

# Decision Notification

## Application Details

Application no.	216475, 216476
Licence No.	57320281
Licence Class	Restaurant & Catering
Premises Name	Willy's
Premises Address	Unit 1 96 King William Road Goodwood SA 5034
Applicant	APR Group Holdings Pty Ltd , J PAK GROUP PTY LTD
Application Type	Application for a Liquor Licence, Application for Extension of Trading Area (S 69)
Representative	Andrew Wong - Lion Liquor Licensing Consultants

## Outcome

Decision	Granted
Effective Date	19 Aug 2022

## Procedural

I allow the applicant to vary their application as follows:

Under section 51(3) of the *Liquor Licensing Act 1997* (the Act) I allow the applicant to reduce the proposed trading hours and capacity sought in the application.

## Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- All approvals, consents or exemptions have been obtained
- The application has been advertised on the premises albeit noting that the notice was displayed 3 days late.

## People

### Position of Authority

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

- Darren Simon Packer (62139)
- Jessica Allison Packer (148770)
- Adam Peter Robinson (163944)

## Premises

### New Premises

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

### Capacity

The capacity of the venue is set at 55.

### 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dining area shall lapse and become of no effect if the permit issued by the local council lapses, or is cancelled, withdrawn or revoked.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 for consumption on the licensed premises authorised
- Sale of liquor for consumption at the site of a function off the licensed premises authorised
- 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	11:00 am to 10:30 pm	-
Tuesday	11:00 am to 10:30 pm	-
Wednesday	11:00 am to 10:30 pm	-
Thursday	11:00 am to 10:30 pm	-
Friday	11:00 am to 10:30 pm	-
Saturday	11:00 am to 10:30 pm	-
Sunday	11:00 am to 10:30 pm	-

## Reasons for Decision

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

APR Group Holdings Pty Ltd and J PAK Group Pty Ltd (the Applicant) have applied for a Restaurant and Catering licence in respect of premises situated at Unit 1, 96 King William Road, Goodwood and to be known as Willy's.

Pursuant to section 77 of the *Liquor Licensing Act 1997* (the Act) the following persons have lodged submissions opposing the grant of this application:

Sue Fitzsimons

Terence Hallion

Peter Schemeczko

Christine Webster

Julie Tiver

Anthony Smerdon

Marion Tregeagle

Tim Anstey

Helen Marshall

Adriana Santini

The concerns raised in the submissions have been made on quite similar grounds and therefore I will summarise collectively and address them together.

### Capacity

A number of Objectors have raised concerns with the proposed capacity of 80 for the premises stating that the premises would be unlikely to accommodate that many persons. There were also concerns raised with the outdoor space being heavily utilised due to the premises being unable to adequately accommodate 80 persons.

The Applicant had applied for a capacity of 80 persons. Under section 51(3) of the Act, I have allowed the Applicant to vary the application, to reduce the proposed capacity of the premises to 55. This is consistent with the planning approval provided by the City of Unley. It is to be noted that the outdoor dining portion of the licence application is not included in the number of persons accommodated in the calculation for the building rules assessment and consent.

The Applicant has sought approval under section 69 of the Act. This provision allows the Authority to extend the authority conferred by the licence so that the licensee is authorised to sell liquor in a place adjacent to the licensed premises for consumption in that place.

Section 69(3) of the Act, provides that an authorisation cannot be granted under this section unless, if the relevant place is under the control of a council - the council approves the application. As this area is under the control of the council, the council is responsible for setting trading hours for the use of the area and a capacity for the area.

### Trading hours

I note that some parties have taken issue with the proposed trading hours for the premises. The Applicant had applied to trade from 11am to 1am the following day, Monday to Sunday.

Under section 51(3) of the Act, I have allowed the Applicant to vary the application, to reduce the proposed trading hours to 11am to 10:30pm, Monday to Sunday.

The varied hours sought do not conflict with any development approvals the premises is subject to.

### Amplified and live music

A number of Objectors have raised concerns with music being played from the premises.

