



DECISION AND REASONS FOR DECISION

In the matter of an application by Mr Simon Farrugia under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant an application for a renewable limited licence for the business trading as Frothy Beer Club

Commission:

Ms Deirdre O'Donnell, Deputy Chair

Ms Danielle Huntersmith, Commissioner

Mr Andrew Scott, Commissioner

Date of Decision:

18 May 2021

Date of Reasons:

18 May 2021

Counsel Assisting:

Mr Paul Davies

Decision:

The Commission has determined to set aside the decision of the Delegate and grant the application for a renewable limited licence.

Signed:

A handwritten signature in black ink, appearing to read 'Deirdre O'Donnell'.

Deirdre O'Donnell

Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. On 30 December 2020, Mr Simon Farrugia (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for a renewable limited licence (**Proposed Licence**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ to supply liquor in respect of the proposed premises located at CS Square Shopping Centre, 29-35 Lake Street, Caroline Springs (**Proposed Licensed Premises**), trading as Frothy Beer Club (**Original Application**).
2. The Applicant is proposed to be in day to day management or control of the Proposed Licensed Premises. The Proposed Licensed Premises comprises a fitted-out shipping container with fridges to both store and serve liquor (14 metres x 6 metres), as well as a surrounding fenced-off area operating as a beer garden, in an outdoor part of the CS Square Shopping Centre.
3. The Applicant sought the following trading hours for supply of liquor:

On any day other than Good Friday & Christmas Day Between 11am and 11pm
4. The Applicant originally sought to supply liquor for consumption on and off the premises. The liquor products to be supplied included beer (pre-packaged and tapped keg), wine, spirits, cider and premixed drinks. Following correspondence with the VCGLR, the Applicant amended his original application as outlined below.

Amended application

5. On 7 January 2021, the Applicant stated, *"I would like to amend this application to only restrict sales to on-premises(s) consumption, we no longer wish to offer take away sales from the pop-up bar. We will be limiting customers to purchasing the below volumes:*
 - (a) *Beer – 6 beers per customer per day*
 - (b) *Wine – 6 wine serves per customer per day*

¹ All references to legislation are references to the LCR Act unless stated otherwise.



- (c) *Premix – 6 premix drinks per customer per day*
- (d) *Cider – 6 cider drinks per customer per day (and)*
- (e) *Spirits – 6 serves of spirit based drinks per customer per day.”*

6. On 14 January 2021, the Applicant submitted the declaration of the right to occupy form and consent from CS Square Shopping Centre for the Proposed Licensed Premises.
7. On 16 February 2021, the Delegate determined to refuse the Original Application, as amended, (**Original Decision**) pursuant to section 44(2)(b)(v) on the grounds that the scale and scope of the supply of liquor was not limited for the following reasons:
 - (a) the trading hours, being 7 days a week, from 11:00am to 11:00pm;
 - (b) the range of liquor products, including beer (pre-packaged and tapped beer), wine, cider, spirits and premixed drinks; and
 - (c) the location of the premises and the nature of the Applicant’s business (operating as a beer garden).

APPLICATION FOR INTERNAL REVIEW

The Review Application

8. On 16 February 2021, the Applicant applied to the Commission for internal review of the Original Decision (**Review Application**).
9. The Applicant submitted information addressing the reasons for the Review Application, including:
 - (a) amending the proposed product range in the following way, “*We intend on having a strong range of beers and craft beer however other alcohol categories are limited to 1-2 brands, for example;*
 - i. *1 cider brand and a selection of their flavours*
 - ii. *1 offer per type of wine – 1 merlot option, 1 rosé option, etc.”; and*



(b) amending its proposal to supply liquor 6 days per week as below:

- i. Tuesday – Between 4pm & 11pm
- ii. Wednesday to Sunday – Between 12pm & 11pm.

10. On 22 February 2021, a copy of the Review Application was served on Victoria Police and Melton City Council. On 26 February 2021, Victoria Police and Melton City Council both responded advising that they did not object to the grant of the Review Application.

