

Decision Notification

Application Details

Application no.	213131
Licence No.	57612701
Licence Class	Liquor Production & Sales
Premises Name	5 O'Clock Somewhere
Premises Address	101 Gilbert Street ADELAIDE SA 5000
Licensee	5 O'Clock Somewhere Pty Ltd
Application Type	Variation to Conditions (Upgrade)
Representative	Didier Vollerin - Australian Hotels Association (SA)

Outcome

Decision	Granted
Effective Date	09 Feb 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 vary the application to increase the trading hours from Monday to Sunday 8am to 11pm to Monday to Sunday 9am to 11pm.

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	9:00 am to 11:00 pm	-
Tuesday	9:00 am to 11:00 pm	-
Wednesday	9:00 am to 11:00 pm	-
Thursday	9:00 am to 11:00 pm	-
Friday	9:00 am to 11:00 pm	-
Saturday	9:00 am to 11:00 pm	-
Sunday	9:00 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 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 of the premises, 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 the following submission:

“This venue is in the CBD, has a capacity of 90, trading hours are currently 8am to 8pm, application with the Delegate to vary hours as per the Development Application 9am to 11pm, an increase in 2 hours of trade per day.

The venue is a Cellar door, current capacity is 19 people (1 in 4 sqm), at the peak of trade during Covid, capacity of 57 (3 in 4 sqm). The reason for the Exemption (applied for with the licence back in October 2014) as I understand it, is the majority of staff that work at the venue, also work at the Winery, a mix of staff who have knowledge of the product they are selling.

All staff have Responsible Service of Alcohol training, the venue has a Liquor Management plan, has the required liquor signage.

The venue does not hold functions, the space does not allow for these events.

The venue will trade to 11pm, as per council’s approval, this is not the late night venue that may trade past 2am, as per the Late Night Code of Practice, it can only trade to 11pm, well within the General Code of Practice.

There has never been any complaints / warnings / cautions etc, made to the Licensee, by council, or SAPOL, or CBS. (as per indicated by the delegate of the Licensee)”

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.

The approved trading hours for the premises are Monday to Sunday 8am to 8pm.

As part of this application the licensee now seeks to trade Monday to Sunday 9am to 11pm.

I note that the exemption from responsible person was granted in October 2014 at the time the licence was granted. Following this in March 2016 an application for variation to conditions to increase the trading hours for the premises was granted.

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. The capacity of the premises is 90.

Although the premises capacity may currently be limited due to COVID-19 pandemic restrictions, these restrictions are temporary and I have to consider the exemption against the potential capacity of the premises.

The premises is located on the southern side of the Adelaide central business district.

Under section 39 of the Act, the licence permits without restriction, the sale and supply of:

Their product for consumption on (in any quantity); and

Their product, and other liquor of the same type for the purposes of comparison, by way of sample; and

Any liquor for consumption with a meal they have provided; and

Any liquor for consumption at a function at which food is being provided; and

Any liquor for consumption to a person who is seated at a table

In addition to this, a responsible person for the purposes of the Act, is an authorised person in relation to licensed premises.

Schedule 4 of the Act states:

authorised person , in relation to licensed premises, means—

(a) the licensee; or

(b) a responsible person for the licensed premises; or

(c) a police officer; or

(d) a person who holds a security agents licence that authorises the person to perform the function of controlling crowds in licensed premises under the Security and Investigation Industry Act 1995;

The Act provides an authorised person with powers and controls that are not afforded to staff of licensed premises.

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

I can no longer conclude that the business conducted under the licence (being the sale and supply of liquor) is of a limited scope. For this reason, the exemption is 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
09 Feb 2022