One objector has provided an excerpt from an article in Glam Adelaide, in this article the Applicant is quoted as saying "On weekends, Adam also intends for there to be mellow DJ acts and a rotation of live acoustic performances". The same objector has submitted that the proposed bi-fold or louvered windows will facilitate the egress of sound on to the street from live DJ's and acoustic performances. Another objector has submitted that outside music will be more audible and disruptive to local residents

It has also been submitted by another objector that if there is music it should only be played inside the venue and not outside. Whilst another objector has submitted that the possibility of music, either live or piped at night would have an obvious adverse effect on surrounding residential properties.

In relation to music emanating from the premises, section 57(1a) of the Act, 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.

### Parking

All of the Objectors have submitted that there are various parking issues in the area, with a number of objectors submitting that there is inadequate parking available.

In relation to the concerns raised in the submissions about potential parking issues at the premises this is a planning related matter and therefore, in accordance with section 77(3) of the Act I am not required to consider this.

### Proposed business to be conducted under the licence

A number of the Objectors have raised concerns that the business to be conducted under the proposed licence will be more of a bar than a restaurant. As part of these concerns the Objectors have submitted that an application for a restaurant and catering licence is an application for a restaurant with the intended primary service being food service with alcohol service being ancillary to this.

One objector has submitted that the publicity associated with the venture seems to imply the venue is more about the wine rather than the food. This same objector made reference to articles in the CityMag, Glam Adelaide and Broadsheet Adelaide and provided excerpts from these articles. In these excerpts the Applicant has made statements that imply the business to be conducted under the licence will be that of a wine bar and that meals will not be the main focus of the business.

Another Objector has submitted that the area is already well served by existing local wine bars and restaurants.

When determining an application for a Restaurant and Catering licence, I am not required by the Act to consider whether or not there are other similar businesses in the vicinity of the proposed licensed premises catering to the needs of the public.

### Noise and disturbance

A number of the Objectors have submitted that the proposed licensed premises will likely or inevitably result in undue annoyance, disturbance and inconvenience to people who reside in the vicinity of the premises.

A number of Objectors have raised concerns about potential noise into the early hours of the morning. I note that the applicant has varied the proposed trading hours for the premises.

One Objector, has submitted that this tenancy is different (to those on King William Road) in that it extends around the corner into a quiet residential street and consequently brings with it potential for huge impact on noise, disturbance and inconvenience for residents.

Another objector has stated that the potential noise is of great concern. The same objector went on to submit that it is inevitable that most of the patrons will park in Bloomsbury Street and the surrounding streets and the noise as people walk past will disturb residents until the early hours of the morning.

In addition to this, the Objector has also submitted there is already a level of noise on Friday and Saturday nights due to people returning to their cars after dining/drinking on King William Road. The increased number of people exiting from the proposed venue would obviously exacerbate this issue and the thought of having to put up with this 7 days a week is extremely concerning.

Another Objector has raised similar concerns about patrons leaving the premises standing around talking, starting up

cars and the like up to 1am in the morning in a residential street outside residents homes. This has been reiterated by another Objector who has submitted there will be noise from patrons returning to their vehicles at a time when most residents are asleep.

This has been reiterated by another Objector, who has submitted that the proposed hours would be very disruptive and cause excessive noise on work/school nights and residents sleep hours would be negatively impacted.

A number of Objectors have raised concerns about noise from outdoor areas and have submitted that this will be audible and disruptive to local residents and that the noise from these patrons will travel down the street.

An Objector has raised concerns that there are only two toilets available to patrons, accessible from the rear of the property – adjacent to our property. This again raises noise levels and security concerns.

The same Objector has also raised concerns with rubbish removal and noise and made the statement, that they anticipate the tenant will organise post-trading bottle and rubbish storage and subsequent removal which will not impact our adjoining property and would be undertaken in normal business hours. In addition to this, concerns have been raised about the addition of outdoor lighting to what is already a well-lit corner.

In relation to the concerns raised about toilet facilities, waste removal and lighting to outdoor areas this is not within the jurisdiction of the Commissioner.

#### Applicants response to submissions

In response to the submissions the Applicant has submitted that the proposed premises is zoned commercial and they will abide by all council trading regulations.

