

# Decision Notification

## Application Details

Application no.	213036
Licence No.	57710648
Licence Class	Packaged Liquor Sales
Premises Name	Alchemellia
Premises Address	Unit 6 50 Liverpool Street Port Lincoln SA 5606
Applicant	ALCHEMELLIA PTY LTD
Application Type	Application for a Liquor Licence

## Outcome

Decision	Granted
Effective Date	16 Mar 2022

## 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:

- Sally Annalise Redden (170191)
- Angela Christina Bascomb (170269)

## Premises

### New Premises

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

## 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

## Conditions

The following conditions are added to the licence

- The sale and supply of liquor is restricted to the following types: Liquor produced in the Eyre & Western Region.
- The sale and supply of liquor for consumption off the licensed premises is restricted to liquor that is part of a pre wrapped gift hamper containing other non-alcoholic gift products.

## Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	9:00 am to 5:00 pm	-
Tuesday	9:00 am to 5:00 pm	-
Wednesday	9:00 am to 5:00 pm	-
Thursday	9:00 am to 5:00 pm	-
Friday	9:00 am to 6:00 pm	-
Saturday	9:00 am to 1:00 pm	-
Sunday	-	-

## Reasons for Decision

Alchemillia Pty Ltd (**the Applicant**) has applied for a packaged liquor sales licence (PLSL) in respect of a premises situated at 6/50 Liverpool Street, Port Lincoln SA (**the proposed premises**).

As part of their application, the Applicant has submitted a Community Impact Assessment Form. It is the content of this report and the application as a whole that my decision is based on. I will have regard to the supporting materials of the application, as well as submission from the Australian Hotels Association (**AHA**) opposing the application.

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 *Liquor Licensing Act 1997* (**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 of the amenity of, the locality of the premises or proposed premises; and
- the nature of the business conducted or to be conducted under the licence (as prescribed).

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**), which state: *“The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

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 relevantly 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 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.

### **Nature of the proposed offering**

The Applicant currently operates a shop out of the Port Lincoln township trading under the name Alchemillia Pty Ltd (**Alchemillia**). Alchemillia is a bricks and mortar shop which currently sells skin care and baby products. The Applicant purchased the online business ‘Port Lincoln Gourmet Box Co’ in the past 12 months, which is a business that operates online and sells various gift hampers containing produce such as jams, honey, chocolates, nuts, and alcoholic products such as wine and gin. The products offered are exclusively Eyre Peninsula produced products, often packaged together in gift boxes with the intention of the goods going to a person other than the purchaser. However, it is evident from the Port Lincoln Gourmet Box Co website, under the tab ‘The Bar’ that the alcoholic products are also available for purchase as a single bottle, and are available to collect from the proposed premises by the purchaser.

The Applicant wishes to extend the online gift offering to sell these products from their bricks and mortar store on Liverpool Street, thereby allowing them to access a greater range of tourists and potential customers. The alcoholic product offering they seek to stock includes 3 wineries, 2 breweries, and 2 distilleries for a total of 15 different lines, in addition to their non-alcoholic offerings of local produce. Sales volumes are expected to be somewhere around 10 bottles of wine/spirits per week, with this number potentially increasing up to 100 over peak periods such as Christmas. Most sales of alcohol will be as part of a gift hamper, however the Applicant intends to sell individual bottles if a customer wishes to purchase a single bottle.

The proposed trading hours by the Applicant are as follows:

- Monday – Thursday: 9am to 5pm
- Friday: 9am to 6pm
- Saturday: 9am to 1pm
- Sunday: Closed

### 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 Applicant provides little by way of locality in the sense described above, but states that they do not seek to be competitive with other businesses in the area, but aim to provide a convenient and city-central location for tourists to see the wide range of products that the Eyre Peninsula region offers.

### Harm

The Applicant has submitted that they believe that their shop would be ‘*unsuitable for abuse or misuse of alcohol, and therefore impact would be minimal, if not non-existent*’.

The Applicant does however concede that the health impacts can be quite damaging to the vulnerable population, with a large Aboriginal population in Port Lincoln. There is also a school in close proximity to the business. The Area Report attached to the application shows a total of 35 licensed premises and 17 schools. The Applicant submits that the proposed opening hours will not impact on any persons needing access to schools, hospitals, drug and alcohol centres, or recreational areas. There is no mention of nearby drug and alcohol centres or hospitals in the Community Impact Assessment.

In terms of policies and procedures to be implemented to minimise potential harm, the Applicant submits in the Community Impact Statement that they would not sell any alcoholic item without other items such as chocolate and nuts as their store is designed to be gifts. In later submissions the Applicant clarified that they do intend to sell individual bottles of alcohol.

South Australia Police (SAPOL) have not objected to the application.

