

Decision Notification

Application Details

Application no.	217674, 217675
Licence No.	57008546
Licence Class	General & Hotel
Premises Name	Mercato
Premises Address	88 O'Connell St North Adelaide SA 5006
Licensee	The Missile Pty Ltd
Applicant	THE MISSILE PTY LTD
Application Type	Application for a Liquor Licence, Application for Extension of Trading Area (S 69)

Outcome

Decision	Conditional Grant
Effective Date	16 Feb 2023

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

Certificate

A certificate of approval is issued for the premises to be situated:

88 O'Connell St
North Adelaide SA 5006

The certificate is granted subject to the following conditions:

- The certificate shall lapse on 23 June 2026 if the premises are not completed by this date.
- The applicant must submit a copy of the Certificate of Occupancy at which time a further order will be made and the final approved plan and licence will be issued.

This certificate of approval is not a licence.

The certificate of approval must be converted to a licence prior to the applicant commencing trade at the premises.

People

Position of Authority

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

- John Caporaso (66911)
- Rose Caporaso (66912)
- Jianna Caporaso (165569)
- Massimo Caporaso (173905)

Reasons for Decision

Mercato – General and Hotel Licence Decision

The Missile Pty Ltd (**the Applicant**) have sought a General and Hotel Licence in respect of premises yet to be built at 88 O'Connell Street, North Adelaide (**the Site**), to be known by the trading name 'Mercato'.

The Site is on the ground floor of the 88 O'Connell development, which is a landmark site in the City of Adelaide, to be developed in conjunction with the Adelaide City Council and private enterprise. Residential apartments will be located in the upper floors, with commercial activity at the ground level. Construction is currently underway.

O'Connell Street is a cosmopolitan, popular and well frequented pub, restaurant and shopping strip, located in North Adelaide.

The Applicant has submitted a Community Impact Assessment form, submissions, and various other documents in support of their 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 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 Community Impact Portal; a business plan/plan of management; and a site or

property plan, floor plan and/or photographs/artists impressions of the site/building.

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

Section 3(1) of the Act provides that:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and

(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and

(d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

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

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

(b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and

(c) the adverse effects on a person's health; and

(d) alcohol abuse or misuse; and

(e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

The Applicant must also satisfy the Authority that the pre-requisites in section 57 of the Act have been met, in relation to such matters such as: the suitability of the premises; the potential for them to cause undue offence, annoyance, disturbance or inconvenience to nearby residents, workers and worshippers in the vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools in the vicinity of the premises; and whether the appropriate approvals, consents and exemptions, in respect of the proposed premises have been obtained.

Additionally, section 53 of the Act gives the Authority “*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*”, and section 53(1a) of the Act 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 Applicant submits that Mercato will showcase Italian culture and history, with a menu that focuses on Italian style products. The Caporaso family, as operators of the proposed offering, will draw on their 50 years’ experience operating Mercato Campbelltown to provide an Italian food and beverage experience to customers. Liquor products will also be available for sale for consumption on and for takeaway.

The Applicant has provided indicative drafts of the food menu, wine list, and takeaway liquor stock list. Takeaway liquor will focus on Italian product, with some additional high end product sourced from other international locations, as well as some boutique/artisan Australian liquor. Tastings, functions and masterclasses will be hosted on site from time-to-time. An Italian-style bar will also operate on the premises.

The Applicant expects to cater for a wide range of customers, including families, couples, young and old, ranging from North Adelaide residents, to those attending sporting and cultural events nearby, as well as others attracted to the specialist offering from further afield.

The Applicant intends to trade 7 days a week and it is submitted that Mercato will provide a true Italian experience, sharing the best of Italy, and will be an important recreational, social and cultural facility for its anticipated clientele.

Mercato's directors and shareholders will work in this new business and it will employ approximately 100 staff, including a mixture of part-time and casual employees.

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.

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 in the Adelaide Metropolitan area is the area within a two kilometre radius of the site of the relevant premises. In the case of *Liquorland (Australia) Pty Ltd (Park Holme)* [2020] SALC 37 (the *Liquorland Park Holme decision*), Judge Gilchrist observed at [20] that:

"....."locality' is now focused upon the local community and is much more focused on primary trade catchment areas, as opposed to secondary catchment areas. The accumulated experience of this Court is that in most parts of metropolitan Adelaide, leaving aside large discount liquor stores, a two kilometre radius from existing or proposed take away liquor facilities is a fair estimate of where the vast majority of the patrons of those facilities will reside."

I have reviewed the Location and Area Reports provided by the Applicant and note that a 2km radius has been applied, which is consistent with the Guidelines. I agree that a 2 km radius from the premises is appropriate to define the locality.

Harm Considerations

The Applicant has provided Location and Area reports generated from CBS' Portal in relation to the communities and facilities within the locality. The reports indicate a number of childcare, kindergarten and primary and secondary schools in the locality, and tertiary education facilities.

The applicant noted that there is some level of homelessness and sleeping rough in the parklands, but has expressed the view that this proposal is not anticipated to impact negatively on that issue.

The Applicant submits that there are no specific 'at risk' groups who might be affected that the applicant is aware of other than those referred to, given the nature of the proposal.

The applicant has written to a number of premises nearby and to various Government bodies seeking their views on the proposal.

It is submitted that the licensee will ensure compliance with all of their obligations under the Act and Code of Practice and will ensure all staff are appropriately trained and informed as to their obligations in that respect, and it is noted that the principals are experienced operators of licensed premises.

