

Decision Notification

Application Details

Application no.	206249, 206250
Licence No.	57619062
Licence Class	Liquor Production & Sales
Premises Name	Advino Pty Ltd
Premises Address	95 Samuel Road Nuriootpa SA 5355
Licensee	ADVINO PTY LTD
Applicant	ADVINO PTY LTD
Application Type	Application for a Liquor Licence, Application for Exemption\Responsible person

Outcome

Decision	Granted
Effective Date	25 Jun 2021

Requirements

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:

- Matthew James Alexander (109945)
- Philip James Slee (92077)
- Angela Alexander (130203)
- Emily Lauren Alexander (165653)
- Chelsea Grace Alexander (165654)
- Jennifer Clare Slee (97489)
- Matthew Charles Slee (165655)
- Timothy Martin Slee (165656)
- Andrew James Slee (165657)

- Nicholas Phillip Gill (Note: subject to the condition in this order being satisfied within 3 months of the date of the order)
- Antonin Guillaume Giroux (Note: subject to the condition in this order being satisfied within 3 months of the date of the order)

Premises

New Premises

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

Capacity

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The capacity of the venue is set at 20.

Exemptions

The following exemptions are added to the licence

- Responsible Person

Authorisations

The following authorisations/restrictions are added to the licence

- Profit sharing agreement approved

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	8:00 am to Midnight	-
Tuesday	8:00 am to Midnight	-
Wednesday	8:00 am to Midnight	-
Thursday	8:00 am to Midnight	-
Friday	8:00 am to Midnight	-
Saturday	8:00 am to Midnight	-
Sunday	8:00 am to Midnight	-

Profit Sharing Agreement

I approve the agreement between the entities (Fresh Country Vineyards Pty Ltd and Advanced Viticulture and Management Pty Ltd) and Advino Pty Ltd subject to the following conditions:

- Nothing in this approval or in the terms of the Agreement between the parties shall relieve the licensee of its duties or liabilities under the Act.
- The approval is for the period specified in the agreement and there shall be no changes or alterations to the agreement without the prior approval of the Licensing Authority.
- Nothing in this approval or in the terms and conditions of the agreement between the parties shall relieve the unlicensed entity of its duties and liabilities under the law of South Australia.
- It is a requirement under section 99(3) of the Act that the business conducted under the Agreement be conducted under the personal supervision and management of a natural person approved by the licensing authority.
- The licensee will maintain accounts and records in accordance with the Act and its Regulations for inspection by an authorised officer.

The following profit sharing agreements are approved pursuant to section 99 of the *Liquor Licensing Act 1997*:

- Winery Lease (dated 18 March 2021) between Fresh Country Vineyards Pty Ltd and Advino Pty Ltd;
- Equipment Lease (dated 18 March 2021) between Fresh Country Vineyards Pty Ltd and Advino Pty Ltd;
- Grape Sale and Purchase Agreement (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;

- Winery Management and Supply Agreement (dated 18 March 2021) between Advino Pty Ltd and Advanced Viticulture and Management Pty Ltd.

The following agreements were provided to the Licensing Authority as part of the application, but are not considered to require s 99 approval under the Act:

- General Security Agreement (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;
- Loan Agreement - Working Capital Facility (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;

Reasons for Decision

Advino Pty Ltd (**Advino**) has applied to the Licensing Authority (**the Authority**) for: a Liquor Production and Sales Licence; an exemption from the Responsible Person requirements contained in s 97 of the *Liquor Licensing Act 1997* (**the Act**); the approval of persons assuming positions of authority in corporate entities pursuant to s 98 of the Act; and the approval of agreements Advino has entered into with other entities pursuant to s 99 of the Act.

Advino is a start-up company and has entered into various agreements and arrangements with Fresh Country Vineyards Pty Ltd, as trustee for the Southern Premium Vineyard Trust (**FCV**), in connection with the lease of a winery to Advino. The agreements reflect that Advino is a start-up business with FCV as its landlord, grape supplier and financier (FCV has recently acquired 4 vineyards and a winery in the Coonawarra, South Australia). Additionally, Advino has entered into an agreement with Advanced Viticulture and Management Pty Ltd (**AV&M**) to provide winery management and supply services.