The AHA, in their objection submissions, submit that the question of alcohol abuse is addressed in uncertain terms, merely stating the legal requirement of ‘packaged’ sales. Further, the AHA submit that there is no detail as to how stand-alone sales will be discouraged and provides no comfort by way of harm minimisation practice.

### Social Impact and Amenity

The Applicant submits that the proposed business is not in direct competition with other businesses that supply alcohol in the area (such as bottle shops) given the different business model, with the offering of alcohol being limited to the producers of the Eyre Peninsula and, further to this, sales of alcohol are not the primary revenue stream for the business, thus the Applicant will have a relatively low alcohol sales footprint and believe that there will be no negative impact resulting from their alcohol sales.

The Applicant feels that their shop will encourage employment rates in the area as they are supporting and showcasing local businesses and regional produce, but do not provide evidence in support of the submission that employment rates may increase as a result of the granting of this application.

As their business is about supporting small local businesses from the region, in addition to a relatively small alcohol sales footprint, the Applicant 'made a positive decision' (as described by the AHA in their objection) not to consult with the local community regarding the application for a PLSL.

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

The Applicant submits that the shop will encourage and promote rural and regional produce, allowing a 'one stop shop' to showcase the best of the Eyre Peninsula, which may in turn promote the region as a whole by drawing more interest and tourism to both Port Lincoln and the Eyre Peninsula producers in which they stock.

### **Submissions from the AHA**

The Australian Hotels Association (AHA) objected to the application on several grounds. They have submitted concerns that to grant the application would be in breach of section 38(3) of the Act. Section 38(3) of the Act provides that 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. In other words, sales of packaged liquor must be physically from other commercial premises such as a supermarket. An exemption to s 38(3) can be provided under s 38(6) if the licensing authority considers it is in the public interest to do so - For example a regional store which sells both liquor and basic produce. The Applicant has since provided submissions applying for an exemption from s38(3) on public interest grounds which I have considered.

The AHA also submit that the Applicant provided nothing by way of harm minimisation policy, community consultation or types of liquor and quantities of sale. By way of community consultation, AHA submit that the Applicant has made a positive decision not to engage with its local community. I have considered the points raised by the AHA. The Applicant submits in the community impact statement that its' proposed business is in itself about supporting the local community and local small business, and as such the Applicant did not think it necessary to consult with the community to add alcoholic products into its offering. As to types of liquor/quantities of sale, the Applicant outlined in their application that they wished to sell local wine, gin, and beer. In subsequent submissions the Applicant outlined expected quantities of sale.

### **Further Submissions from the Applicant**

The Applicant was invited to make further submissions in relation to the following:

1. To confirm whether the business currently being operated online was Port Lincoln Gourmet Box Co.
2. The type of liquor licence that the online business was currently trading under as no licence existed under the names Port Lincoln Gourmet Box Co or Alchemillia Pty Ltd.
3. The community impact submission indicated that if the PLSL were granted that alcohol would only be sold pre-wrapped in gift boxes. The Applicant was asked to confirm if that was the case and if so, whether they would object to a condition being placed upon the PLSL that limited all liquor sales such that liquor could only be sold as part of gift packages and not individual sales. The Applicant was further requested to provide an estimated

volume of liquor sales per week.

4. The business offering in the initial application would offend section 38(3) of the Act, which places a condition upon a PLSL that the business conducted under the licence must be devoted entirely to the business conducted under the licence and must be physically separate from the premises used for other commercial premises (such as a supermarket). An exemption to s38(3) is available under s38(6) if the licensing authority considers it would be in the public interest. The applicant was invited to provide submissions as to why their business offering should be considered to be in the public interest.

In response to queries 1 & 2, the Applicant responded that Alchemillia does not currently sell any alcohol from their bricks and mortar shop, but that they would like to sell from the shop, which comes as a result of their purchasing of the Port Lincoln Gourmet Box Co business. The Applicant detailed their understanding and mentioned previous contact with Liquor Licensing regarding the need for a liquor licence for their current trading arrangements, and were operating under the assumption that their online business model did not currently need a liquor licence.

In response to query 3, the Applicant stated (contrary to their application) that they would like to sell single items of alcohol as well as bottles of alcohol that are part of a gift hamper. The Applicant estimated volume of sales to be in the vicinity of 10 per week, increasing up to 100 per week during peak festive periods.

In response to query 4, the Applicant submitted that their store should be considered to be an exemption on the basis that the granting of their application would be in the public interest. This is based on the offering of exclusively local produce and products. The sale of beer, wine & spirits from the region would be beneficial to promoting the town of Port Lincoln and the Eyre Peninsula as a whole. There would be no competition with larger commercial style bottle shops that stock a wide range of international product.

