

Decision Notification

Application Details

Application no.	213336, 213181, 213184
Licence No.	57602992
Licence Class	Liquor Production & Sales
Premises Name	Nepenthe Wines
Premises Address	93 Jones Road HAHNDORF SA 5245
Licensee	Australian Vintage Ltd
Application Type	Variation to Conditions (Upgrade), Application for Alterations, Application for Redefinition
Representative	Ben Allen - Wallmans Lawyers

Outcome

Decision	Conditional Grant
Effective Date	15 Feb 2022

Requirements

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

- Landlord's consent has been obtained
- The application for variation to conditions has been advertised. The applicant has development approval.

Premises

Capacity

- The capacity of the venue is set at 150.
- The capacity has increased from 50 persons to 150 persons.

Alterations/Redefinition

I approve the proposed alterations to the premises in accordance with the plan lodged with the application subject to a certificate of occupancy being provided to the licensing authority by 1 February 2023 and an order being issued for the use of the new areas.

The proposed alterations to the premises include an extension of the cellar door and the addition of a deck.

I approve the redefinition of the licensed area to include the above mentioned areas and an outdoor area.

The licensed area will be redefined in accordance with the plan lodged with the application and the capacity varied upon approval for use of the new areas being issued by the licensing authority.

The licensee shall notify the Liquor and Gambling Commissioner within seven days of any changes to the approved plans submitted with this application.

Conditions

The following conditions are added to the licence

- The number of functions, where the capacity may increase up to 400 is limited to two per calendar year.

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	10:00 am to 11:30 pm	-
Tuesday	10:00 am to 11:30 pm	-
Wednesday	10:00 am to 11:30 pm	-
Thursday	10:00 am to 11:30 pm	-
Friday	10:00 am to 11:30 pm	-
Saturday	10:00 am to 11:30 pm	-
Sunday	10:00 am to 5:00 pm	-

Reasons for Decision

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

Exemption from responsible person requirements

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.

I note that the licensee currently has an exemption from this requirement.

As part of the application, I have reviewed this exemption and asked the applicant to provide a submission as to why the exemption should remain on the licence. In response to this request the licensee has advised that the exemption from responsible person is no longer required.

The exemption from responsible person will therefore be removed from the licence when the licensing authority approves the use of the new areas.

Trading hours

The current approved trading hours for the liquor production and sales licence are Monday to Sunday 10am to midnight.

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 93 Jones Road, Balhannah has been issued planning approval by the Adelaide Hills Council for Development Application Number 20/500/473 on 4 February 2021.

Development Application Number 20/500/473 was granted Development Plan Consent subject to a number of conditions, condition 7 of the approval provides that the opening hours of the cellar door shall be 10:00am to 5:00pm 7 days a week, with the exception of 12 functions a year, in which case the opening hours shall be 10:00am to 11:30pm Monday to Saturday and 10:00am to 12.30am the following day New Year's Eve.

It appears quite clear from the planning approval before me, that the longest approved hours of trade for the premises (excluding New Year's Eve) is for the 12 functions a year.

The Act provides provision for New Year's Eve trading for licences that are authorised for the sale of liquor for consumption on the licensed premises, that the sale of liquor for consumption on the premises may continue until 2 am on New Year's Day. Noting that a premises must have the relevant planning approval for this to occur.

I do not consider it appropriate for a liquor licence, for the sale, supply and consumption of liquor on the premises to exceed the hours in which a premises are permitted to trade under the relevant planning laws.

It is therefore appropriate for the licensing authority to amend the hours of trade for the liquor licence to those permitted under the relevant planning laws.

Under section 43 of the Act, the trading hours for consumption on the licensed premises will be amended to Monday to Saturday 10 to 11:30pm and Sunday 10am to 5pm when approval is provided for the use of the new areas.

Premises address

I note that from the documentation provided as part of this application that it is evident that the correct address for the premises is 93 Jones Road, Balhannah SA 5242.

The premises address will be updated when approval is provided for the use of the new areas.

Under Delegation from the Liquor and Gambling Commissioner



Jane Widdowson
Hearings Delegate
15 Feb 2022