

Decision Notification

Application Details

Application no.	212755
Licence No.	57104740
Licence Class	On Premises
Premises Name	O Kipos Greenmarket and Cafe
Premises Address	69 Essington Lewis Avenue Whyalla SA 5600
Applicant	Michael James Niemz, Nick Stassinopoulo
Application Type	Application for a Liquor Licence

Outcome

Decision	Granted
Effective Date	11 May 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

Licensee

The following persons are approved to hold the licence:

- Michael James Niemz (59207)
- Nick Stassinopoulos (137043)

Premises

New Premises

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

Capacity

The capacity of the venue is set at 150.

Community Impact Assessment

The application is a designated application for the purposes of section 53A of the Act.

Michael James Niemz and Nick Stassinopolous (**the Applicant**) have applied for an On Premises licence in respect of premises located at 69 Essington Lewis Avenue, Whyalla and known as O Kipos Greenmarket and Cafe

As part of the application the Applicants have submitted a Community Impact Report (CIR), with supporting attachments. 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 the Australian Hotels Association (AHA), that my decision is based on.

This application for an on premises licence is a designated application under section 53A of the *Liquor Licensing Act 1997* (the “Act”) and so may only be granted if the licensing authority is satisfied that the grant is in the community interest. In determining this application under section 53A(2) of the Act, I must have regard to:

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

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

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

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

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

Section 3(1) of the Act provides that:

- (1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—
 - (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and
 - (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
 - (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
 - (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

- (1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor

includes—

- (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and
- (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
- (c) the adverse effects on a person’s health; and
- (d) alcohol abuse or misuse; and
- (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

The Applicant must also satisfy the Authority that the pre-requisites in 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 business

The premises is located in a local commercial precinct that has a range of businesses including retail, offices, restaurants, supermarket and hospital. The applicant currently operates a fruit and vegetable market and café at the site, and is seeking a liquor licence in order to enhance its existing business model.

The existing café is currently a popular spot for friends and family to meet up including couples, singles and families with children. The proposed business model is to create a “relaxed outdoor Mediterranean setting” with local live music. The Applicants seek to provide liquor (a limited range of beer and wine, and a smaller selection of spirits) from midday to early evening, with a tapas style food offering.

The Applicants have indicated that in line with ‘extending’ the current business, the service of liquor will only occur after midday in order to not interfere with the existing family friendly market day trading of 9am-12pm daily and will only be served in the outdoor area.

The Applicant has advised that the ‘café’ will offer all products will be sourced from local South Australian producers.

There will be entertainment provided in the form of background music during the afternoon and evening. The Applicants have intimated that there may be a number of events during the year where music will be more prominent, however, these events will be on a Friday or Saturday evening and not run past 11:30pm.

Potential harm

The Applicants have identified a number of potential 'at risk' groups in the locality including members of the indigenous community, people from lower socio economic backgrounds, young adults and heavy drinkers. The Applicants maintain that any impact on these groups would be less than the greater Whyalla population.

The Applicants have identified two primary schools, a high school and child care centre within the locality as well as a hospital and Anglican church. It is not expected that the operation of the business under the licence will have any adverse impact on these facilities.

A number of policies and procedures will be implemented to minimise any impact to 'at-risk' groups, including: appropriate training of all staff, asking for proof of age, no service of liquor before midday, and consumption of liquor on permitted by those seated at a table. I note that the Applicants have also advised that liquor promotions will not be advertised on social media feeds.

Cultural, recreational, employment or tourism impacts

The applicants anticipate significantly increasing their trading hours and employing at least 2 additional staff members.

The Applicants are of the view that the current business is unique to the region and popular with the locals, it is expected that a licence will enhance the existing business and create a distinctive venue in Whyalla.

The venue currently attracts visitors from surrounding towns or those passing through. According to the Applicants' submissions, residents from as far as Kimba and Port Lincoln have recommended stopping at O'Kipos store to travellers, and so the Applicants are keen to further develop their business as a tourist destination.

Social impact and impact on the amenity of the community

The locality falls within the City of Whyalla council zone, with a population of 22 424 and unemployment rate of 7%. There are a number of other licensed premises in the locality including: 4 General and Hotel, 4 restaurants, 1 packaged liquor and 1 on premises.

The applicant has confirmed that liquor will only be served in the outdoor area which is fenced off, there will be no 'bar area' for consumption, and patrons consuming liquor must be seated at tables.

The Applicants have also undertaken a level of community consultation, and provided letters of support from several local businesses as well as the Whyalla City Council and the Member for Giles.

AHA Submission

A submission opposing the grant was received from the Australian Hotels Association, it can be summarised as follows:

- the proposed hours are not consistent with the hours actually applied for.
- the 'garden' area is not suitable to be licensed, as it is predominantly dirt and gravel
- the proposed business model would be better suited to a restaurant and catering licence
- the locality has high unemployment levels, and many licenced premises already servicing the area
- there are a significant number of at risk groups and individuals within the locality, it would not be in the community interest to grant this application.

The Applicants have responded and confirmed that the sale and supply of liquor will only occur during the hours

approved by council, namely;

Wednesday – Thursday 12pm – 9 pm

Friday – Saturday 12pm – 10pm

Sunday 12pm – 8pm

The Applicants have also stated that the description of the ‘garden’ provided by the AHA is not accurate, the photograph was taken on a non trading day and did not capture the area that patrons will be using for the consumption of liquor.

The proposed venue will provide an alternative for patrons who wish to consume liquor with their meal without attending a local hotel. The Applicants contend that there are limited options for those in Whyalla who would like to go out for a meal and a drink without being exposed to gambling. The Applicants state that all the hotels in town provide at least one form of gambling the public, such as gaming machines, horse racing, sports betting and keno, and that patrons would usually need to walk through these areas before reaching the beer garden or other dining area.

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	-	-
Tuesday	-	-
Wednesday	Midday to 9:00 pm	-
Thursday	Midday to 9:00 pm	-
Friday	Midday to 10:00 pm	-
Saturday	Midday to 10:00 pm	-
Sunday	Midday to 8:00 pm	-

Reasons for Decision

Decision

This is an application for an existing fresh produce market in Whyalla to permit the sale and supply of liquor in an outdoor café area. The market stocks a range of local South Australian produce, and this focus on local produce will be reflected in the liquor products available from the café.

The Applicants have provided a description of the menu items including seasonal ‘specials’ and have indicated that the sale and supply of liquor will only occur after 12pm (as part of the lunch time trade) into the evening, and only to patrons seated at a table.

The Applicants have considered the potential risks posed to vulnerable groups in the locality by a licence of this category and have indicated that there will be appropriate measures put in place to minimise the risk of harm. I accept that the proposed style of trade, limited range of liquor products, and restricted trading hours will pose little risk to the community.

I have had regard to the submissions made on behalf of the Australian Hotels Association and submissions in reply from the Applicants. I note that the Applicant have since confirmed the trading hours to be consistent with the approval granted by the City Council of Whyalla.

The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest. It is expected that a venue such as this, offering a “Mediterranean village” dining experience unique to Whyalla is in the interest of the community.

I am satisfied that the grant of this application will pose little risk, and is consistent with the expectations and aspirations of the public. Accordingly, under section 53A(1) of the Act I grant the application.

Under Delegation from the Liquor and Gambling Commissioner



Vicki Brunello
Hearings Delegate
11 May 2022