

Decision Notification

Application Details

Application no.	209290
Licence No.	57008261
Licence Class	General & Hotel
Premises Name	Bodega Winebar
Premises Address	150 Main Road McLaren Vale SA 5171
Applicant	BENCHMARK (SA) PTY LTD
Application Type	Application for a Liquor Licence
Representative	Hugh Davidson - David A Watts & Associates

Outcome

Decision	Conditional Grant
Effective Date	11 Nov 2021

Requirements

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

- Landlord's consent has been obtained
- The application has been advertised
- The Applicant has Development Approval

Certificate

A certificate of approval is issued for the premises to be situated:

150 Main Road
McLaren Vale SA 5171

The certificate is granted subject to the following conditions:

- The certificate shall lapse on 12 October 2022 if the premises are not completed by this date.
- The applicant must submit a copy of Certificate of Occupancy at which time a further order will be made and the final approved plan and licence will be issued.
- The certificate of approval must be converted to a licence prior to the applicant commencing trade at the premises.

People

Position of Authority

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

- PETER JOHN CAPURSO (167733)
- Norman George Doole (10925)
- Mina DiFabio (74147)
- Giuseppe Di Fabio (8663)
- Jane Catherine Doole (10924)

Premises

New Premises

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

Capacity

The capacity of the venue is set at 100.

Community Impact Assessment

The application is a designated application for the purposes of section 53A of the Act.

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 off the licensed premises authorised

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Tuesday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Wednesday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Thursday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Friday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Saturday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm
Sunday	9:00 am to 2:00 am the following day	9:00 am to 10:00 pm

Reasons for Decision

BENCHMARK (SA) PTY LTD (**the Applicant**) has applied for a General and Hotel Licence in respect of premises situated at 150 Main Road, McLaren Vale SA 5171, to be known as Bodega Wine Bar.

In order for this application to be granted I must be satisfied that the granting of the application is in the community interest. In making this determination, under section 53A(2) of the *Liquor Licensing Act 1997* (**the Act**), I must have regard to:

- the harm that might be caused (whether to a community as whole or a group within a community) due to the excessive or inappropriate consumption of liquor; and
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact of the amenity of, the locality of the premises or proposed premises; and
- the nature of the business conducted or to be conducted under the licence (as prescribed).

I must also apply the Community Impact Assessment Guidelines (**the Guidelines**) when making a determination on the application. Importantly, the Guidelines state that: *“The onus is on the applicant to satisfy the licensing authority that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

Pursuant to section 3(2) of the Act, when deciding whether or not to grant this application, I must have regard to the objects of the Act as set out in section 3(1) of the Act.

As part of the application, the Applicant has provided a Community Impact Assessment Submission (CIAS). It is the information provided in this submission, the application material itself, submissions opposing the grant, and the Applicant's submissions in reply, that my decision is based on.

Nature of the business

The proposed business is a wine and tapas bar located in the main street of McLaren Vale, operating primarily as an evening venue, initially 5 days per week from Wednesday to Sunday. The Applicant seeks to trade under the licence 7 days per week to allow for future growth opportunities.

The Applicant advises that the tapas food will focus on regional produce and South Australian seafood with an Asian twist. Tapas will be available from 5pm – 10pm with a food offering available at all times. The menu will offer a range of tapas such as chicken, prawn & sweet corn wontons with salted plum, seared scallops with sweet pomme puree & chilli jam, and confit salmon with lime oil & yuzu salt.

The wine list will showcase regional and Australian wine and offer an extensive selection of international wine varietals. Cocktails, spirits and a small selection of beer will also be offered.

The Applicant submits that:

“The tapas and wine bar is aimed at sophisticated clientele with a different offering to a traditional ‘Pub’.

The bar is expected to attract local wine business owners and respected industry professionals along with tourists visiting the area as a getaway from their corporate working week in the Adelaide CBD and surrounds. It will also support the existing Bed and Breakfast accommodation industry, as there are very few evening venues available to entice clientele to these local businesses.”

Entertainment will be provided by way of music playing through the venue's sound system. Occasionally a live acoustic guitarist may perform at the venue for a special booking or seasonal celebration.

