

Decision Notification

Application Details

Application no.	209666
Licence No.	57619664
Licence Class	Liquor Production & Sales
Premises Name	Mary St Brewing
Premises Address	28 Trellios St Modbury SA 5092
Applicant	DANIEL JAMES NOSKE
Application Type	Application for a Liquor Licence

Outcome

Decision	Granted
Effective Date	26 Jul 2021

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

People

Licensee

The following persons are approved to hold the licence:

- Daniel James Noske (123782)

Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: South Australia Police, Aaron Rogers

I note that the licensing authority also received submissions from Deborah Barr, Elaine Barnes, Brenda Lopez and Tony Fortanier. A person who makes written submissions under section 77 of the *Liquor Licensing Act 1997* (the Act) must ensure the applicant is given a copy of the written submissions at least seven days before the day appointed for hearing or determination of the application. The applicant has advised that the submissions were not received. Nonetheless, I will address those submissions in my reasons for decision.

Conditions

The following conditions are added to the licence

- The licence authorises the sale of liquor produced by the licensee either personally or under contract. Details of all contracts entered into must be available for inspection by an authorised officer.
- The licensee shall not, as part of, or in connection with, the business authorised by this licence, invite or admit prospective purchasers of liquor to any premises or place at which liquor is displayed or stored by the licensee.

Premises

New Premises

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

Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor restricted to licensee's own product and by direct sales transactions only

Annual Fees

Noting the restricted trade authorised by this licence, I reduce the annual fees payable under this licence, on an ongoing basis, to align with the annual fees for a category 1 liquor production and sales licence.

Reasons for Decision

In reaching my determination, I have had regard to the objects of the *Liquor Licensing Act 1997*.

The application is for the grant of a liquor production and sales licence.

Pursuant to section 76 of the *Liquor Licensing Act 1997* (the Act), the Commissioner of Police has lodged with the Liquor and Gambling Commissioner (the Commissioner) a submission in respect of the application. The submission raises concerns with the following conditions which had been proposed to be included on the licence:

- sale of liquor for consumption on the licensed premises authorised, but restricted to sampling only
- sale of liquor by direct sales transactions and the sale of liquor for consumption off the licensed premises is restricted to the licensee's product only.

The concerns of the Commissioner of Police can be summarised as being a concern that the local council had not provided the requisite approvals for the applicant to authorise sampling or the consumption of liquor on the licensed premises. The consent provided by the City of Tea Tree Gully indicates that the council agrees to the licensee operating within the parameters defined for a home activity. Regulation 3 of the *Planning, Development and Infrastructure (General) Regulations 2017* (the Planning Regulations) defines 'home activity' as the use of a site by a person resident on the site -

(a) that does not detrimentally affect the amenity of the locality or any part of the locality; and

(b) that does not require or involve any of the following:

(i) assistance by more than 1 person who is not a resident in the dwelling;

(ii) use (whether temporarily or permanently) of a floor area exceeding 30m²;

(iii) the imposition on the services provided by a public utility organisation of any demand or load greater than that which is ordinarily imposed by other users of the services in the locality;

(iv) the display of goods in a window or about the dwelling or its curtilage;

(v) the use of a vehicle exceeding 3 tonne tare in weight.

The applicant has described the trade proposed at the premises as follows:

"I own the lease hold on The Joiners Arms Hotel in Hindmarsh and I am starting a brewing company 'Mary St Brewing' and we will be brewing beer that will be sold at the pub I own plus selling packaged beer to other pubs and bars plus via delivery to residential customers.

To get a [liquor production and sales] licence we need [to] nominate a licensed area. We have nominated our home address as we want to keep our business entitles separate.

We will be holding a small amount of stock in our double garage about the size of 1 pallet (4 square metres) and there will be no alterations need for this as we have plenty of room.

The stock will arrive on our car which is a medium size SUV by myself and my wife, and we have a large drive way so there will be no parking on the road to impact any other road users of neighbours.

The stock will be behind a locked roller door and there are no sales direct from our home as we will offer a delivery service to customers. 80% of the stock will go directly to the Joiners Arms Hotel.

There will be no signage displayed advertising our business as all advertising will be at The Joiners Arms Hotel and online."

It is my view that allowing the applicant to trade in the manner proposed would not contravene the definition of home activity in the Planning Regulations. Nonetheless, as the applicant has confirmed that there will be no sales directly from the premises and that sales will occur by delivery only, I will impose the following conditions/authorisations on the licence:

- sale of liquor restricted to licensee's own product and by direct sales transactions only
- the licensee shall not, as part of, or in connection with, the business authorised by this licence, invite or admit prospective purchasers of liquor to any premises or place at which liquor is displayed or stored by the licensee.

I note that the imposition of these conditions/authorisations should also address the concerns raised in the submissions of Aaron Rogers, Deborah Barr, Elaine Barnes, Brenda Lopez and Tony Fortanier which can be summarised as follows:

- concerns that the grant of the licence would increase traffic in the locality which is likely to cause undue offence, annoyance, disturbance and inconvenience to people who reside in the vicinity of the premises
- concerns that the carrying on of business will cause undue offence, annoyance and disturbance to people who reside in the vicinity of the premises;
- concerns that the amenity of the locality in which the premises is located would be adversely affected by the grant of a licence; and
- concerns that the provision of sampling on the licensed premises has the potential to cause undue offence and disturbance to people who reside in the vicinity.

The applicant has addressed the objects of the Act in their application and I am satisfied that the sale, supply and consumption of liquor will be undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor and the expectations and aspirations of the public.

I am satisfied that the grant of the licence would not be contrary to the public interest or inconsistent with the objects of the Act.

Pursuant to section 56 of the Act, I am satisfied that Daniel Noske is a fit and proper person to hold the licence.

Pursuant to section 57 of the Act, I am satisfied that the premises for which the licence is sought are of a sufficient standard for the purpose of carrying on business under the licence. Further, I am satisfied that the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises and or to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises. I note that the City of Tea Tree Gully

has confirmed that they do not object to the application on the basis that the activity proposed is primarily office-based, the associated storage requirements are less than 30m² and that the business proposed falls within the definition of 'home activity' and is not expected to impact neighbouring properties.

The application is granted.

Under Delegation from the Liquor and Gambling Commissioner



Natasha Kontzionis
Manager, Liquor & Gambling
26 Jul 2021