

Application Details

Licence No.	57316698
Licence Class	Restaurant & Catering
Application no.	200307
Premises Name	The Topsy Tow
Premises Address	25 Schuster Street FREELING SA 5372
Applicant	Denise Gow
Application Type	Application for a Liquor Licence
Representative	Andrew Wong - Lion Consulting

Outcome

Decision	Granted
Effective Date	23 Apr 2020

Procedural

I grant permission for Andrew Wong to represent the applicant in this matter.

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:

- Denise Marie Gow (161603)

Determination Details

Submissions from the following persons or corporate entities were received and taken into consideration when determining this application: Australian Hotels Association (SA)

Grounds of Submission

The submission was made on the following grounds:

- Section 35(3) of the Act states that food *must* be provided by the licensee of the function. It is only in these circumstances that off licensed premises sale is permitted, otherwise the licensed premises means 25 Shuster St Freeling.
- These are not 'prescribed circumstances' as set out in the *Liquor Licensing (General) regulations 2012*.
- The condition sought is contrary to section 35 and the licence must not be granted.
- The trading hours cannot be justified in any reasonable business model.

Response to Submission

The applicant has provided the following in response to the submission lodged by the AHA:

- There is a provision under section 35 of the Act, "except as otherwise allowed by a condition of the licence" and the Commissioner therefore has discretion to impose the condition.
- This condition appears on other current Restaurant and Catering licenses.
- The hours sought are to provide flexibility for booking events. There would not be one event that would run from 6am to 2am, but rather would allow the applicant to operate at breakfast functions, as well as functions such as weddings which run later into the night.

Commissioner of Police

Whilst the Commissioner of Police did not intervene on the matter they did request that the following condition be imposed on the licence "All containers of liquor are to be opened at the point of service". The applicant has agreed to the imposition of this condition.

I have considered the application and the nature of the business and am of the opinion that this condition is appropriate in the circumstances and as such I impose this condition on the licence.

Premises

New Premises

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

Conditions

The following conditions are added to the licence

- All containers of liquor are to be opened at the point of service.
- The licensee is exempt from the requirement to provide food at functions.

Authorisations

The following authorisations/restrictions are added to the licence

- Sale of liquor for consumption at the site of a function off the licensed premises authorised

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	6:00 am to 2:00 am the following day	-
Tuesday	6:00 am to 2:00 am the following day	-
Wednesday	6:00 am to 2:00 am the following day	-
Thursday	6:00 am to 2:00 am the following day	-
Friday	6:00 am to 2:00 am the following day	-
Saturday	6:00 am to 2:00 am the following day	-
Sunday	6:00 am to 2:00 am the following day	-

Reasons for Decision

I have considered the submission lodged by the AHA in respect to this application, however I do not agree with the

statements they have made in their submission. The Commissioner has a discretion to impose conditions on the grant of a licence under section 43(2)(a) of the Act. Furthermore, there is a clear intention by Parliament that there be an element of flexibility surrounding meals and food under section 35 of the Act with the inclusion of "except as otherwise allowed by a condition of the licence" in section 35(2) of the Act.

I do not believe that the imposition of this condition significantly alters the licence class nor varies it to such an extent that another licence class would be more appropriate. The restaurant and catering licence is the most appropriate licence class for this type of trade.

The applicant intends to operate a business that focuses on providing beverages at functions, rather than food. The applicant has stated that whilst they will be able to provide snacks at the functions, the space in which they intend to operate from (being a caravan) does not have the capacity to cater for everyone at the events.

I do not believe that a business of this nature is contrary to the public interest and therefore am of the opinion that, in these circumstances, it is appropriate to exempt the applicant from the statutory requirement to provide food at functions which they operate at. The licensee will still be required to comply with all other requirements under section 35(3) of the Act, relating to booking of the function and keeping records. The site of the function will still, for the duration of the function, be considered to be part of the 'licensed premises' and therefore subject to all the statutory requirements relating to licensed premises, such as the provision of signage and having a responsible person present.

With regards to the trading hours, I do not believe the hours sought are unreasonable for the proposed business model and will set the trading hours at 6am to 2am the following day for each day of the week.

Under Delegation from the Liquor and Gambling Commissioner



Ashleigh Hughes
Team Leader, Licensing and Registration
23 Apr 2020