

Decision Notification

Application Details

Application no.	215425
Licence No.	57008465
Licence Class	General & Hotel
Premises Name	Asia House
Premises Address	2 Adelaide Road Millicent SA 5280
Applicant	WENG GROUP PTY LTD
Application Type	Application for a Liquor Licence

Outcome

Decision	Refused
Effective Date	29 Dec 2022

Reasons for Decision

This is an application by Weng Group Pty Ltd (**the applicant**) for a General and Hotel licence at 2 Adelaide Road, Millicent SA 5280 and to be known as Asia House. I note that the application is a designated application for the purpose of section 53A of the *Liquor Licensing Act 1997* (the Act) and therefore, in order to grant the application, I must be satisfied that the granting of the application is in the community interest. The applicant has lodged a community impact assessment report providing details about their proposed business and addressing the matters set out in the Community Impact Assessment Guidelines.

In accordance with section 53(1a) of the Act I must also be satisfied that the grant of the application would not be contrary to the public interest, and if I am satisfied that it is, then the application must be refused.

Background

I note that the applicant currently holds a Restaurant and Catering Licence at this site, which currently trades as Asia House. It is the applicant's intention that, should this application be granted, the Restaurant and Catering licence will be surrendered on the same day.

The applicant's business currently specialises in Asian cuisine for dine-in, takeaway and function catering. They offer a full menu which includes entree, main and dessert. They currently only sell liquor to dine-in customers. The premises also has a built in drive-through which they utilise for customer meal orders, but they intend to utilise this functionality for takeaway liquor sales as well, should their application be successful.

Their decision to apply for a General and Hotel licence is a result of customer inquiries about whether they can buy alcohol to take away and a belief that the ability to sell takeaway liquor will generate more sales and revenue for the business.

Submission

The application attracted a submission under section 77 of the Act from the Australian Hotels Association South Australia (**the AHA**). In their submission, the AHA raise the following:

- The business model is a Restaurant and can operate most of its business activities under a Restaurant and

Catering licence. The fact that a particular business model cannot operate within another category of licence is no reason to grant a General and Hotel Licence. This class should be reserved for traditional hotels as this category allows applications for gaming machine entitlements to be made and take-away sales to be permitted and therefore the application should be treated with a great deal of caution.

- In effect the applicant seeks a Packaged Liquor Sales Licence, in addition to a Restaurant and Catering Licence, under the umbrella of a General and Hotel Licence and this should not be permitted.
- The town of Millicent (population 5,000) is already served by 3 Hotels, 2 of which have drive-through bottle shops, and 1 BWS store 700 metres from the proposed premises. Allowing another take-away facility is not in the interest of the community, particularly as the applicant does not have experience in selling take-away liquor.
- There is no benefit of convenience as convenience is already available a few seconds away from the premises.
- There is no evidence of planning or development consent, as the only consent provided is for a Restaurant.

The AHA then submit a number of conditions they believe the licence should be subject to, should the Licensing Authority determine to grant the application.

Applicant's Response

The applicant was invited to respond to the submission made by the AHA. Their response can be summarised as follows:

- The "General" in the "General and Hotel Licence" should open more opportunities to other eligible businesses. They are not intending to compete with the other bottle shops and BWS in the town and they anticipate that the extra income generated from takeaway sales will be insignificant compared to these other venues.
- In response to the submission that there are sufficient outlets already in Millicent, the applicant submits that Millicent serves as an important transit for people travelling between Adelaide and Victoria and attracts many tourists and the nearby town of Beachport (which has a higher density of liquor outlets than Millicent) thrives with more outlets. They are responding to feedback from their customers (as reflected in the customer surveys submitted) and tapping into market potential.
- In relation to their experience, the applicant notes that they conducted takeaway liquor sales during the COVID-19 pandemic when they were granted a short-term licence to sell take-away liquor as part of the Government's policy during the pandemic. They have operated licensed premises since 2017 and have a good track record of good compliance.
- They note an email they received from Council indicating they were supportive of their application and do not believe the licence will alter the land use should they continue to operate as a Restaurant, however also point to their Community Impact Report where they state they are prepared to lodge a development application with Council for a change of land use *if required*.

Public Interest

Pursuant to section 53(1a) of the Act I must be satisfied that the grant of the application would not be contrary to the public interest, and if I am satisfied that it is contrary, then the application must be refused.

I note that, as pointed out by the AHA, this is effectively a Restaurant wanting to expand their trade beyond what is permitted under section 35 of the Act to allow them to also conduct take-away sales from the premises. However, as pointed out by the applicant, the "General" in the General and Hotel Licence category does mean that this licence class is not strictly reserved for traditional Hotels and other business types can trade under this licence class, provided they meet all the requirements under the Act in order for their application to be granted.

Each application for a General and Hotel licence must be considered on its own merits, having regard to the proposed business model and the manner in which they propose to trade with respect to the sale of liquor.

In this case, the applicant is proposing to utilise an existing drive-through facility at their premises to facilitate take-away liquor sales, effectively creating a Restaurant with a drive-through where you can collect both food and liquor at the same time. This is a business model not previously contemplated by the Licensing Authority and therefore careful consideration must be given as to whether this type of business is in the public interest. (I note for completeness I am aware of at least one General and Hotel Licence in regional South Australia where patrons can purchase both food and liquor for takeaway from a drive through, however this occurs in the context of the hotel's bottle shop).

Drive-through restaurants are a common feature across South Australia; there are many national and international brands who operate these types of businesses. I do not believe there is any expectation in the minds of the public that they would be able to obtain liquor from these types of businesses; rather I am of the opinion that the public would hold concerns about these types of businesses being permitted to do so, given the level of convenience they offer as "fast food" outlets and their attractiveness to minors and families.

Further, the Act makes it clear that the concept of a drive-through bottle shop ought to be reserved only for General and Hotel licences. The Act specifically prohibits other licence classes that permit take-away sales (being Clubs and Packaged Liquor Sales licences) from operating through a drive-through bottle shop. Whilst the Act does not address Restaurants operating drive-through bottle shops, as the Restaurant and Catering licence class itself does not permit takeaway liquor, I am of the opinion that had Parliament been required to consider such a proposal, that it too would have been prohibited.

While the Government put in place special measures to allow restaurants to sell small quantities of takeaway liquor with meals during the COVID pandemic, those rights ceased as COVID restrictions eased and there has been no amendment to the Act to provide those rights to restaurants on an ongoing basis.

I am satisfied that it is not in the public interest to allow a Restaurant to operate a drive-through bottle shop under the guise of a General and Hotel Licence and to allow this application to be granted would set an undesirable precedent of allowing the many other drive-through Restaurants in South Australia to also expand into a similar business model.

Accordingly, under section 53(1a) of the Act, the application is refused.

For completeness, I am also of the view the application is not in the community interest, as takeaway liquor in the town of Millicent is already serviced by two hotel bottle shops and a standalone BWS packaged liquor store. For a population of 5000 people, that is more than sufficient. The application would therefore not add a great deal of convenience to tourists or residents and I am unable to identify any other factors that would indicate the application is in the community interest.

Under Delegation from the Liquor and Gambling Commissioner



Zoe Thomas
Assistant Director, Licensing
29 Dec 2022