

Decision Notification

Application Details

Application no.	213154, 213155, 213733
Licence No.	57317848
Licence Class	Restaurant & Catering
Premises Name	Cocina Comida
Premises Address	Shop 4 205 Pirie Street Adelaide SA 5000
Proposed Premises Address	16 Ebenezer Place Adelaide SA 5000
Licensee	Reuben James Williamson
Application Type	Application for Removal of Licence, Variation to Conditions (Upgrade), Application for Extension of Trading Area (S 69)

Outcome

Decision	Granted
Effective Date	09 Feb 2022

Procedural

I allow the applicant to vary their application as follows:

- reduce the trading hours from Mon to Sun - 10am to 2am the next day to Mon to Sun - 10am to 10pm.

I note the advertising period was modified to two weeks under section 52(3)(a) of the Act.

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

Premises

Removal

The licence is removed to:

16 Ebenezer Place
Adelaide SA 5000.

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

Licence Plan

The licensee is authorised to sell and supply liquor in an area adjacent to the premises for consumption in that area, as outlined in red on the approved plan.

Conditions

The following conditions are added to the licence

- The approval to sell liquor in an outdoor dining area shall lapse and become of no effect if the permit issued by the local council lapses, or is cancelled, withdrawn or revoked.

Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor in an approved place adjacent to the licensed premises authorised

Trading hours

The following are the approved trading hours

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

Reasons for Decision

Under section 81(1)(a) of the *Liquor Licensing Act 1997* (the Act) I exercise my discretion to determine this matter without holding a hearing.

Submission

A submission has been lodged against the application by the following persons, who oppose the grant of the application:

- Ms Birgit Helena Nilsson
- Ms Emily Palmer
- Dr Erin Smith
- Mr Brian Dare
- Ms Sharon Ley
- Miss Fiona Beauchamp
- Mr Chris Wilkinson
- Ms Elke Obermeier
- Ms Lana Hill

All of the persons above raised similar concerns in their submissions against the application. They can be summarised collectively as follows:

- There will be noise caused by patrons exiting the venue and milling around, noise from the emptying of bottles and noise from patrons moving between the indoor and outdoor dining areas of the premises
- That the hours proposed are excessive

- There are a number of residential dwellings within close proximity to the proposed premises who will be disrupted by the noise caused

Requests have been made to impose conditions in relation to when bins can be emptied and restrictions on music at the venue.

The persons who lodged submissions were advised by our office that the applicant had amended their proposed trading hours from 10am to 2am to 10m to 10pm each day of the week. I note that none of the submissions were withdrawn after being advised of this. A number of the persons above raised further concerns that the proposed new trading hours still were not consistent with how the applicant has advised them informally of how he actually intends to trade (i.e not trading every night of the week for now).

Noise

I will deal firstly with the issues raised in relation to the emptying of cans and bottles and music from the premises and the subsequent proposal to restrict these activities. I note that the Liquor and Gambling Commissioner is only responsible for regulating the sale and supply of liquor, the disposal of cans and bottles does not fall within the jurisdiction of the Commissioner and is a matter dealt with under the relevant planning and development laws. To avoid duplication and ensure compliance with section 11C of the Act we will not be regulating this matter. In relation to music emanating from the premises, section 57(1a) requires me to disregard entertainment when considering whether the proposed premises will likely result in any undue offence, annoyance, disturbance or inconvenience to those who reside in the vicinity of the premises.

When applying the test of whether a premises is likely to cause undue offence, annoyance or disturbance to those who reside in the vicinity, I must be guided by the position of the Licensing Court, and it has been commonly held in the Licensing Court that it is reasonable to expect some level of noise from a licensed premises, it only becomes an issue if the noise becomes 'undue', or unreasonable. There are mechanisms within the *Liquor Licensing Act 1997* to remedy situations where undue noise or offence occurs. The location of the premises and surrounding amenity is crucial when making this assessment. The premises is located in the CBD in an area that hosts a number of licensed venues and late night venues. The application is for a Restaurant and Catering licence to trade until 10pm each night. I do not consider a Restaurant trading until 10pm in the CBD to be unreasonable or see that it is likely that the premises will create a level of noise that is undue when applying the test as interpreted by the Licensing Court.

Trading Hours

I note that some parties have taken issue with the applicant's proposed hours being different to what he has communicated to them, in that he currently only intends to trade until 9pm Wednesday to Saturday but may trade until 10pm on special occasions. Each time a licensee wishes to amend the trading hours on their licence they must lodge an application with our office and pay an application fee to do so. I therefore can understand the appeal of seeking a licence that allows them to trade to the full extent they may wish to in the future, even if they are not intending to do so in the short term. The hours sought do not conflict with any development approvals the premises is subject to and, as outlined above, I do not consider a 10pm close time unreasonable for a Restaurant in the CBD. Therefore I do not see any reason to restrict their trading hours beyond what they have applied for, only for them to have to pay another fee should they chose to open on other days in the future.

Decision

After considering the submissions lodged I am of the opinion that the application should be granted as sought.

Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes
Hearings Delegate
09 Feb 2022

