

Decision Notification

Application Details

Application no.	211408
Licence No.	57319109
Licence Class	Restaurant & Catering
Premises Name	HNLV
Premises Address	Level 1, 253A-255 Seaview Road Henley Beach SA 5022
Applicant	HENLEY PAVILION PTY LTD
Application Type	Application for a Liquor Licence
Representative	Patrick Connelly - Clelands Lawyers

Outcome

Decision	Granted
Effective Date	02 Dec 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:

- George Kasimatis (29894)
- Peter Marios Louca (142848)
- Angela Anastasia Papas (109159)

Premises

New Premises

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

Capacity

The capacity of the venue is set at 120.

Determination Details

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

Jodie Boettcher, Bethany Boettcher, Harrison Boettcher, Allen Irvine and Kim Bond.

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

Granting the application would create undue offence, annoyance, disturbance or inconvenience

The effect on the amenity of nearby residents

The proposed restaurant and catering licence is inconsistent with other restaurant licences in the area

Potential for undue noise

Proposed trading hours for the premises are until 2am

One submission also states that residents are currently subjected to property damage and violence, along with fights and fear caused by out of control patrons of licensed premises.

I note that on 5 November 2021, Jodie Boettcher lodged additional information relating to her submission, which included what appears to be a portion of a development approval. This additional information was not provided to the licensing authority within 7 days of the determination date and was supplied to the applicant after the date for determination.

It is important to note that section 77 of the *Liquor Licensing Act 1997* (the Act) prescribes the grounds on which a submission can be made on. In particular, section 77(3) of the Act specifically prohibits submissions on matters that are or should be dealt with under the law relating to planning, unless they are made by a Council who have established a combined assessment panel.

The comments provided by the Commissioner of Police relate to matters under section 77(3) of the Act.

The applicant's representative has written to the Licensing Authority addressing the concerns raised above. A copy of this response was circulated to the objectors. I will summarise the response below.

The applicant submitted that it was unclear whether the objectors did in fact reside within the locality and provided reference to three Court decisions, each of these decisions detail undue offence, annoyance, disturbance or inconvenience that may be caused by licensed premises.

The applicant goes on to detail the nature of the proposed business and the locality. The application is for the grant of a restaurant and catering licence in the heart of Henley Square. Henley Square underwent a major 8 million dollar development in 2015 and is now a vibrant retail and commercial precinct. The proposed premises is to be situated on the first floor at 251-255 Seaview Road, Henley Beach. The ground floor of that building trades as Estia Restaurant and is surrounded by other restaurants. The premises is fitted out to create a new upmarket establishment consistent with the redeveloped square. The applicant has supplied images of the premises and its location to Henley Square and submits that the relevant development approvals have been granted by the City of Charles Sturt.

The applicant proposes to operate with a heavy focus on fresh seafood and local produce and notes that it is an inherent condition that the supply of meals must at all times be the primary service provided to the public. There is no intention to operate a hotel, nightclub or entertainment venue. The directors of the applicant company are all extremely experienced and reputable operators of licensed venues in South Australia, none of which have been the subject of any complaints pursuant to Section 106 of the Act.

In an effort alleviate any concerns in relation to the proposed operations, the applicant has proposed to amend the trading hours on Friday and Saturday nights to no later than 1am the following day.

As the submissions lodged by the parties are made on quite similar grounds I will address them together.

The Act requires me to consider whether granting the application would result in undue offence, annoyance,

disturbance or inconvenience to people who reside, work or worship in the area. The Licensing Court has considered 'undue noise' on many occasions, and has held that for the noise to be 'undue' it must be excessive or beyond what is appropriate or natural, and that residents should expect to tolerate a degree of disturbance or inconvenience in the interest of the community having access to a licensed premises. Applying the test in this scenario, I do not believe there is sufficient evidence to conclude that the granting of this application would cause undue offence, annoyance, disturbance or inconvenience.

In addition to this, I note that the proposed licensed premises is located in an area zoned as a suburban activity centre. This zone encourages active retail precincts that includes neighbourhood-scale shopping, business, entertainment and recreation facilities. It is a focus for business and community life and provides for most daily and weekly shopping needs of the community. I do not consider it unusual for a restaurant and catering licence of this size to be located within a suburban activity centre and note that it is quite common to find licenses of this nature in these types of areas.

I have undertaken searches to check whether other licensed premises of the this nature are held in the area and note that Henley square hosts a number of licensed premises, in particular restaurant and catering licences.

The licence class sought is a Restaurant and Catering licence which restricts the licensee to providing liquor only to persons with a meal, seated at a table, or attending a function. This licence class will not allow the applicant to operate a 'bar' which is commonly associated with noise.

The applicant has applied for the proposed trading hours of Sunday to Thursday midday to 1am the following day and Friday and Saturday midday to 2am the following day.

Section 57(2) of the Act, states that:

An application for a licence for premises or proposed premises must not be granted unless the licensing authority is satisfied—

- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
- (b) that any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained; and
- (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.

I note that under section 11C of the Act, the Commissioner should take steps to avoid inconsistencies with matters that are dealt with under the relevant planning laws. It is also important to note that whilst local Councils can regulate trading hours of premises, a licence issued under the Act only regulates the hours that liquor may be sold, supplied or consumed on the premises, not the actual trading hours of the premises. Whilst the two authorities are regulating different aspects of trade, where possible direct conflicts should still be avoided.

I note that the premises located at 1/253A-255 Seaview Road, Henley Beach is subject to Development Application Number 252/0413/17, issued by the City of Charles Sturt on 3 May 2019. This development application was lodged for the change in use of level 1 from residential to restaurant. Pursuant to Section 33 of the Development Act, 1993, the Development Application Number 252/0413/17 was granted Development Plan Consent subject to a number of conditions, condition 2 of the approval provides that the hours of operation of the activity be between 12:00pm and 12:00am on any day.

It appears quite clear from the information before me that the development approval granted by Council for the change

of land use was granted on the condition that the restaurant will only trade between midday and midnight.

I therefore do not consider it appropriate for the licensing authority to issue a liquor licence permitting the sale, supply and consumption of liquor on the premises outside the hours in which they are permitted to trade under the relevant planning laws.

In relation to the statement contained in one of the submissions that residents are currently subjected to property damage and violence, along with fights and fear caused by out of control patrons of licensed premises, there are mechanisms under section 106 of the Act to remedy situations where the behaviour of persons making their way to or from licensed premises, is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity. It is also noted that the statement includes matters that would require a response from the South Australian Police.

After considering the submissions lodged I am of the opinion that the application should be granted. In granting the licence, I restrict, as acknowledged by the applicant, the authorised trading hours under the licence to midday to midnight every day of the week, as outlined below.

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	Midday to Midnight	-
Tuesday	Midday to Midnight	-
Wednesday	Midday to Midnight	-
Thursday	Midday to Midnight	-
Friday	Midday to Midnight	-
Saturday	Midday to Midnight	-
Sunday	Midday to Midnight	-

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
02 Dec 2021