

Application Details

Licence No.	57007825
Licence Class	General & Hotel
Application no.	202826
Premises Name	Sourc'd
Premises Address	2/160 ESPLANADE ALDINGA BEACH SA 5173
Licensee	Sourc'd Pty Ltd
Application Type	Variation to conditions

Outcome

Decision	Granted
Effective Date	27 Sep 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

Determination Details

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

Conditions

The following conditions are added to the licence

- The sale and supply of liquor for consumption off the licensed premises is restricted to liquor produced by South Australia producers that do not have a cellar door and an established distribution network.
- The sale and supply of liquor through direct sales transactions is restricted to liquor produced by South Australian producers that do not have a cellar door and an established distribution network.

Trading hours

The following are the approved trading hours

	Consumption on premises	Consumption off premises
Monday	7:00 am to Midnight	-
Tuesday	7:00 am to Midnight	-
Wednesday	7:00 am to Midnight	-
Thursday	7:00 am to Midnight	-
Friday	7:00 am to Midnight	-
Saturday	7:00 am to Midnight	-
Sunday	7:00 am to Midnight	-

Reasons for Decision

Background

Sourc'd Pty Ltd (**Sourc'd**) was granted a Special Circumstances Licence on 27 July 2018, which was subject to a number of conditions (**Order 214238** relates).

On 18 November 2019 the *Liquor (Liquor Review) Amendment Act 2017* (**the Amending Act**) came into operation, which gave effect to a number of amendments to the *Liquor Licensing Act 1997* (**the Act**), including abolishing 'Special Circumstances Licences' as a category of licence. By virtue of Schedule 2 of the Amending Act, the Special Circumstances Licence held by Sourc'd was transitioned to a General and Hotel licence (**G&H Licence**).

On 16 March 2020 the licensee lodged an application to vary the conditions of the G&H Licence to allow for the sale and supply of any type of liquor for both 'consumption on' and 'consumption off' the licensed premises, and through direct sales transactions. That application was refused by the authority for the reasons set out in **Order B226398**.

Licensee's current application to vary conditions

The licensee has applied (**Application No. 202826**) to vary the conditions of the G&H Licence in respect of their business at 2/160 esplanade, Aldinga Beach.

The Australian Hotels Association's (**AHA**) has lodged a submission opposing all of the variation to conditions sought (save for the change to trading hours), and the Applicant has provided some submissions in reply. I have considered the application, the submissions, the earlier orders of the licensing authority (**the authority**) in relation to Sourc'd, and the matters outlined below, in considering whether or not to grant the variation of conditions sought by the Applicant.

Pursuant to section 3(2) of the Act, when deciding whether or not to grant this application to vary the conditions of the licence, I must have regard to the objects of the Act as set out in section 3(1) of the Act.

Section 3(1) of the Act provides that:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor -

(a) to ensure that 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; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and

(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and

(d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes -

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

(b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and

(c) the adverse effects on a person's health; and

(d) alcohol abuse or misuse; and

(e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

Additionally, s 53 of the Act gives the authority "*an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application)*", and s 53(1a) provides that the authority must refuse an application if it is satisfied that granting the application would be contrary to the public interest.

Variation of conditions sought by the licensee in the current application

The licensee has applied to vary the conditions of their G&H Licence, as set out below:

Variation to trading hours:

From:

Monday to Thursday 7am to 10pm

Friday and Saturday 7am to 11.30pm

Sunday

To:

Monday to Sunday 7am to 12am (midnight)

Variation to conditions:

From:

- The sale and supply of liquor for consumption on the licensed premises is restricted to locally produced wines and liquor.
- The sale and supply of liquor for consumption off the licensed premises is restricted to wines produced by wineries that do not have a cellar door and an established distribution network.
- The sale and supply of liquor through direct sales transactions is restricted to wines produced by wineries that do not have a cellar door and an established distribution network.
- Liquor shall only be sold or supplied for consumption off the licensed premises to persons who have attended pre-booked workshops or tasting events.