The Applicant provided letters of support for the application from the following people:

- The Hon Leon Bignell MP, Member for Mawson
- Karena Armstrong, Co-owner of The Salopian Inn
- Jennifer Lynch, General Manager of McLaren Vale Grape Wine & Tourism Association
- Peter Cahalan, Regional Tourism Manager of Fleurieu Peninsula Tourism,
- Michael Fragos, CEO & Chief Winemaker of Chapel Hill McLaren Vale
- Pip Forrester AM, Chair of Willunga Farmers Market and Fleurieu Peninsula Food Inc
- Chris Thomas, Chief Winemaker and Managing Director of Dowie Doole
- Anthea and Stu Cross, owners and operators of The Vineyard Retreat
- Brad Rey, Vigneron and Director of Zonte's Footstep Pty Ltd
- Anna Small, Arthouse Director of Fleurieu Arthouse
- Paul and Mei Ling Beck of Helivista Tourism

- Chook, Host of Chook's Little Winery Tours

Locality

The Guidelines provide a guide for Applicants in relation to the 'locality' applicable to their application, and state that Applicants are required to identify the geographic area from which they expect to draw customers having regard to the intended nature of the business of the licensed premises.

In accordance with the Guidelines, the locality has been identified as an area within a 5km radius of the proposed premises, and includes the suburb of McLaren Vale and 9 surrounding suburbs and localities.

I note the following submission in relation to the locality:

"The Applicant expects to draw customers from the McLaren Vale area, particularly people employed in the wine industry as well as the touring public from within the Adelaide metropolitan area, South Australia, and wider Australia. Upon recommencement of international travel, the Applicant also expects to draw touring customers from overseas to the popular tourist destination of the McLaren Vale wine region."

Potential Harm

The Applicant has obtained the Area and Location Reports from the Community Impact Portal to identify communities and facilities within the locality.

The Applicant submits that these reports and the ABS Census data "*indicate a prosperous industry savvy area with very few at risk groups.*" The Applicant goes on to say:

"It is not anticipated that the nature and business model of this venue will attract or appeal to at-risk members of the community. The licensee as it has proven with previous venues will ensure compliance with all obligations under the Liquor Licensing Act and Code of Practice and ensure all staff are appropriately trained and informed of their obligations."

The Applicant has identified the following community buildings and facilities in the locality:

- 2 primary schools and 1 kindergarten;
- 3 childcare centres;
- 1 skateboard half pipe;
- McLaren Vale and Districts War Memorial Hospital.

The Applicant advises that there are no drug or alcohol treatment centres, accommodation or refuges for young people or disadvantaged people in the local area, no dry zones and no places of worship in the immediate area.

The Applicant has identified a range of policies and procedures to be implemented to ensure any risk of harm is satisfactorily mitigated, such as:

- A full CCTV security system including cameras monitoring public spaces.
- A zero tolerance policy for any incidents involving sexual, racial or other harassment for both staff and patrons.
- A policy for any patrons displaying signs of intoxication to be refused service and offered water. If the patron does not comply with this direction then they will be asked to leave.

- Requesting the Police to attend if a patron refuses to leave, or in any other circumstances deemed fit by the Responsible Person in charge of the licensed premises.

The Applicant does not anticipate “*that the nature and business model of this venue will attract or appeal to at-risk members of the community.*”

Cultural, Recreational, Employment and Tourism Aspects

In terms of economic benefits, it is intended that the Applicant will initially employ approximately 5 full time staff and 2 part time casuals, with the expectation that this number will increase during the summer months. The Applicant anticipates that the majority of staff will be hired locally.

Based on past experience at the Applicant’s other venues and the former business at the premises, Blessed Cheese, the Applicant advises that trade comprises approximately 20% McLaren Vale locals, 35% SA tourists, 35% other Australian tourists and 10% international tourists.

The Applicant’s projections and modelling are based on an average spend of \$40 - \$60 per head at Bodega Wine Bar.

Social Impact and Impact on the Amenity of the Locality

The Applicant submits that the premises is located on the main street of the McLaren Vale township in a commercial area, “*which will ensure no disturbance to the local community as there are no residents within the immediate vicinity of the proposed premises.*”

The Applicant refers the Licensing Authority to the Area and Locality Reports from the Community Impact Portal along with the ABS census data for details of crime statistics, social profile information such as population and unemployment in the relevant council areas, and the location and type of existing licensed premises.

The Applicant notes that there is one traditional General and Hotel Licensee in the area, being Hotel McLaren. The Applicant submits that the remainder of the General and Hotel Licensees in the locality are vineyards, information centres and restaurants.

The Applicant submits that:

“The Applicant considers its market and respective business to be different from the clientele attracted to Hotel McLaren.

The Applicant expects that based on past experience at the Blessed Cheese premises, that the proposed premises will attract clientele that will prefer a more upscale intimate wine bar experience than that of the traditional pub experience offered by Hotel McLaren and as such is not in direct competition with this premises.”

