

# Decision Notification

## Application Details

Application no.	207320, 207318
Licence No.	57318276
Licence Class	Restaurant & Catering
Premises Name	1837 Barossa Restaurant
Premises Address	119 Yaldara Drive Lyndoch SA 5351
Applicant	1837 BAROSSA PTY LTD
Application Type	Application for Exemption\Responsible person, Application for a Liquor Licence

## Outcome

Decision	Granted
Effective Date	14 May 2021

## 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

### Position of Authority

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

- Guido Johannes Auchli (150807)

## Premises

### New Premises

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

## Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor for consumption on the licensed premises authorised

## Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	8:00 am to 9:00 pm	-
Tuesday	8:00 am to 9:00 pm	-
Wednesday	8:00 am to 9:00 pm	-
Thursday	8:00 am to 9:00 pm	-
Friday	8:00 am to 11:00 pm	-
Saturday	8:00 am to 11:00 pm	-
Sunday	8:00 am to 11:00 pm	-

## Reasons for Decision

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

It is a requirement under section 97(1) of the Liquor Licensing Act 1997 (the Act) that premises must be personally supervised by a responsible person at all times that they are open to the public, however under section 97(2) of the Act the Commissioner may exempt a licensee from this requirement and approve alternative arrangements for the supervision and management of the business. An exemption can only be granted if the licensing authority is satisfied that, in view of the limited scope of a business conducted under a licence, an exemption would not compromise the principle of responsible service of alcohol and consumption of liquor.

The applicant has submitted the following reasons why they should be granted an exemption:

*"Once we have the restaurant licence granted, we will look for a lessee for the restaurant. We will then make an application with you to transfer the licence of the restaurant to the lessee. Hence, we will only hold the licence during transition periods, which would be presumably only every 5 years and for a short time. During this transfer periods we will re-direct most of the client traffic to our Cellar door, which is just next door and will only seat very limited person in the Restaurant. Hence, the restaurant will have very limited traffic only, whenever 1837 Barossa will run it during this transition periods.*

*We have applied for the RP exemption because we only expect limited number of people for this restaurant, whenever we will run it. The principle of responsible service and consumption of liquor will not be compromised at any time, because the RP will be reachable by phone at all time when the restaurant premises are open."*

Whilst I understand that it is not the applicant's intention to run the Restaurant, but rather to find a third party to operate from this part of the premises, if an exemption is granted then it will continue to apply even if the licence is transferred to another party. Furthermore, even if the applicant intends to use the Restaurant as 'overflow' until a third party is found this is still an entirely separate licensed premises from the Cellar Door and needs to be assessed on its own merits as a stand alone licensed venue. Liquor sold or supplied in these areas need to be kept separate so as to ensure there is no breach of section 104 of the Act. Therefore any liquor sold in the Cellar Door, whether by the glass or in a sealed bottle, cannot be brought into the Restaurant, and vice versa, any liquor sold in the Restaurant cannot be taken into the cellar door.

Generally exemptions are granted where the sale of liquor is ancillary to the businesses primary purpose and the alcohol sales at the premises are quite minimal. I need to consider the appropriateness of the exemption in terms of the premises operating to the intended full capacity as a fully operational Restaurant.

The requirement under section 97 of the Act supports the second object of the the Act '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.'

The principle of responsible service of alcohol is an important aspect of the licensing regime and contributes to overall public safety surrounding the consumption of liquor. In deciding whether to grant an exemption from these requirements the interest of the public should be weighed against the burden of ensuring a responsible person is present at all times on a licensee. For this reason exemptions should only be granted in rare and exceptional circumstances. I have not been satisfied that there are any exceptional circumstances present that would justify an exemption being granted.

I am not satisfied that the business that will be conducted under the licence (being the sale and supply of liquor) will be of a limited scope. For this reason, the application for an exemption from these requirements is refused. Therefore, at all times the premises are open to the public the licensee must ensure that a responsible person, or person approved in a position of authority in the licensee entity, are present to supervise and manage the business.

## Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes  
Hearings Delegate  
14 May 2021