

# Decision Notification

## Application Details

Application no.	210938
Licence No.	57611682
Licence Class	Liquor Production & Sales
Premises Name	McCarthy's Orchard
Premises Address	207 Sand Road McLaren Vale SA 5171
Licensee	Lisa Jane McCarthy, Mark David McCarthy
Application Type	Variation to Conditions (Upgrade)

## Outcome

Decision	Granted
Effective Date	19 Oct 2021

## Requirements

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

- The application has been advertised
- All approvals, consents or exemptions have been obtained

## Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	10:00 am to 6:00 pm	-
Tuesday	10:00 am to 6:00 pm	-
Wednesday	10:00 am to 6:00 pm	-
Thursday	10:00 am to 6:00 pm	-
Friday	10:00 am to 11:00 pm	-
Saturday	10:00 am to 11:00 pm	-
Sunday	10:00 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.

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

As part of the application to increase the trading hours, I have reviewed this exemption and asked the applicant to provide a submission as to why the exemption should remain on the licence. The applicant has supplied a short

submission.

The approved trading hours for consumption on premises are Monday to Sunday 10am to 3pm. As part of this application the licensee now seek to trade until 6pm on Monday to Thursday and until 11pm Friday to Sunday.

This is a significant increase to the approved trading hours, and it is therefore prudent to review whether the exemption from the responsible person requirements is still appropriate in the circumstances.

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. To allow the continuation of the exemption, I must be satisfied that the business conducted under the licence is of a limited scope.

I note that the exemption from responsible persons was granted in November of 2012. In 2019, the licensed area was increased and the conditions of the licence varied to provide for a cellar door.

The premises is a cellar door open to the public. It is therefore quite evident that liquor, in this case wine, is their primary and predominant purpose.

I have considered the submission made by the licensee, the category of licence held by the licensee, the extent of the trading hours and the capacity of the premises.

Given all of the above, I am not satisfied that an exemption from the responsible person requirements can remain on the licence without compromising the principle of responsible service of alcohol and consumption of liquor. The exemption from responsible persons is therefore removed from the licence.

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 at all times the premises are open to the public

## Under Delegation from the Liquor and Gambling Commissioner



Jane Widdowson  
Hearings Delegate  
19 Oct 2021