

Application Details

Licence No.	57709223
Licence Class	Packaged Liquor & Sales
Application no.	202398
Premises Name	Frances General Store
Premises Address	1 Second Street Frances SA 5262
Applicant	Colin Edwin Hembury & Jayne Anne Hembury
Application Type	Application for a Liquor Licence

Outcome

Decision	Granted
Effective Date	18 Aug 2020

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

Licensee

The following persons are approved to hold the licence and receive proceeds of the business conducted under the licence:

- Jayne Hembury (162604)
- Colin Edwin Hembury (116441)

Premises

New Premises

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

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	-	8:00 am to 7:30 pm
Tuesday	-	8:00 am to 7:30 pm
Wednesday	-	8:00 am to 7:30 pm
Thursday	-	8:00 am to 7:30 pm
Friday	-	8:00 am to 7:30 pm
Saturday	-	9:00 am to 4:00 pm
Sunday	-	9:00 am to 2:00 pm

Reasons for Decision

This application may only be granted if the licensing authority is satisfied that the grant of the application is in the community interest. In determining this application 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 a whole or a group within a community) due to the excessive or inappropriate consumption of liquor;
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact on 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, which state: *"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 submitted a completed Community Impact Assessment Form as their community impact submission. It is the content of this form, the application material itself, the Applicant's further submissions and information provided to the licensing authority, along with submissions lodged by Corrado Petruzzella and Julie Ann Petruzzella, the owners of the land at 1 Railway Terrace, Frances SA upon which the Frances Hotel Motel is situated opposing the grant (the objector), that my decision is based on.

Nature of the business

The proposed business is the Frances Store, a general store located in the regional town of Frances, SA, which sells a variety of grocery and household items.

The Frances Store is located approximately 51 kms south of Bordertown SA and 39 kms north of the township of Naracoorte, SA, and serves the town, surrounding farming region and adjacent areas in Victoria.

The Applicant states that the Frances Hotel Motel closed due to the COVID-19 pandemic, has not been selling packaged liquor in the town since it closed in March this year, and consequently customers need to travel to either Bordertown or Naracoorte to buy packaged liquor.

The Applicant has proposed that in the event the application is granted, the Frances Store will carry a limited range of packaged liquor, and the premises will not be used for on-site consumption of alcohol. The product range of liquor to be sold will include beer, spirits and some wines.

The Applicant has identified the 'locality' as the town of Frances, the surrounding farming region, and adjacent areas in Victoria.

The Applicant states that there are no other packaged liquor stores in the locality, and that with the closure of the Frances Hotel Motel, residents in the locality need to drive a significant distance to obtain packaged liquor.

The Applicant states that there is a need for a packaged liquor sales licence in the town of Frances given the fact that the Frances Hotel Motel is closed, and it is not clear whether it will reopen, and if it does, when that might occur. The Applicant states that the ability to sell packaged liquor from the Frances Store would be a service to the district, as it would enable residents in the locality to avoid having to travel to the nearest major centres to acquire packaged liquor.

The Applicant has engaged in community consultation with local residents of the township and surrounding community of Frances (58 people have signed a petition in support of the application). It is clear from the application and material provided that some members of the community are supportive of the application.

Potential Harm

The Applicant has not identified any "at risk" groups, and submits that the sale of packaged liquor from the Frances Store will have no greater impact on the primary school, recreational reserve, or sporting facilities in the town, and that on the contrary, the ability to purchase packaged liquor in the town will reduce the impact of travel to towns close to 50 kms away for the purpose of purchasing liquor.

The Applicant submits that in the event the licence is granted, the internal layout of the Frances Store will be reconstructed to ensure there is no merging of the liquor and food outlets. Further information was sought from the Applicant in relation to how the liquor would be kept separate from the groceries, and how the layout would be reconstructed.

The Applicant has advised that walls will be constructed to enclose the packaged liquor for sale. These walls will be timber framed, made of gyprock, and 2.4 metres high. A secure non transparent door will also be constructed. Customers will not be able to see alcohol whilst shopping for food.

