

Decision Notification

Application Details

Licence No.	57617604
Licence Class	Liquor Production & Sales
Application no.	205245
Premises Name	Shirvington Wines Pty Limited
Premises Address	107 Strout Road McLaren Vale SA 5171
Licensee	Shirvington Wines Pty Limited
Application Type	Variation to conditions

Outcome

Decision	Granted
Effective Date	18 Jan 2021

Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: Stewart Webber

Mr Webber has lodged a submission, pursuant to section 77 of the Act, opposing the grant of this application. In summary, his grounds for opposing the application are as follows:

- The location of the premises is inappropriate for the consumption of liquor, being close to a residential dwelling.
- There is the potential for noise from the cellar door to impact nearby residents and livestock
- They disagree with the decision of the Council Assessment Panel and seek to use this as an opportunity to revisit their decision
- They submit that information was provided as part of the development application, including that the cellar door was to operate as a tasting room by appointment only, with an estimated attendance of no more than a dozen persons at any one time, and that the liquor licence should require compliance with these obligations.

It is important to note that this is not an application for a liquor licence, a liquor licence was granted for the premises in August 2020. The application being considered today is for a variation to the conditions of the licence so the submission can only be considered against what is sought in the application, not the grant of the licence itself.

When the licence was granted in 2020 they were restricted to sampling only and permitted to have a capacity of 60 persons at any one time. They now seek, as part of this application, to vary their licence to remove the restriction to sampling only and instead permit consumption by the glass. Whilst the licence was previously silent on trading hours, as part of their application to allow consumption by the glass they were also required to provide proposed trading hours; they have sought hours of 10am to 6pm 7 days a week.

It is important to note that section 77 of the Act prescribes the grounds on which a submission can be made on. In particular, section 77(3) of the Act specifically prohibits submissions on matters that are or should be dealt with under the law relating to planning, unless they are made by a Council who have established a combined assessment panel. The issue of the application process under the *Liquor Licensing Act 1997* being used as a second opportunity to raise objections already dealt with at the planning stage was also discussed at length in the review of the Act completed by the Honorable Tim Anderson QC in 2016. As part of his review he recommended that changes be made to the Act to prevent duplication of matters at the planning level and then again at the liquor licence level. It is clear that the

incorporation of section 77(3) into the Act reflects that Parliament agreed with Mr Anderson's views on this issue. For these reasons it appears quite inappropriate to use this process as a forum to revisit the decision of the combined assessment panel, as Mr Webber would like us to do.

I am bound to only consider grounds for submissions as permitted under section 77 of the Act, this includes whether granting the application would result in undue offence, annoyance, disturbance or inconvenience to people who reside in the area. The Licensing Court has discussed 'undue noise' on many occasions, with it being held that for the noise to be undue it must be excessive or beyond what is appropriate or natural, and that resident's should expect to tolerate a degree of disturbance or inconvenience in the interest of the community having access to a licensed premises.

Applying the this test in this scenario, I do not believe there is sufficient evidence to conclude that the granting of this application would cause *undue* noise to nearby residents. Whilst the variation from sampling only to consumption by the glass may result in patrons spending more time at the premises or consuming more liquor than they would if they were restricted to sampling only, I also place significant weight on the capacity and trading hours of the licence. The capacity will remain the same as it currently is, being 60 persons, and more importantly the hours sought are only 10am to 6pm. They will therefore be restricted to trading during the day with no late night trading permitted. I do not think it is unreasonable to have to experience some noise during daylight hours and I do not believe this will cause offence or annoyance beyond that that would be reasonably be expected during the day when people are ordinarily moving about and majority of businesses are operating.

Turning to the submission that the premises is not suitable to be licensed, under section 77(2)(e) of the Act, this ground of submission can only be used on an application for a new licence or removal of a licence to a new location, which this application is not. I will therefore not be taking this grounds of submission into consideration against this application.

The final submission made by Mr Webber is in relation to the information submitted as part of the development application process and the suggestion that the applicant should therefore be bound by these under their liquor licence. Beyond what Mr Webber has outlined in his submission there is no further evidence that this was in fact the information submitted as part of the development application. In any event, as I have mentioned previously it is not appropriate to use this application as a means to revisit the decision of the Council Assessment Panel. The Council determined not to impose conditions such as these as part of the final development approval granted. The restrictions around land use fall within the jurisdiction of the local councils and it is generally not appropriate for the Liquor and Gambling Commissioner to override these. The land use granted includes the use of the premises as a 'cellar door' and I am of the opinion that the variation sought is in line with the approved land use and there does not appear to be any exceptional reasons that would warrant the Liquor and Gambling Commissioner imposing further restriction on the land use beyond those determined by Council.

After considering the submission lodged I am of the opinion that the application should be granted as sought.

Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor for consumption on the licensed premises authorised

The following authorisations/restrictions are removed from the licence

- Sale of liquor for consumption on the licensed premises authorised, but restricted to sampling only

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 6:00 pm	-
Saturday	10:00 am to 6:00 pm	-
Sunday	10:00 am to 6:00 pm	-

Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes
Hearings Delegate
18 Jan 2021