Submissions from residents opposing the application

Submissions opposing the application were received from the following nearby residents:

- Mr Greg Walker
- Mr Roger Freeman
- Mrs Adele Pugsley
- Mrs Taryn Van Den Brink
- Mr Edmund Florez

- Mrs Jenny Hanson
- Mrs Elizabeth Darkes

The common objections raised by the residents relate to the following:

- The close proximity of the proposed premises to nearby residential housing located at 152 Main Street and Kalamata Court, McLaren Vale.
- The statement made by the Applicant that there will be “*no disturbance to the local community as there are no residents within the immediate vicinity of the proposed premises.*”
- The operation of a live music venue during the trading hours sought by the Applicant.
- The extended trading hours sought by the Applicant to 2:00am.
- Insufficient parking.
- Failure to engage and consult with nearby residents.
- Failure to obtain Development Approval.

Submission from Hotel McLaren (SA) Pty Ltd opposing the application

Hotel McLaren (SA) Pty Ltd (**Hotel McLaren**) also filed a submission opposing the application.

Hotel McLaren submits that the Applicant has failed to discharge the onus to satisfy the Licensing Authority that the grant of the application is in the community interest.

Hotel McLaren makes the following observations and submissions in relation to the Applicant’s CIAS using the numbering below:

1. The licence sought by the Applicant carries the broadest range of trading rights, in that liquor can be sold for both on and off premises consumption without any limitation on range. Hotel McLaren submits it is self-evident that the granting of this type of licence, particularly with authorisation for sale of liquor for consumption off premises, carries the highest risk of harm due to excessive or inappropriate consumption of liquor.
2. The Applicant has failed to engage and consult with a number of relevant stakeholders such as the relevant local health network, Drug and Alcohol Services (SA) and Wellbeing McLaren Vale. Hotel McLaren submits that the Applicant should have engaged with the facilities identified in Part 4.2 of the CIAS and other relevant stakeholders in order to address the objects of the Act set out under section 3(1). Hotel McLaren questions the Applicant’s submission that the nature of the proposal is not anticipated to have any negative impacts on the facilities identified given the lack of engagement with these facilities.
3. Further information in relation to engagement with and minimisation of harm with the at-risk groups referred to in the CIAS should have been provided. Hotel McLaren notes previous decisions that have referred to a failure to address any at-risk groups in an application for the sale of liquor solely on the basis of the nature of the business as concerning, such as *Sometimes Always* (20 April 2020). Hotel McLaren also refers to *Kauri Community and Sports Centre* (22 April 2020) to make the point that there are still risks associated with alcohol being available in an affluent area.
4. No evidence has been provided to substantiate the Applicant’s assertion that the higher price point will not encourage the rapid or excessive consumption of liquor. Further to this, no proposed stock list or price list has been provided.

5. In response to the Applicant's assertion that the sale of liquor for off premises consumption will complement existing accommodation offerings by providing a place for evening liquor sales for takeaway, Hotel McLaren submits:

(a) Hotel McLaren, located approximately 650m from the proposed premises, is authorised to sell liquor for off premises consumption until midnight Monday to Saturday and 9:00pm on Sunday;

(b) a BWS is located approximately 150m from the proposed premises and is authorised to trade until 9:00pm 7 days per week;

(c) there are numerous cellar door outlets in the McLaren Vale area.

Whilst acknowledging that the former 'needs test' no longer applies, Hotel McLaren submits that consideration should be given to the existing availability of liquor in the community in light of the potential harm that may be caused due to the excessive or inappropriate consumption of liquor.

6. In relation to policies and procedures to ensure compliance with the licence and legislative obligations, the Applicant has merely re-stated existing legal obligations, save for the installation of CCTV. A detailed management plan has not been provided with the CIAS.

7. No evidence has been provided to substantiate the assertion that Bodega Wine Bar will attract different clientele to Hotel McLaren. Hotel McLaren questions the relevance of this statement to the assessment of whether granting the application is in the community interest.

8. The Applicant submits it is an experienced operator, however, the CIAS does not identify the licensed premises operated or formerly operated by the Applicant or the persons to be approved in positions of authority.

9. The trading hours sought are extensive, running from 9:00am to 2:00am the following day, which is a total of 17 hours per day.

10. At Part 3.1 of the CIAS, the Applicant submits that the registered proprietor of the premises is a person in a position of authority with the Licensee entity. Hotel McLaren notes that the registered proprietor of the premises is Valente Investments Pty Ltd, and points out that a company cannot be approved as a person in a position of authority. Hotel McLaren questions the relevance of this submission to the community interest.