The Applicant also submitted that they are community minded business operators who plan to be respectful of all neighbours and that staff both verbally and via written signage will be emphasising to all patrons to be respectful of surrounding neighbours. The Applicant has stated that they “are bound by our responsible service of alcohol RSA thus avoiding any anti-social behaviour from overly intoxicated patrons.”

In relation to the business to be conducted at the premises that Applicant submitted:

“Our venue will have a joint focus. We plan to showcase the very best South Australian food and produce with beautifully curated share plates, local artisan cheeses and breads. Along with wines from small boutique winemakers - coming together to provide a wonderful harmonious dining experience.”

“We have a vision for our space that works in synergy with the local area. We have put a lot of time, effort and money into creating a beautiful space that residents can be proud to be close to. We are not a nightclub, we aren't a big pub with an even bigger, louder beer garden. We are lovers of good food and good wine, who love the street and want to add to its vibrancy.”

#### Request for further information

Pursuant to section 78(1)(a) of the Act, the Commissioner may, in the Commissioner’s absolute discretion, call for further written submissions to be made in relation to a particular application.

On 1 August 2022, the Commissioner’s Delegate (Hearings Delegate) wrote to the Applicant with the following concerns about the proposed business to be conducted under the Restaurant and Catering licence.

*It is noted that there are a number of on line articles which refer to the proposed business as a wine shop and bottle shop, in one article the applicant is quoted as saying “I just wanted to create somewhere where I could go for a couple*

*glasses of wine or grab a bottle close to home.”*

*A restaurant and catering licence does not permit the sale of liquor for consumption off the licensed premises.*

*In addition to this, the on line articles also refer to the business as a wine bar and the outdoor dining permit provided for the application states that the business trading name is Willy’s Wine Bar.*

*The Licensing Authority has generally held the view that the use of the word “Bar” in the name of a restaurant is not appropriate as it connotes an establishment where a patron may enter and obtain liquor contrary to the specific requirements that apply to restaurant and catering licences contained in section 35 of the Act.*

*Section 35(1) of the Act provides:*

*Subject to this Act and the conditions of the licence, a restaurant and catering licence—*

*(a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and*

*(b) authorises the licensee to sell liquor at any time for consumption on the licensed premises—*

*with or ancillary to a meal provided by the licensee or in prescribed circumstances; or*

*(ii) to a person—*

*(A) attending a function at which food is provided; or*

*(B) seated at a table; and*

*.....*

*In one of the online articles the applicant is quoted as saying:*

*“There will be food, too. Once the wine offering is locked in, Adam will create a complementary small plates offering, but the intention is to not draw attention away from the booze.”*

*“And if someone wants [more] food, I’ll be saying, ‘Take a wander down the street. There are some of Adelaide’s best restaurants just down the road’.”*

*Section 35(2) of the Liquor Licensing Act 1997, states:*

*A restaurant and catering licence is subject to the condition that business must be conducted at the licensed premises such that the supply of meals is at all times the primary service provided to the public at the premises, except as otherwise allowed by a condition of the licence.*

Pursuant to section 78(1)(a) of the Act, the Hearings Delegate asked the Applicant to provide further information as to how the proposed business intends to operate in the response the Applicant was asked to address the following queries:

- Provide details of the business plan or a copy of the business plan
- Will the supply of meals be the primary service provided at all times, will food be provided at functions, how is this consistent with the promotion of the business
- How will the business be advertised

On the 3 August 2022, the Applicant responded to the Hearings Delegate's request for information with a letter and a copy of the food menu for the business.

