion available pursuant to section 53 of the Act. I am of the view that granting the application is in the public interest and will further the objects of the Act by offering additional products that will enhance the cheese experience of customers of The Smelly Cheese Shop.

I am also of the opinion that it is in the public interest to grant the Applicant an exemption under section 38(6) from the requirements of section 38(3) 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. On the basis of the information provided, together with the application, 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.

## Under Delegation from the Liquor and Gambling Commissioner



Stephanie Burke  
Hearings Delegate  
02 Nov 2021