

Decision Notification

Application Details

Application no.	211318
Licence No.	57319052
Licence Class	Restaurant & Catering
Premises Name	Yolk Co
Premises Address	42 North East Road Walkerville SA 5081
Applicant	Zac Mucklow Investments Pty Ltd
Application Type	Application for a Liquor Licence
Representative	Patrick Connelly - Clelands Lawyers

Outcome

Decision	Granted
Effective Date	17 Mar 2022

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:

- Zachary William Mucklow (169051)

Premises

New Premises

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

Capacity

The capacity of the venue is set at 100.

Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor for consumption on the licensed premises authorised
- Sale of liquor for consumption at the site of a function off the licensed premises authorised

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	7:00 am to 10:00 pm	-
Tuesday	7:00 am to 10:00 pm	-
Wednesday	7:00 am to 10:00 pm	-
Thursday	7:00 am to 10:00 pm	-
Friday	7:00 am to 10:00 pm	-
Saturday	7:00 am to 10:00 pm	-
Sunday	7:00 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:

- Allan Laube
- Angelika Cearns
- Brian Rodda
- Charles Borg
- Cynthia Wang
- ECH Inc (represented by Damien Smith)
- David Wilson
- Elisabeth Lee
- 60 North East Pty Ltd (represented by Evangelos Toskas Commercial & Legal)
- Garry Turner
- Gloria Collins
- Gurmeet Kaur
- Janet Kelly
- Leonard Burton
- Maria Canala
- Nancy Mitchell
- TW Kok

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

- There are a number of residential dwellings within close proximity to the proposed premises who will be disrupted by the noise and littering etc. caused by patrons of the premises
- That the hours proposed and capacity are excessive
- There are already adequate licensed premises in the area, another licensed venue is not required
- There are already severe parking issues in the area due to the number of businesses in the area and lack of

parking available resulting in illegal parking in front of neighboring dwellings.

The applicant made a submission in response to these concerns raised, pursuant to section 78 of the Act.

Noise

The applicant raised in their response the position of the Licensing Court when it comes to assessing whether noise from the premises is likely to be 'undue'. 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.

The location of the premises and surrounding amenity is crucial when making this assessment. As the applicant points out, the premises is on a main arterial road with other business surrounding it, including a licensed Hotel. Council have assessed the premises as being appropriate for this use when considering their development application. The applicant also notes that the Council have imposed conditions as part of their approval that aim to manage any potential for undue offence or annoyance to those residing nearby.

Their proposed trading hours also seem quite appropriate for a Restaurant in this location, with liquor sales proposed to cease at 10pm each night. As the applicant notes, there is another licensed premises right next door which can trade until 5am so I can not foresee a Restaurant trading to 10pm creating noise in excess of this other premises.

Taking all these factors into consideration, I am not satisfied that it is likely the proposed premises will create a level offence or annoyance to those residing nearby that would meet the test of being 'undue', and therefore warrant me exercising my discretion to refuse the application on this ground.

Capacity and Trading Hours

The applicant notes that both the capacity and trading hours are determined by local council as part of their development approval and therefore Council have determined that these are appropriate taking into consideration the location of the premises in a suburban business zone.

Our office is guided by local councils and/or private certifiers when it comes to setting capacities, and there does not appear to be any exceptional circumstances in this instance to warrant restricting the capacity beyond what Council has determined is appropriate. The same can be said for the trading hours, which as I have discussed above, I am of the view are appropriate given the nature and location of the premises.

Adequate Licensed Premises

Some of the submission argue that there are already sufficient licensed premises in the area and another licensed venue is not needed in the area. This is not one of the grounds in which a submission can be made, as set out in section 77 of the Act. There is no requirement in the Act for the applicant to satisfy the Authority that there is a need for their premises in that location.

Parking

One of the significant matters of concern, raised by almost every person and business who lodged a submission, is the issue of parking in the area.

I note that the Liquor and Gambling Commissioner is only responsible for regulating the sale and supply of liquor, issues in relation to traffic flow and parking do 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.

Further, as the applicant points out this is not a valid ground of submission for nearby residents and it is only local councils, under strict conditions, who may make submissions to the Licensing Authority regarding planning matters. The issues of parking would have undoubtedly have been considered by council when assessing their development application.

For these reasons I won't be taking the concerns in relation to parking into consideration when assessing this application for a Restaurant and Catering Licence.

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
17 Mar 2022