In the letter the Applicant submitted:

*I understand the confusion regarding the inconsistencies with the articles published by media sources such as; Glam Adelaide, City Mag and Broadsheet as you have outlined. Before the applicants engaged our services, they planned to open a small bar with a bottleshop to service the local community. They proceeded to apply for a General and Hotel Licence to allow them to operate the Bar and Bottleshop.*

*With an application lodged and as they were unaware of the licensing process, they were confident that they could proceed further and thus contacted media outlets to help them promote their future business and concept. At the time of the interviews in April 2022 all the details provided were true and correct and the business concept was a bar and bottleshop to be known as Willy's Wine Shop and Bar.*

*After starting the licensing process, they ran into some hurdles and, as a result, engaged our services to assist them with the licensing process. After discussing with the applicants the difficulty in obtaining a General and Hotel Licence in this particular location, they decided to pivot their business to become a restaurant instead of the bar and bottleshop concept. In May their application for a General and Hotel Licence was withdrawn and we applied for a Restaurant and Catering Licence on their behalf.*

*The applicant has since rebranded to become "Willy's" and pivoted the business to become a restaurant to showcase the best of South Australian food and accompanied by a selection of fine wine. Willy's will curate food and wine and mindfully pair them together to create a new fine dining experience for South Australia. As the business will now be a restaurant, the kitchen will be open during all hours of trade. Functions will also be fully catered for with canape, grazing boards and other packages available. The business will only be advertised as a Restaurant there will be no mention of a Bar or Bottleshop as this was the old concept. The applicants have contacted Glam Adelaide, City Mag and Broadsheet to have the existing articles removed and to instead promote their new Restaurant concept. Alongside a full dining menu they will also have a daily selection of cheeses from small artisan producers and fresh bread supporting local bakeries.*

*We understand the confusion that the original publications have caused, which were accurate at the time of the interview. However, we want to reaffirm that the business concept has since pivoted, with the service of food being the primary focus.*

## Decision

Section 35 of the Act sets out the criteria which must be satisfied before a Restaurant and Catering licence may be granted. It emphasises that the consumption of liquor should be ancillary to a meal or at a function at which food is provided.

Section 35 of the Liquor Licensing Act 1997 relevantly provides:

*(1) Subject to this Act and the conditions of the licence, a restaurant and catering licence—*

*(a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and*

*(b) authorises the licensee to sell liquor at any time for consumption on the licensed premises—*

*(i) with or ancillary to a meal provided by the licensee or in prescribed circumstances; or*



*(ii) to a person—*

*(A) attending a function at which food is provided; or*

*(B) seated at a table; and*

*(c) authorises the licensee to sell liquor in accordance with a condition under subsection (3).*

In addition to this section 35(2) of the Act states:

*A restaurant and catering licence is subject to the condition that business must be conducted at the licensed premises such that the supply of meals is at all times the primary service provided to the public at the premises, except as otherwise allowed by a condition of the licence.*

I am satisfied with the Applicant's explanation of the serious of events prior to lodging the application for a restaurant and catering licence.

I note that the proposed business name for the Applicant's application for general and hotel licence was Willys Wine Shop and that the proposed business name for the restaurant and catering licence is Willy's.

The Applicant has submitted that the business will now be a restaurant and that the kitchen will be open during all hours of trade. The Applicant has also submitted that functions will also be fully catered for with canape, grazing boards and other packages available.

The Applicant has submitted that the business will only be advertised as a Restaurant there will be no mention of a Bar or Bottleshop.

I also note that the menu provided by the Applicant, includes a number of menu options including appetisers, mains and deserts, this is consistent with the Applicant's submission that the business will operate as a restaurant.

I am therefore satisfied from the information before me that the proposed premises will operate in a different fashion to that originally made public by the Applicant.

I am also satisfied by the Applicant's submission and assurances that the principal business to be conducted at the premises will be the provision of meals.

The Act requires me to consider whether granting the application would result in undue offence, annoyance, disturbance or inconvenience to people who reside in the area, a prominent concern raised by a number of objectors. The Licensing Court has discussed 'undue noise' on many occasions, with it being 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 noise to nearby residents.

Whilst the premises is located adjacent to a suburban area, 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. I do not consider the trading hours unreasonable either, the Applicant has amended the application and only seeks to sell and supply liquor until 10:30pm, which is not unusual for a restaurant near a suburban area.

After considering the content of the application, the concerns raised in the submissions opposing the grant of the Restaurant and Catering licence, the Applicant's response to the submissions and the Applicant's response to the



request for further information I am of the opinion that the application should be granted.

## Under Delegation from the Liquor and Gambling Commissioner



Jane Widdowson  
Hearings Delegate  
19 Aug 2022