I note that neither South Australia Police (SAPOL) nor the Naracoorte Lucindale Council have objected to this application.

Cultural, recreational, employment or tourism impacts

The Applicant has not identified any particular cultural, recreational, employment or tourism impacts in the event the application is granted.

I note that reducing the need to travel lengthy distances to obtain packaged liquor could result in more time for recreation for some members of the community.

Social impact and impact on the amenity of the locality

The Community Impact Assessment Guidelines provide a guide for applicants in relation to the locality applicable to their application, and states 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.

The Applicant has identified the locality as the rural township of Frances, the surrounding farming region, and adjacent areas in Victoria.

Locality is not in dispute and I am satisfied that the Applicant has correctly identified the locality most likely to be affected by the granting of the application.

The Applicant has stated that the Frances Hotel Motel has been closed for approximately 5 months (since March this year), that the business has not sold, and that any sale is likely to take months to settle.

The Applicant further states that the closure of the Frances Hotel Motel is a very sad event for the District, being the sole liquor outlet for residents of the Town and District in all directions.

Community support for the proposed business

As noted above, the Applicant has provided some evidence of community support for their application, consisting of a petition signed by 58 people.

Submission from the Frances Hotel Motel objectors opposing the application

A submission opposing the grant of the application was received from the objectors, which I summarise as follows:

- the application should not be granted as it does not meet the requirements of the Act;
- the statement by the Applicant that: *"it is likely that the closure of the Hotel may be permanent due to the*

economic impact of the present closure" is incorrect. The landlord has engaged several hotel brokers to search for a new tenant and has received a good level of enquiry from people interested in taking over the business of the hotel. The objector submits that the Frances Hotel Motel will be reopening for business shortly and has provided the licensing authority with a copy of an offer to purchase the business;

- the objector submits that the onus is on the Applicant to satisfy the licensing authority that the grant of the licence is in the community interest, and counters the point made in the Applicant's submission about the fact that presently members of the community must travel to Naracoorte or Bordertown to purchase packaged liquor, by stating that: *"as has been explained above, this situation is temporary, and the Frances Hotel Motel will have a new tenant and licensee soon."*
- There is no community benefit. The objector notes that Frances is a small town and suggests the likelihood is that it has a dwindling population consistent with the broader rural experience with farms consolidating, and younger people moving to Adelaide or larger regional centres to find employment and study, and in this context contends that the community interest is best served if both the general store and the hotel motel continue to operate as strong businesses; and that there is no need or community benefit to be derived if the Frances Store was to sell packaged liquor;
- The application is scant on detail, no site plan has been provided, and there is no suggestion in the application that the sale of packaged liquor will be physically separated from the other products within the store. The objector notes the long running tension in South Australia involving the issue of whether supermarkets should be able to sell packaged liquor and that it is a problem in terms of harm minimisation for stores to be selling packaged liquor *"with bread, milk and other staples"*, quoting several paragraphs from the Hon Tim Anderson's Review of the South Australian Liquor Licensing Act 1997 (published in 2016).
- The objector also notes that the South Australian Parliament recently passed amending legislation to close what the objector describes as a potential 'loophole' in section 39 of the Act that could have been used by a leading supermarket chain to sell packaged liquor;
- The Applicant has failed to address potential harm in any detail. The objector notes that there is a primary school in Frances with 34 FTE students, and that the school has a play centre on site. There is a recreational reserve in the town, described as the sporting and community hub, with various facilities such as an oval, tennis courts, netball courts, clubrooms, bowls club, War Memorial and toilet block;
- The objector states that both the general store and the hotel motel have served the community since the 1880's, and while confirming that the Frances Hotel Motel is temporarily closed as they search for a new tenant and licensee, maintains that this process will be completed shortly. They note it was regrettable that the end of the lease of the Frances Hotel Motel coincided with the COVID-19 pandemic, but maintain the Frances Hotel Motel is still viable, describing the Applicant's suggestion that *"the closure of the Hotel may be permanent"* as ill-founded and wrong.
- The objector states that the amenity of the town is best served with both businesses continuing to operate in the way they have done for many years, and that the Frances Hotel Motel will soon be providing the full range of services to the local community again, including the sale of packaged liquor;
- The Applicant has failed to demonstrate that the grant of the licence is in the interest of the community. It is not to the benefit of the community to encourage liquor purchases to be made where people also regularly do their grocery shopping. The community can purchase packaged liquor from the Frances Hotel Motel which provides a fully integrated hospitality offering; and
- The Applicant bears a positive onus of demonstrating that the grant of the licence is in the community interest. They have failed to provide the evidence necessary to discharge this onus, and the application should be refused.