11. On 5 March 2021, the Applicant sought to further amend his application in the following way: *“My intention is to further restrict the scale and scope of the supply of liquor. Please see below:*

- i. *Thursday – Between 5pm & 11pm*
- ii. *Friday – Between 12pm & 11pm*
- iii. *Saturday – Between 12pm & 11pm*
- iv. *Sunday – Between 12pm & 9pm*

Also please note that duration of use for this licence will only be for 6 months. No renewable needed.”

The Amended Review Application

12. Counsel Assisting the Commission emailed the Applicant on 23 April 2021 setting out some matters for the Applicant’s response, including the Applicant’s expressed wish (on 5 March 2021) to amend his Internal Review application by applying for a Temporary Limited Licence, for a duration of 6 months.

13. A preliminary meeting with the Applicant took place on 28 April 2021. At that meeting the Applicant confirmed that, having now understood the limitation of a Temporary Limited Licence and having reflected on his own circumstances, he had decided to revert to his original request to apply for a Renewable Limited Licence, and that, in all other respects, the amended Review Application be considered by the Commission ‘on the papers’. The Applicant also confirmed the following points:

(a) the amended trading hours are as set out in paragraph 11;



- (b) there would be no off-premises supply or take away liquor;
- (c) that he understood of the importance of responsible service of alcohol in his business; and
- (d) that the product lines to be sold were as follows:
 - i. 10 lines of beer (as the main offering, given the name of the business), comprising one to be supplied from a keg, with the remainder being supplied from bottles;
 - ii. niche and local wine offerings, with an example being one local brand, 'Hipsteria'; and
 - iii. cider from DV Cider House (from the Macedon Ranges).

LEGISLATION AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

14. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Application is a reviewable decision and the Applicant is an eligible person to apply for the review of that decision. The Review Application was made pursuant to section 153 of the LCR Act.
15. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
- (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate².
16. Under the LCR Act, an application for a renewable limited licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

² Section 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe the manner in which the Commission is to undertake internal reviews.



an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).

17. The Original Application is uncontested, as no objections were received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).
18. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must either:
- (a) grant the application, and if so, determine whether to do so subject to conditions;³ or
 - (b) refuse to grant the application.⁴

Exercising the internal review power

19. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁵
20. The objects of the LCR Act are set out at section 4(1) and provide that:
- The objects of this Act are—*
- (a) *to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—*
 - (i) *providing adequate controls over the supply and consumption of liquor; and*
 - (ii) *ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and*
 - (iii) *restricting the supply of certain other alcoholic products; and*

³ LCR Act, sections 44, 49 and 157.

⁴ LCR Act, sections 44 and 157.

⁵ VCGLR Act, section 9(3) and (4).



- (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and*
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and*
- (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and*
- (d) to regulate licensed premises that provide sexually explicit entertainment.*

21. Section 4(2) of the LCR Act further provides that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.⁶

22. In exercising the internal review power, the Commission:

- (a) must consider all the information, material and evidence before the original decision maker⁷;
- (b) may consider further information or evidence⁸; and
- (c) may, in respect of uncontested applications on review, have regard to any matter the Commission considers relevant, make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.⁹

23. Under section 49 of the LCR Act, the Commission may impose any condition it thinks fit on the grant of an application.

24. The Commission considers that while the grounds of refusal outlined in section 44(2) of the LCR Act are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

⁶ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

⁷ LCR Act, section 157(2).

⁸ LCR Act, section 157(3).

⁹ LCR Act, section 44(4).



25. Section 44(2)(b) of the LCR Act empowers the Commission to refuse to grant the Review Application on various grounds, including that:

- (a) *the granting of the application would detract from or be detrimental to the amenity of the area in which the Premises to which the application relates are situated; or*
- (b) *the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.*

26. A limited licence may be a temporary limited licence or a renewable limited licence. Pursuant to section 14(1B) of the LCR Act, a renewable limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence, and it may be renewed in accordance with the LCR Act. A limited licence may further be subject to any conditions determined by the Commission and specified on the licence.