The Applicant will implement various risk mitigation measures including:

- All staff involved in the supply of liquor will be trained in responsible service of alcohol (RSA) matters and there will also be at least 1 approved badged Responsible Person (RP) on the premises at all times;
- Although minors will be allowed on the premises in accordance with the Act, the Applicant does not anticipate large numbers of unaccompanied minors will be likely to attend the site. Staff will be trained to ask for suitable forms of identification for any patron who appears under the age of 25 years. If in doubt staff will be instructed to refuse service to any person who cannot provide suitable identification. Patrons in school uniform will not be served liquor;
- The range of liquor to be provided at the price points proposed will not be especially attractive to minors;
- Staff will all be trained in RSA matters and there will not be discounted liquor offered at irresponsible prices;
- Non-alcoholic drinks will always be available for purchase and free water will be available at all times;
- Food will be available at all times of trade;
- Anti-social behaviour will not be tolerated and any patrons displaying signs of intoxication will be refused service and asked to leave if considered safe to do so under the circumstances.

Neither the City of Adelaide nor SAPOL have objected to the application. Additionally, I note that the City of Adelaide has expressly consented to the application as landlord of the Site.

The Caporaso family have not experienced any significant issues of liquor-related harm at their Campbelltown 'sister;' store site and submit that no particular negative impact on any particular group in the locality would appear likely, in respect of the present application taking into account the nature of the proposal. I agree with that submission.

Objections received by the Licensing Authority

The Authority received 4 submissions from nearby residents in the locality in relation to the application (**objectors**). Of those, 1 objector took issue with the application on a number of bases including scope of the licence class (and suggested that if it is approved the same conditions that apply to Mercato Campbelltown ought also apply to this business), and suggested that assessment of the application should be deferred until after 88 O'Connell Street had been built to enable a proper consideration of the impact on amenity.

The other 3 objectors main concern relates to the proposed trading hours and they consider that a closing time of 1am is too late for the venue to be trading and have requested that the trading hours be reduced such that they would be in line with the City of Adelaide's Precinct Liquor Licensing Statement (noting that the Applicant had initially sought to trade from 7am -1am, 7 days per week).

After considering the objections, I enquired whether the Applicant would be agreeable to the grant of the application with the trading hours amended for 'consumption on' to 7am – Midnight, Sunday to Thursday and 7am – 1am, Friday and Saturday. The Applicant through their lawyers confirmed their agreement to this suggested change, and I grant approval for the applicant to vary their application accordingly.

Decision

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, and that the majority of objections raised by individual local residents will be addressed by the reduction in trading hours discussed above.

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 very low. The Applicant is an experienced and reputable licensee who operates an established and successful business in Campbelltown without incident. The proposed offering will be a very similar business model to that.

The proposed business will add to the amenity of the locality and will provide an attractive offering that will be frequented by and enjoyed by a wide cross section of the community.

It is clear from reviewing the application material that the community benefits conferred from the grant of this application will be significant, that the risk of harm is very low, and that any negative impacts that may arise from the grant (e.g. increased noise in the locality) are greatly outweighed by the benefits that will flow from granting the application.

The proposed premises will provide significant additional employment opportunities and it is likely that some of these

opportunities will be for the benefit of members of the relevant community.

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; and the relevant development approvals are in place for the premises. The reduction in trading hours from 1am down to Midnight Sunday – Thursday has addressed any concerns I had in this regard.

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.

I am satisfied that it is in the community interest and the public interest to grant this application.

Certificate of Approval granted

The application by Missile Pty Ltd for a General and Hotel Licence in respect of premises that are yet to be constructed and are to be situated at 88 O’Connell Street, North Adelaide is granted, but given the extent to which the proposed premises are uncompleted, I grant the Applicant a Certificate of Approval pursuant to section 59 of the Act, subject to the following conditions:

- 1) The Applicant shall notify the Authority within 7 days of any changes to the approved plans submitted with this application;
- 2) The Applicant obtaining any necessary approvals for the fit out of the premises from the local Council (if required);
- 3) The Applicant must provide a copy of the Certificate of Occupancy to the Authority, prior to commencing trade from the premises;
- 4) On providing the Authority with a copy of the Certificate of Occupancy, the Authority will grant the Applicant a General and Hotel Licence in accordance with section 32 of the Act;
- 5) The Certificate of Approval shall lapse on 23 June 2026 if the premises are not completed by this date, or on such later date as approved by either the Authority;

The following trading rights will be conferred if/ when the Certificate of Approval converts to a General and Hotel

Licence:

- 1) Sale of liquor for consumption on premises from 7am – Midnight, Sunday to Thursday, and 7am – 1am the following day, Friday and Saturday;
- 2) Sale of liquor for consumption off premises from 9am – 10pm, 7 days a week; and
- 3) The following persons are approved to occupy any position of authority in the entity holding the licence: Rose Caporaso (66912); John Caporaso (66911); Jianna Caporaso (165569); and Massimo Caporaso (173905).

Upon the Certificate of Approval converting to a General and Hotel Licence, the General and Hotel Licence will be subject to the following conditions:

- 1) Food shall be available to patrons at all times when liquor is available for consumption; and
- 2) The style and nature of the business is to be conducted so that it does not consist primarily and predominantly of the retail sale of liquor.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

16 Feb 2023