Advino has applied to the Authority for the approval of 6 agreements as part of its application pursuant to s 99 of the Act, which requires consideration as to whether or not the agreements require approval pursuant to s 99 of the Act as profit sharing agreements, including:

- Winery Lease (dated 18 March 2021) between Fresh Country Vineyards Pty Ltd and Advino Pty Ltd;
- Equipment Lease (dated 18 March 2021) between Fresh Country Vineyards Pty Ltd and Advino Pty Ltd;
- Grape Sale and Purchase Agreement (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;
- Winery Management and Supply Agreement (dated 18 March 2021) between Advino Pty Ltd and Advanced Viticulture and Management Pty Ltd;
- General Security Agreement (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;
- and
- Loan Agreement - Working Capital Facility (dated 18 March 2021) between Advino Pty Ltd and Fresh Country Vineyards Pty Ltd;

Of these I consider that only the first 4 agreements require the Authority's approval under s 99 of the Act, namely: the Winery Lease; the Equipment Lease; the Grape Sale and Purchase Agreement and the Winery Management and Supply Agreement. I do not consider that the General Security Agreement or the Loan Agreement - Working Capital Facility agreement require s 99 approval (but note that there is nothing in those 2 agreements which could be considered to be contrary to the public interest).

I have considered the application and agreements in light of the requirements in s 99(2) (a) and (b) of the the Act and am satisfied that approving the Winery Lease; the Equipment Lease; the Grape Sale and Purchase Agreement and the Winery Management and Supply Agreement is likely to assist the liquor industry and industries with which it is closely associated (i.e.- other businesses in the supply chain and the export industry). I am also mindful that Advino is a start-up company and that the various agreements provide it with the opportunity to access land, equipment and finance, and to defer costs if required until when it is a more established and profitable business. Additionally, I am satisfied that approving the the Winery Lease; the Equipment Lease; the Grape Sale and Purchase Agreement and the Winery Management and Supply Agreement is in the public interest.

Pursuant to this order approving Advino's application for a Liquor Production and Sales Licence, Advino is a corporate entity that holds a licence. By virtue of the various agreements and arrangements outlined above, FCV and AV&M are corporate entities that will exercise control or substantial influence over Advino. I approve FCV and AV&M assuming a position of authority in Advino pursuant to s 71(2) of the Act.

I approve the following Directors in AV&M assuming a position of authority in Advino pursuant to s 98 of the Act: Matthew James Alexander and Phillip James Slee, who I note are also Directors in Advino and have submitted Personal Information Declarations (PIDs) to the Authority in relation to Advino's licence application, and whom have satisfied the Authority that they are fit and proper persons to be approved to occupy a position of authority in Advino.

In relation to FCV, I note that the Authority has not yet received PIDs from its Directors, Mr Nicholas Phillip Gill or Antonin Guillaume Giroux, but consider that it is open to me to grant the application and approve these Directors on a provisional basis pursuant to s 53(4) of the Act. I grant the application and approve Mr Nicholas Phillip Gill and Antonin Guillaume Giroux to assume a position of authority in Advino on the condition that they each provide a completed PID to the Authority within 3 months of the date of this order, and that such PIDs satisfy the Authority that they are fit and proper persons to continue to be approved as persons in a position of authority in Advino.

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. 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.

The licensee of the Applicant, through its lawyers, has applied for an exemption from this requirement.

The applicant has submitted the following reasons why they should be granted an exemption:

"Limited nature of the business".

Having considered all of this, I am satisfied that, in view of the limited scope of the business conducted under the licence, an exemption from the responsible person requirements can be granted without compromising the principle of responsible service of alcohol and consumption of liquor.

I note that this exemption applies only to the requirement to have a responsible person present at all times, and that the licensee must still comply with the provisions of the General Code of Practice requiring all persons involved in the sale and supply of liquor to have completed approved responsible service of alcohol training.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

25 Jun 2021