27. As noted above, section 26(1) of the LCR Act provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.

Conduct of an inquiry

28. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter require the Commission to observe the rules of natural justice, although it is not bound by the rules of evidence and can inform itself in any way it thinks fit.¹⁰

MATERIAL BEFORE THE COMMISSION

29. The Commission on review had before it and considered all the materials before the Delegate, which included the Original Application, consisting of:

- (a) an application for renewable limited licence, dated 21 December 2020 with submissions addressing scale and scope, dated 31 December 2020;
- (b) declaration of right to occupy;

¹⁰ See sections 25(3) and 33 of the VCGLR Act.



- (c) questionnaire and Declaration of Associates forms; and
- (d) training certificates.

30. The Commission also had before it and considered additional information and evidence including:

- (a) the Original Decision, dated 16 February 2021;
- (b) the Review Application, dated 16 February 2021 with submissions from the Applicant as outlined at paragraph 9; and
- (c) the amended Review Application, dated 5 March 2021, with submissions from the Applicant as outlined in paragraph 11.

DETERMINATION OF THE REVIEW APPLICATION

Issues for determination on review

31. In making its decision on review, the matters for the Commission to consider are as follows:

- (a) whether the nature of the supply of liquor as proposed by the Applicant is limited in scale and scope as required by section 26(1) of the LCR Act; and
- (b) whether a renewable limited licence should be granted or refused, having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.

Whether the proposed supply of liquor is limited in scale and scope

32. The Commission has considered all the Applicant's submissions, and in particular the matters outlined in paragraph 13 above.

33. The Commission considers that the amended proposed supply of liquor is limited in scale and scope. In particular, the Commission had regard to factors including the small proposed product range and limited lines, and the proposed relatively short trading hours. In summary, the Commission considers that the proposed business model and the amendments the Applicant has made over the duration of this application reduce the scale and scope of the proposed supply of liquor in such a way as to satisfy the requirements of section 26 of the LCR Act.



34. The Commission also notes that it considers there is minimal potential for a detrimental impact on the amenity of the area as the Proposed Licensed Premises is located in a shopping centre with limited hours of operation, in combination with the other limitations contained in the licence conditions.
35. Additionally, the Commission considers that the grant of a renewable limited licence for the scale and scope proposed by the Applicant aligns with community expectations for a business operating under this licence type.

DECISION ON REVIEW

36. Having regard to all the matters set out above, the Commission is satisfied that the Review Application meets the requirements of section 26 of the LCR Act, and, in the circumstances, the Commission has determined to set aside the decision of the Delegate and grant the application for a renewable limited licence subject to the conditions set out in Appendix One.

The preceding thirty-six (36) paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell (Deputy Chair), Ms Danielle Huntersmith (Commissioner) and Mr Andrew Scott (Commissioner).



Appendix One

TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours and in the manner specified below.

SUPPLY OF LIQUOR

The area set aside for the supply and consumption of liquor must be clearly delineated from any other area.

AMENITY

The licensee will 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 where the supply and consumption of liquor occurs under this licence during or immediately after the trading hours authorised by 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.

Liquor must not be removed from the licensed area.

RESPONSIBLE SERVICE OF ALCOHOL

All staff involved in the service of liquor on the licensed premises must have completed an approved Responsible Service of Alcohol course within the preceding three years.

All copies of the RSA certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a VCGLR inspector.

TRADING HOURS FOR CONSUMPTION ON THE LICENSED PREMISES

On any of the days listed below other than Christmas Day or Good Friday,

Thursday	Between 5 pm and 10 pm
Friday and Saturday	Between 12 pm and 11 pm
Sunday	Between 12 pm and 9 pm



SPECIAL CONDITIONS

The range of liquor supplied on the licensed premises is restricted to ten (10) lines of beer, one (1) local red wine, one (1) local white wine and one (1) local cider.