

Decision Notification

Application Details

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| Application no. | 215963 |
| Licence No. | 57104902 |
| Licence Class | On Premises |
| Premises Name | Wood and Wine Studio |
| Premises Address | Shop 3 24 Gawler Street Mount Barker SA 5251 |
| Applicant | K & J Burgan Pty Ltd |
| Application Type | Application for a Liquor Licence |
| Representative | Andrew Wong - Lion Consulting Group |

Outcome

| | |
|----------------|-------------|
| Decision | Granted |
| Effective Date | 25 Jul 2022 |

Procedural

I allow the applicant to vary their application as follows:

- amend the capacity from 50 persons to 25 persons

Requirements

The requirement to provide the following in support of the application has been waived:

Community Impact Assessment

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

- Landlord's consent has been obtained
- The application has been advertised
- All approvals, consents or exemptions have been obtained

People

Position of Authority

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

- Jennifer Lynne Stewart (165552)
- Keith William Burgan (165553)

Premises

New Premises

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

Capacity

The capacity of the venue is set at 25.

Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when

determining this application: Mr Gary Coppola on behalf of the Australian Hotels Association and Mr Ben Allen on behalf of Fassina Investments Pty Ltd

Community Impact Assessment

The application is a designated application for the purposes of section 53A of the Act.
I am satisfied that the granting of this application is in the community interest.

Trading hours

The following are the approved trading hours

| | Consumption on premises | Consumption off premises |
|-----------|-------------------------|--------------------------|
| Monday | 9:00 am to 9:00 pm | - |
| Tuesday | 9:00 am to 9:00 pm | - |
| Wednesday | 9:00 am to 9:00 pm | - |
| Thursday | 9:00 am to 9:00 pm | - |
| Friday | 9:00 am to 9:00 pm | - |
| Saturday | 9:00 am to 9:00 pm | - |
| Sunday | 9:00 am to 9:00 pm | - |

Reasons for Decision

K & J Burgan Pty Ltd, on behalf of The Trustee For The Burgan Family Trust (**the Applicant**), has applied for an 'On Premises Licence' pursuant to s 33 of the *Liquor Licensing Act 1997* (**the Act**) in respect of a business with the trading name 'Wood and Wine Studio' which is to be located at Shop 3, 24 Gawler Street, Mount Barker (**the Premises**).

The Applicant has described the proposed offering in the following terms: "*The venue will be an art studio where students will do arts and crafts and get a complimentary glass of wine with it. There will be no sale of liquor*" and advised that "*the business will be a woodwork and design studio where patrons will make signs and other wood products while sipping on a glass of wine or beer. The business currently operates through a catering licence however they no longer wish to provide food to clients which is why they want to get an on-premises licence.*"

The Applicant seeks to trade between the hours of 9am - 9pm, 7 days per week, and initially sought a capacity of 50, but later requested to vary this to 25 persons, which was allowed by the Licensing Authority (**the Authority**).

Section 33 of the Act provides that the holder of an On Premises Licence may sell alcohol for consumption on the licensed premises at any time:

33—On premises licence

Subject to this Act and the conditions of the licence, an on premises licence authorises the licensee to sell liquor at any time -

(a) to a person on licensed premises for consumption on the licensed premises; and

(b) to a resident on licensed premises for consumption on or off the licensed premises.

An application for an On Premises Licence is defined in s 53A of the Act as a designated application. The Authority has waived compliance with the usual requirement for the Applicant to complete a Community Impact Submission, in accordance with the Community Impact Assessment Guidelines (**the Guidelines**). Irrespective of this, the application remains a 'designated application' for the purposes of the Act and may not be granted by the Authority unless the Authority is satisfied that the grant of the application is in the community interest and is not contrary to the public interest or inconsistent with the objects of the Act.

There have been 2 objections filed with the Authority in relation to this application.

The Australian Hotels Association (SA) (**AHA**) objected on the basis of the potential scope of the licence and trade permitted under same, and noted that the application for waiver of the need for a Community Impact Assessment relied in part on the limited quantity of alcohol intended to be supplied. The AHA submitted that the licence should be conditioned and referred to 2 other similar businesses (Studio Vino Glenelg 57104520 and Monkey Bar 57104570). The AHA has submitted that in the event the application is granted, it is appropriate that the Authority impose the following conditions:

"Liquor shall only be sold or supplied to persons attending a ticketed course event for the duration of, and up to 30 minutes after, the scheduled event.

Liquor supply shall be limited to a maximum of 2 drinks per person per course"

The Applicant has agreed to accept the conditions proposed by the AHA.

An objection was also filed on behalf of Fassina Investments Pty Ltd, the licensee of the Barker Hotel (**Barker Hotel Objection**) on a number of grounds, including that:

- there is no evidence as to the approvals, consents or exemptions required under the law relating to planning or building being in place for the proposed licensed business;
- no planning, building or development approval was made available for inspection nor any Certificate of Occupancy;

