

Decision Notification

Application Details

Application no.	210925, 211013
Licence No.	57001730
Licence Class	General & Hotel
Premises Name	Brighton Metro Hotel
Premises Address	466 Brighton Road BRIGHTON SA 5048
Licensee	LHG3 Pty Ltd
Application Type	Variation to Conditions (Upgrade), Application for Alterations and Redefinition

Outcome

Decision	Granted
Effective Date	14 Oct 2021

Requirements

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

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

Premises

Capacity

I approve the proposed capacity of 920. The proposed change in capacity will become effective from the effective date of the order approving the use of the beer garden.

I note the current capacity of the premises is 700.

Alterations/Redefinition

I approve the proposed alterations and redefinition in accordance with the plan lodged with the application subject to a statement of compliance being provided to the licensing authority by 7 April 2022 and an order being issued for the use of the new area.

The proposed alterations and redefinition to the premises are for an increase to the beer garden.

Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: City of Holdfast Bay

The City of Holdfast Bay has lodged a submission, pursuant to section 77(3) of the *Liquor Licensing Act 1997* (the Act), opposing the grant of this application.

The grounds for opposing the application are as follows:

Development Approval 110/00127/20 conditions:

- Condition 3. The number of patrons shall be limited to not more than 370 patrons at any one time, hours of operation must not exceed 10pm on Sunday nights and 12:00am any other night, and the provision of acoustically treated wall and entry points, as specified in the Sonus Environmental Noise Assessment S6340C5 March 2021, with specific details to be presented prior to Development Approval.
- Condition 6: Outdoor speakers shall be fixed to a level that is below the height of external walls and be south or west facing, operate no later than 10pm Sundays and 12pm any other day and emit a maximum decibel reading of not more than 30dB(A) when measured from the nearest residential property.
- Condition 7: Live music shall not be played from the addition (“public bar” or “beer garden”).

The Honorable Tim Anderson QC in 2016 in his review of the Liquor Licensing Act 1997 discussed at length the separation of the planning matters to those dealt with by the licensing authority. As part of his review he recommended that changes be made to the Act to prevent duplication of matters at the planning level and then again at the liquor licence level. It is clear that the incorporation of section 77(3) into the Act reflects that Parliament agreed with Mr Anderson's views on this issue.

In addition to this, on 18 November 2019 the *Liquor Licensing (Liquor Review) Amendment Act 2017* (the Amendment Act) came into operation, resulting in a significant number of amendments to the Act. In line with the transitional provisions set out in Schedule 2 of the Amendment Act licences were transitioned to new classes of licence. Under section 5(2)(d) of the Amendment Act, conditions that are, or should be dealt with or addressed under the *Development Act 1993* or *Planning, Development and Infrastructure Act 2016* were removed from licences.

I note that section 11C of the Act states:

The Commissioner should—

...

(b) in the assessment of an application for a licence under this Act; or

(c) in the imposition of conditions under this Act,

take reasonable steps to avoid any inconsistency with, or the duplication of, matters that are dealt with or addressed under the *Planning, Development and Infrastructure Act 2016*.

I am satisfied that the Applicant has obtained the relevant planning approvals as required under section 68(2) of the Act.

For the reasons set out above, it is inappropriate to impose conditions relevant to planning matters.

Reasons for Decision

In reaching my determination, I have had regard to the objects of the *Liquor Licensing Act 1997*.

Under Delegation from the Liquor and Gambling Commissioner



Jane Widdowson
Hearings Delegate
14 Oct 2021