#### **Current Offering and Requirement for a Liquor Licence**

The Applicant was invited to make submissions as to their current online alcohol offering and the type of liquor licence they currently hold to sell alcohol online as part of the Port Lincoln Gourmet Box Co business. The Applicant asserted that their current offering does not require a liquor licence, as they are a business selling gifts, with the following excerpt taken from the CBS website:

Businesses don't need a liquor licence to sell alcohol with the sale of flowers, confectionery, food or items designed to be a genuine gift to a person other than the purchaser if: the gift is delivered directly to the recipient of the gift, at a place other than the premises where the business is conducted.

The exemption from requiring a liquor licence in the case of gifts is set out in regulation 7 of the *Liquor Licensing (General) Regulations 2012 (the Regulations)*, and relevantly provides the following:

d) the sale of liquor in the course of the business of selling flowers, confectionery, food or other things to be delivered as a gift to a person other than the purchaser if—

(i) the liquor is delivered by the vendor, together with the flowers, confectionery, food or other things, directly to the donee of the gift (or to another person of or above the age of 18 years) at a place other than the premises at which the business is conducted; and

(ii) the liquor has been purchased on a retail basis by the person conducting the business from the holder of a general and hotel licence, packaged liquor sales licence, liquor production and sales licence or an interstate direct sales licence; and

(iii) the volume of liquor supplied in respect of each sale does not exceed the prescribed volume; and

(iv) the value of the liquor and its container is not more than 50% of the total sale price of the gift; and

(v) both the purchaser and the donee of the gift are of or above the age of 18 years

As is evident from the Port Lincoln Gourmet Box Co, under 'The Bar' tab, a customer is able to purchase a single bottle of alcohol directly from the website and opt to pick it up at the proposed premises, rather than have it delivered to a third party. The current offering therefore breaches sections (i) and (iv) of regulation 7 of the licensing regulations, and as a result the Applicant is currently carrying on a business without a licence.

## Decision

The Applicant currently operates a small store on Liverpool Street in Port Lincoln, which sells a range of baby and skin care products. The Applicant wishes to expand their offering and incorporate their online gift hamper business into their skin product store. In the store, the Applicant seeks to stock a small range of wine, gin, and beer in addition to other produce such as jams, chocolate, and honey, all of which are exclusively produced on the Eyre Peninsula. The products will be packaged together in various hampers. The Applicant has noted their intention to be able to sell individual bottles of alcohol if a customer wishes to purchase a single bottle.

I have considered the AHA submissions regarding section 38(3) of the Act, and the subsequent submissions that the Applicant provided in regard to their eligibility for a public interest exemption from the requirement of s38(3) under s38(6). I note that SAPOL have no objected to the application.

From the information provided in the application, it is clear that a large proportion of the customers visiting the store will be tourists, potentially looking for a gift, or gift hamper to take home as a memento of their trip.

I have considered the potential for alcohol related harm to be caused to the community, and the harm minimisation measures that may be taken, and I am satisfied on the material before me that the risk of harm posed by this application is relatively low.

I have considered and have had regard to the objects of the Act, as required by section 3(2) of the Act, in determining this application.

Having considered the evidence and performing the evaluative exercise that the Act requires, I am satisfied that the positive aspects of the application identified by the Applicant, in particular the public interest in having a shopfront that stocks and showcases a range of Eyre Peninsula product to promote the region as a whole, outweigh any potential negative impacts of the application, namely, the risk of alcohol related harm, and that the application is in the community interest.

However, I am not satisfied that it is appropriate for a store that sells skin care products and baby care products to sell bottles of wine or spirits unless it is in a pre-wrapped hamper, alongside other product. To do so would set an undesirable precedent whereby gift shops could also become bottle shops, and I do not consider this to be in the public interest.

Having failed to meet the test set out in section 38(6) of the Act, I cannot grant the Applicant an exemption from the requirements of section 38(4) of the Act in respect of individual bottles of liquor being sold on their own, and not part of a pre-wrapped hamper. However, this does not preclude the Applicant from selling individual bottles through direct sales transactions only via their website.

I do consider it appropriate, and in the public interest, to grant an exemption under section 38(6) of the Act to allow them to sell liquor as part of a pre-wrapped hamper from their bricks and mortar store. This type of product, being a gift hamper, is consistent with the other types of products being sold in the store and, as outlined above, I consider the sale



of these types of gift hampers to be in the community interest. The applicant will therefore be subject to a condition that any liquor sold for consumption off the licensed premises must be part of a pre-wrapped gift hamper bundled with other gift products.

Furthermore, I also consider it appropriate to restrict the sale of any liquor products, either for consumption off the licensed premises, or through direct sales transactions, to local products produced in the Eyre & Western Region, as defined under the *Planning, Development and Infrastructure Act 2016*. The licence will be subject to such a condition.

Accordingly, under section 53A(1) of the Act Alchemillia's application for a PLSL at 5/60 Liverpool Street, Port Lincoln is granted subject to the conditions set out in this order.

## Under Delegation from the Liquor and Gambling Commissioner



Zoe Thomas  
Assistant Director, Licensing  
16 Mar 2022