Paragraphs 11 – 13 provide submissions in relation to planning approval. Hotel McLaren refers to sections 57 and 58 of the Act, and notes that the Applicant has obtained planning approval authorising the change of use of the premises from café to wine bar. Hotel McLaren submits that it is not clear from the planning approval that licensing of the premises under a General and Hotel Licence is permitted.

In conclusion, Hotel McLaren submits that the grant of the application is not in the community interest and says it is unclear whether the Applicant has obtained all of the required consents and approvals.

Applicant's submissions in reply to the resident objectors

The Applicant acknowledges the proximity to residential housing, however, it does not believe its proposal will have an unreasonable effect on nearby residents. The Applicant points out that Condition 3 imposed by the City of Onkaparinga as part of the Development Approval states:

"The rear courtyard area shall be vacated by 10pm and the venue managed by staff onsite, to prevent unreasonable noise nuisance affecting nearby residents or businesses."

The Applicant has accepted this condition in order to maintain and protect residential amenity, together with

Condition 4, which states:

“No live music shall be played at the venue, other than acoustic music inside that shall not create unreasonable noise nuisance affecting nearby residents. Recorded or DJ music shall also be kept to reasonable noise levels, particularly for the rear courtyard area, with reference to the relevant Environment Protection Authority standards.”

In relation to the extended trading hours sought, the Applicant submits that:

“The proposed hours for consumption of liquor on the licensed premises were considered prior to lodgement of the application. The proposed Authorised trading hours are in line with other licensed venues across the area and are not necessarily the same as the anticipated regular trading hours, but do afford a proposed business flexibility such as the ability to have functions that are in line with other businesses in the area.”

The Applicant provides the trading hours of other licenced premises in the area by way of comparison:

Hotel McLaren

Consumption on premises: Mon - Sun 5am - 2am following day

Consumption off premises: Mon - Sat 5am - Midnight Sunday 8am - 9pm

Oscars Dining

Consumption on premises: Mon - Sun 5am - 2am following day

Consumption off premises: not applicable

Ogre Brewing Co

Consumption on premises: Mon - Sun 5am - 2am following day

Consumption off premises: Mon - Sun 9am - 10pm

In order to address the issue of parking, the Applicant submits that:

“The City of Onkaparinga has reviewed and assessed parking requirements as part of the Development Approval process and has granted the Applicant with Development Approval.”

In response to the objection that the Applicant failed to engage and consult with nearby residents, the following submission is provided:

“The Applicant has complied with all the required advertising and notification for both the approved Development Application and the pending liquor licence application as set out by both the City of Onkaparinga and the Liquor and Gaming Commissioner.”

The objection on the ground that the Applicant failed to obtain Development Approval from the City of Onkaparinga has now been addressed as approval was granted on 12 October 2021.

Applicant’s submissions in reply to Hotel McLaren

In its submissions in reply, the Applicant addresses each observation and submission of Hotel McLaren using the same numbering as follows:

1. The Applicant respectfully disagrees and notes that CIAS was reviewed by a Hearings Delegate before the

application was advertised.

2. The Applicant undertook significant engagement with the community, including Hotel McLaren, as is evidenced by the 12 letters of support provided with the CIAS. In response to the remaining argument put forward at paragraph 2, the Applicant provides the following response:

“The Applicant notes that Drug and Alcohol Services SA (Southern Fleurieu) is in Morphett Vale and not McLaren Vale. Wellbeing McLaren Vale is a primary health care provider, but does not provide any, Drug or Alcohol related services so was not considered relevant to the application. Other GP clinics in McLaren Vale, including McLaren Vale Family Practice are primary health care providers, and do not provide any, Drug or Alcohol related services so was not considered relevant to the application.”

3. The Applicant maintains that the information contained in the CIAS adequately addresses at-risk groups for the proposed business operation in line with the relevant ABS data provided.

4. The Applicant is of the view that the target market for the proposed business and higher price point of the liquor products being sold will attract a different audience to one that intends to drink to excess. The Applicant considers stock lists and proposed price lists to be commercially sensitive information prior to opening, and submits that it would be unreasonable to provide such information before the licence has been granted.

5. The Applicant submits that the liquor products being offered at Bodega Wine Bar such as single vineyard wines, interesting varietal wines and international wines will be complementary to the products sold at the existing licensed premises noted by Hotel McLaren, and further submits that none of the proposed products are readily available at either Hotel McLaren or BWS McLaren Vale.