- there is nothing in the application material to establish the applicant's rights to use the common WC facility or the extent to which the "common" WC is currently shared with other premises;
- the site could, at its highest, arguably have existing use rights for planning purposes as a 'shop', but the business proposed is for a different land use than a shop and therefore the necessary approvals for Section 57(2) purposes are not in place and on that basis the application cannot be granted;
- the licence seeks a licensed capacity of 50 persons. The premises are not suitable for the licence as sought, and pursuant to the Building Code of Australia, taken at its highest the 1 common WC (even if it was for the exclusive use of this venue which would appear unlikely) a maximum number of persons permitted on site would be 25, including staff and any persons present;
- there are issues in terms of a lack of car parks, that there is restricted carparking available on Gawler Street (1 hour duration) whereas the workshops may take 3 hours or more. The Barker Hotel asserts that it has already observed patrons of the current Wood and Wine business parking in the private Hotel Barker carparking area and submits that granting the licence as sought for a business catering for 50 patrons and additional staff at a site where there is inadequate carparking and toilet facilities cannot be said to be unlikely to result in undue offence, annoyance, disturbance or inconvenience;
- the Applicant's representative refused to engage in any communication regarding the application and has not proposed any conditions to ensure the licence only trades in the manner described in the application material;
- the Applicant has not adequately addressed 'at-risk' groups in the locality and did not provide a risk management plan for inspection. There is a paucity of material in the application as to the matters the Authority must take into account in deciding whether or not the application is in the community interest. Despite the waiver of the usual community impact submission requirements, it is still incumbent on the Applicant to provide material for the Authority to consider the harm that may be caused, and the cultural, recreational, employment or tourism impacts, the social impact in and the impact on the amenity of the locality and the nature of the business to be conducted under the licence;
- the application should be refused as it would be contrary to the public interest to grant a licence as sought for this number of patrons and staff without adequate carparking or toilet facilities;
- the Applicant may currently be trading contrary to the requirements of the Act and in breach of planning and building approvals. This apparent unlawful trade should be taken into consideration in the exercise of discretion and the general public interest considerations for the purposes of Section 53 of the Act;
- the application does not meet the minimum standards required for the purposes of Section 57 or 53A, and in any event should be refused as contrary to the public interest for the purposes of Section 53.

As noted above, the AHA's objection falls away on the proviso that certain conditions are imposed (which the Applicant has consented to). The Authority must be satisfied that these conditions are appropriate.

The Applicant responded to the Barker Hotel Objection as follows:

Wood and Wine DIY Sign Studio is a small business in Mount Barker that conducts creative workshops similar in nature to Studio Vino in Adelaide.

At the present time we limit our workshop bookings to 6 people. We offer a glass of complimentary wine as part of the workshop package. At no time do we sell alcohol. To date our experience has been that 50% of our patrons do not take

advantage of this offer. Our first workshop of the day is scheduled for 10am and our last workshop 6pm. The workshops run on average approximately 2.5 hours. We currently cater for events with food and serve liquor under our licence 57317979.

We have recently hosted two large workshops of 30 and 20 people respectively, which were conducted offsite, and customers enjoyed tea and coffee for morning tea, no alcohol was served. These same customers then visited The Barker Hotel for a pre booked lunch. On average 2/3rds of our customers partake in a meal before or after at The Barker Hotel.

We have willingly agreed to all the conditions and requests of The Australian Hotel Association and also the Mount Barker Council in regard to any limitations and conditions that they have wanted to impose.

We are building a successful unique small business here in Mount Barker and would like to be able to continue with our unique concept and be able to legally provide our patrons with a complimentary glass of wine.

We would therefore ask that you view our application in a favourable light.

The Mount Barker District Council initially advised that:

"You are advised that Council does not have any objections to the limited liquor licences being granted providing that the applicant:

- Ensures that alcohol is served and consumed in a responsible manner; and*

Is made aware of its General Environmental Duty under Section 25 of the Environment Protection Act 1993 to take all reasonable and practical measures necessary to prevent or minimize any environmental harm."

The Applicant sought clarification as to capacity, and Council confirmed that it had no objection to a capacity of 25 people within the licensed area. Council also clarified that the term 'Limited' used in it's earlier correspondence was a typo, and that "*Council has no objection to the request for 3/24 Gawler Street, Mount Barker with CBS granting an "on-premises" licence which will be permanent with a reduced capacity of 25"*.

The Authority wrote to the representative for the Barker Hotel to invite the Hotel to express a position on the conditions

proposed by the AHA. The Barker Hotel did not directly express a position in relation to the conditions proposed by the AHA, but noted that:

"the application material made available for public inspection proposed that –

" Each patron is only allowed one complimentary drink";

" Liquor is strictly limited to a maximum of 1 complimentary drink per person, and there will be no sale of liquor "; and

" There will be no additional liquor sold or supplied even on request"

Decision

Having reviewed the application material and objections, I am of the view that the grant of this application, with appropriate conditions, poses a low risk of harm to the community.

I am satisfied that there is no reason why the application should be refused pursuant to Section 57 of the Act on the basis that either: the premises are not of a sufficient standard to carry on the business; or the business would cause undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or that the Applicant has failed to obtain any approvals, consents or exemptions required for carrying on the proposed business from the premises.

I do not consider that there is any other reason why I should refuse the application under the broad discretion available in s 53 of the Act, and make a specific finding that it is in the public interest to grant this application.

The onus is on the Applicant to satisfy the licensing authority that the grant of the application is in the community interest. I am satisfied that granting this application is in the community interest.

Accordingly, under section 53A(1) of the Act the application for an On Premises Licence is granted subject to the following conditions:

- Consumption on premises from 9am - 9pm, 7 days a week
- Capacity is set at 25 persons

- Liquor shall only be sold or supplied to persons attending a ticketed course event for the duration of, and up to 30 minutes after, the scheduled event
- Liquor must not be served in quantities exceeding: 1 drink per person per course.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

25 Jul 2022