Decision

This application is based on the desire to provide a limited range of packaged liquor products for local residents in and nearby to the regional town of Frances.

The town of Frances has only one hotel motel, which is closed at present. The locality does not have any other packaged liquor outlets, and residents of the community currently need to drive a significant distance to either Bordertown (located 51 Kms from Frances) or Naracoorte (located 40 kms from Frances) to purchase packaged liquor, requiring inconvenient and lengthy roundtrips.

The Applicant has confirmed that the proposed area where liquor will be stored within the Frances Store will be separated from the "milk and bread" groceries by 2.4 metre high walls and a secure non transparent door.

Locality is not in dispute, and I am satisfied that the locality has been correctly identified by the Applicant as the rural township of Frances, surrounding farming region, and adjacent areas in Victoria (for completeness, I note that COVID-19 border restrictions may impact on the ability of Victorian residents to access the town of Frances at present, but nothing turns on that for the purposes of this decision).

In terms of identifying and addressing potential harms, the Applicant has not identified any potential at risk groups, but has stated that liquor would not be sold to minors or to any adults affected by alcohol.

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 has not objected to the application, and the local council has advised the licensing authority that it has no objections to the application.

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

I have considered the objector's submissions in relation to harm minimisation and the need to keep packaged liquor separate from the sale of *"bread, milk and other staples"*, and am also mindful of the requirement in section 38(3) of the

Act that a packaged liquor sales licence is subject to the condition that the licensed premises must be devoted entirely to the business conducted under the licence, and must be physically separate from premises used for other commercial purposes.

Section 38(6) of the Act provides the licensing authority with the discretion to grant an exemption from the condition in section 38(3) of the Act if the licensing authority is of the opinion that it is in the public interest to do so, and notes an example - *"a general store in a regional location might satisfy the licensing authority that it is in the public interest that an exemption from the condition in subsection (3) be granted."*

I sought further information from the Applicant about how the packaged liquor would be stored, and am satisfied on the basis of the information provided that the store layout will be reconstructed so as to ensure that liquor will be kept separate from the food and groceries, and customers will not be able to see alcohol whilst shopping for their groceries.

I have considered the objector's submissions and note the copy of the offer to purchase provided by the objector to demonstrate that a sale of the Frances Hotel Motel is imminent (provided to the licensing authority in support of their contention that this application should not be granted).

An offer to purchase a business may or may not proceed to result in a sale. Even if the Frances Hotel Motel is sold in the near future, it may take months for the sale to settle and for the Hotel Motel to reopen again. The fact is that the Frances Hotel Motel has been closed since March for around 5 months to date, and it is not clear whether it will reopen, and if so when that might occur, or on what trading hours.

I note also that the services and line of products provided by the Frances Hotel Motel, in the event it does reopen, is likely to be different to what the Applicant is proposing to provide. The Applicant is proposing to provide a narrow range of products, with no on premises consumption of alcohol.

Granting the application is likely to result in a significant increase in convenience for those residing in and around the town of Frances, by reducing their need to drive lengthy distances to obtain packaged liquor, saving them time and money, and perhaps also reducing the risk of motor vehicle accidents given the lengthy roundtrips currently being undertaken by members of the community to obtain packaged liquor from either Naracoorte or Bordertown.

I am of the opinion that it is in the public interest to grant the Applicant an exemption under section 38(6) from the condition in section 38(3) of the Act.

I am satisfied that the proposed business will add to the amenity of the locality, and note the community support for the proposed business as evidenced by those who signed a petition in support of the application.

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 information provided, together with the application, 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.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

18 Aug 2020