6. The Applicant is of the opinion that it has complied with the requirements of the CIAS in terms of policies and procedures to minimise harm, and will develop additional management plans prior to operation as required by the Licensing Authority.

7. The Applicant submits that Bodega Wine Bar will offer a different experience to a traditional pub such as Hotel McLaren and maintains its position as stated in the CIAS as the why the granting of the application is in the community interest.

8. The Applicant submits that:

“Individuals approved to hold a position of authority as part of this application have a long history of safe and successful venues in the local area and South Australia.”

9. The Applicant respectfully disagrees that the trading hours sought are extensive, and provides the comparison of other licensed premises in the area as outlined in the submissions in reply to the resident objectors above. The Applicant does not intend to trade from 5am – 2am consistently. It is intended that the business will trade from late afternoon until closure.

10. The Applicant submits that:

“Individuals approved to hold a position of authority as part of this application and within the corporate structure of Valente Investments Pty Ltd, have a long history of safe and successful venues in the local area and South Australia.”

11. Development Approval has been granted.

12. Development Approval has been granted.

13. The Applicant submits that it has applied for the appropriate liquor licence relevant to the proposed business operations. The Applicant confirms that it will operate the business in full compliance with the Liquor Licence and the Development Approval granted by the City of Onkaparinga.

Decision

I have considered and have had regard to the objects of the Act, as required by section 3(2) of the Act, in determining the application.

Harm minimisation is a key component of the community interest test, underpinned by the first object of the Act: “to ensure the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor.”

I note that SAPOL and the City of Onkaparinga have not objected to the application.

I have considered the harm that might be caused (whether to a community as a whole or a group within a community) due to the excessive or inappropriate consumption of liquor, and I am satisfied on the material before me that the risk of harm posed by the proposed licence is low.

I note that the Applicant has advised that it will develop additional management plans prior to operation as required by the Licensing Authority. The Applicant should note that it is required to be compliant with the Act, Regulations and the Code of Practice. The Code stipulates that a Licensee must ensure that all staff engaged by the Licensee have successfully completed nationally accredited responsible service of alcohol training by a Registered Training Organisation approved by the Commissioner. In addition to this, the Licensee is required to have an approved responsible person on the premises in accordance with section 97 of the Act. It is also a requirement of the Code that Licensees complete a Licensee Risk Assessment and Management Plan. The Licensee must provide to all staff involved in the service or supply of liquor on the licensed premises training in relation to the Management Plan to be implemented to address the risks associated with the operational practices. The training must be provided to all staff on induction and at least once in each subsequent 2 year period.

The Act requires an evaluative exercise that involves weighing the positive aspects of the proposed application with the negative aspects in order to determine whether granting the application is in the community interest.

I agree with the Applicant’s submission that Bodega Wine Bar will offer a different experience to a traditional pub such as Hotel McLaren given the type of food and liquor products being offered. I agree with the general theme of the letters of support that the McLaren Vale wine region would benefit from the establishment of such a wine bar as it will support the local economy and provide locals and visitors with an alternative venue to visit in the evenings once many of the wineries have closed. There is some force in Ms Armstrong’s observation that:

“An evening venue, with a casual yet refined feel will be an excellent addition to the already diverse offering in the region. I believe a bar such as Bodega Wine Bar will support surrounding businesses such as my own. The idea of tourism experience being greater than one venue is an attractive one. Pre and after dinner drinks or a light dinner in a stylish environment will only add to the tourist experience of brand McLaren Vale.”

I note the concerns raised by the objectors, particularly those raised by Hotel McLaren, however, I am of the view that these concerns have been adequately addressed by the Applicant in its submissions in reply.

There is no reason why the application should be refused on the basis of the matters outlined in s 57 of the Act such as the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; or prejudice to the safety or welfare of children attending nearby kindergartens and schools.

There is also no basis for refusing the application under the broad discretion available pursuant to section 53 of the Act. I am of the view that granting the application is in the public interest and will further the objects of the Act by offering a unique wine and tapas experience that is not currently offered by other licensed premises within the locality.

The onus is on the Applicant to satisfy the licensing authority that the grant of the application is in the community interest. On the basis of the submissions provided, together with the application and the submissions in reply to the objectors, I am satisfied that the grant of this application is in the community interest.

Accordingly, under section 53A(1) of the Act the application is granted.

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

Under Delegation from the Liquor and Gambling Commissioner



Stephanie Burke
Hearings Delegate
11 Nov 2021