Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to vary the conditions of a limited licence in respect of the premises located at 60 High Street, Mansfield.

Commission on review: Miss Gail Owen, Deputy Chairman

Mr Des Powell, Commissioner

Mr Robert Kerr, Commissioner

Date of hearing: 19 February 2015

Date of decision: 19 February 2015

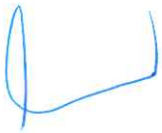
Date of reasons: 27 February, 2015

Appearances: Ms David Mims, Director of the Applicant.

Mr Scott May, Counsel Assisting the Commission.

Decision: The Commission has determined to set aside the decision of the Delegate and vary the licence in accordance with the conditions set out at paragraph 14.

Signed:



Gail Owen

Deputy Chairman

REASONS FOR DECISION

Background

1. On 29 October 2014, Dadebity Pty Ltd (**the Applicant**) applied to the Commission to vary its existing renewable limited licence (No. 36130594) for the premises located at 60 High Street, Mansfield, trading as High Country Wine Cellars.

2. The Applicant's existing licence authorises the supply of liquor for consumption off the licensed premises during limited hours and for wine, beer and cider that is sourced from the Upper Goulburn and Strathbogie regions only.

3. The Applicant sought to vary its existing licence to allow the service of liquor for consumption on the licensed premises for 55 hours per week. The Applicant supplied a letter from the Mansfield Shire Council (**the Council**) advising that planning permission was not required for the sale or consumption of liquor under a limited licence. The Applicant also proposed to limit the range of items to be consumed at the premises to no more than 12 wines, eight beers and four ciders. The Applicant also proposed to permit a maximum of 19 patrons on the premises at one time.

4. In accordance with the Act, copies of the application were served on both Victoria Police and the Council. Neither Victoria Police nor the Council objected to the grant of the application.

The Delegate's decision

5. On 13 January 2015, a Delegate of the Commission refused the application on the basis that the licence would not be limited in scale or scope if the proposed variation were granted. In the Delegate's reasons for decision, the Delegate considered that the "overall combination of licensed activities would be more befitting of a general licence."

Application for Internal Review

6. On 22 January 2015, the Applicant applied for an internal review of the Delegate's decision.

Legislative framework

7. Section 157 of the *Liquor Control Reform Act 1998* (**Act**) sets out the powers and obligations of the Commission in relation to decisions on internal review. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision.

8. Section 26(1) of the Act restricts the ability of the Commission to grant limited licences, stating that the Commission "may grant a limited licence only if satisfied that the scale and scope of the supply of liquor...is limited in nature."

9. Section 47(3) of the Act permits the Commission to have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate. Section 49 of the Act states that the Commission may impose any conditions the Commission thinks fit on the grant of an application.

Material before the Commission on review

10. The Commission had before it the Applicant's original application and attachments, the Delegate's reasons for decision, the Applicant's application to the Commission for internal review and a further submission made by the Applicant.

Submissions made by the Applicant at the hearing

11. Mr David Mims (Director of the Applicant) attended the hearing and made submissions to the Commission concerning how the proposed supply of liquor would be limited in scale and scope. Mr Mims' submissions were, in summary, that:

    11.1. the business is small and tourism-based and was established to promote local wines as there are few wineries in the region offering a full time cellar door (with many operating none at all);

    11.2. the Applicant now wishes to supply liquor 'by the glass' for consumption on the premises;

    11.3. the Applicant is only open when there is trade and the main trading times are Fridays, Saturdays and public holidays with some trade on Sundays;

    11.4. the Applicant intends to offer only a limited selection of products for on-premises consumption;

    11.5. the premises is small (5 x 12 metres) and would be limited to a capacity of 19 patrons; and

    11.6. patrons will be able to either bring their own food from local restaurants or purchase cheese or produce platters at the premises.

12. After some discussion, the Applicant conceded that the more limited hours of Fridays and Saturdays, 12pm – 9pm, Sundays and public holidays, 12pm – 6pm, excluding Christmas Day and Good Friday would be acceptable and that the drinks available would be limited to nine

varieties of wines (red, white and sparkling) and two varieties each of beer and cider (in each case in 330ml bottles);

Findings on Material Facts, Decision and Reasons for Decision

13. After consideration of the Applicant's submissions and the amended application (which is more restrictive than originally proposed) the Commission is satisfied that the Applicant's proposal is sufficiently limited in scale and scope to meet the requirement of section 26(1) of the Act.

14. The Commission considers it appropriate to vary the existing renewable limited licence to permit on-premises supply of liquor subject to the following conditions:

    14.1. Trading hours for consumption on the licensed premises:

        14.1.1. Friday & Saturday: 12pm – 9pm;

        14.1.2. Sunday and Public Holidays: 12pm – 6pm;

        14.1.3. Trading on ANZAC Day must not commence before 12 noon; and

        14.1.4. Good Friday and Christmas Day: No trade.

    14.2. The Licensee must not, in relation to the on-premise supply of liquor, supply or offer to supply more than thirteen different varieties of liquor (consisting of no more than nine varieties of wine (by the glass only) and two varieties of cider and two varieties of beer (in 330ml bottles)) at any one time.

    14.3. Maximum Capacity: No more than 19 patrons on the premises at any one time.

    14.4. Amenity: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of, or in connection with, the use of the premises to which the licence relates, during or immediately after the trading hours authorised under this licence. The Licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.

15. The Commission notes that the existing special condition restricting the supply of liquor to wines, beers and ciders sourced from the Upper Goulburn and Strathbogie regions, will continue to apply and will extend to liquor supplied for consumption on the premises.

16. The Commission notes that, should the Applicant wish to further extend the scale or scope of the supply of liquor in the future (for example, if wishing to trade for more hours or days per week), an application for a general licence is likely to be more appropriate.

The preceding document is a true copy of the Reason for Decision of Miss Gail Owen (Deputy Chairman), Mr Des Powell (Commissioner) and Mr Robert Kerr (Commissioner).