To:

- The sale and supply of liquor for consumption on the licensed premises.
- The sale and supply of liquor for consumption off the licensed premises is restricted to liquor produced by producers that do not have a cellar door and an established distribution network.
- The sale and supply of liquor through direct sales transactions is restricted to liquor produced by producers that do not have a cellar door and an established distribution network.

And seeks the removal of the following condition:

- Liquor shall only be sold or supplied for consumption off the licensed premises to persons who have attended prebooked workshops or tasting events.

Submission from the AHA opposing the application

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

- the change sought in relation to 'consumption on' would have the effect of allowing the Applicant to trade as a fully stocked hotel in regards to consumption on, with an unlimited range of beer, wines, ciders, spirits liqueurs and so on. This change is opposed;
- The AHA opposes all of the variations sought, save for the change to trading hours which it considers to be a matter for the Commissioner;
- The Applicant did not have to satisfy a 'needs test' when it applied for and was granted a Special Circumstances Licence (SCL). If it had sought to supply and sell a broader range of alcohol then it may have been refused an SCL, as arguably the trade sought could have been covered under the (then) existing category of 'Hotel licence'. New applicants for a G&H Licence now need to satisfy the 'community interest' test. As a result of amendments to the Act, the Applicant now finds themselves the holder of a G&H licence without needing to have satisfied either the needs test or the community interest test.
- Varying the conditions of a G&H Licence is not a designated application and therefore, legislatively, the community interest test does not need to be satisfied by the Applicant. Consequently the AHA contends that it would be contrary to the public interest for the Applicant to have the ability to sell liquor to anyone, without restriction, for consumption on and off the licensed premises, without the Applicant having gone through any of the tests aimed at controlling this type of trade in South Australia;
- No business case has been made by the Applicant to support the variations it seeks;
- The Applicant may not be aware of existing restrictions on its current licence / may be in breach of those conditions by selling wines from wineries that have cellar doors, wine clubs, etc;

- The variations to conditions sought would widen the variety of liquor able to be sold from wines to all liquor. This is a significant change and should not be permitted without a detailed and thorough justification, especially as the earlier application was refused on 30 April 2020;
- The application must be refused. It is an attempt to re-agitate an issue that was recently and comprehensively dealt with by CBS. In the absence of a change in circumstances (none of which is advanced) or a Community Impact Assessment (which is absent), the application is an abuse of process as it seeks a different outcome based on the same facts;
- The AHA concedes that the variations sought by the applicant can lawfully be sought, but contends that this type of trade was not originally sought, and did not form part of the original business plan (and has only been sought after the SCL transitioned to a G&H Licence), and that consequently refusal of the application should not be detrimental to the licensee's business; and
- Nothing has been advanced to justify the changes sought. The reasons of delegate Hughes remain compelling. Part of this application has already been dealt with. The remainder is an opportunistic attempt to expand the conditions of what was a very limited SCL. The variations to conditions sought should be refused.

Decision

The application by the licensee to vary the conditions of their G&H Licence can be distinguished from the application to vary considered by delegate Hughes as the conditions sought in this application are not as broad, given that the sale and supply of liquor for consumption off and via direct sales transactions is to be limited to producers that do not have a cellar door and an established distribution network.

The AHA opposes the removal of the words "is restricted to locally produced wines" from the condition in relation to 'consumption on', on the basis that it would have the effect of allowing the Applicant to trade as a fully stocked hotel, "with an unlimited range of beer, wines, ciders, spirits, liqueurs and so on". The Applicant states in reply that it does not understand the basis of this objection given that a neighbouring cafe with a restaurant and catering licence can sell any liquor for 'consumption on'. This reply has some force, and I can see no reason why such a restriction should apply to the Applicant.

I do not consider the application to be an abuse of process as asserted by the AHA. The Applicant has made a fresh application with 'narrower' conditions sought. I note also that as conceded by the AHA, the variations sought by the applicant can lawfully be sought.

The Applicant denies trading in a manner contrary to the conditions of its current licence and has provided an explanation in relation to the assertions by the AHA, by noting that the current conditions stipulate that it may sell and

supply liquor (off premises and direct sales) produced by producers that do not have a cellar door and an established distribution network. For example, the AHA contends that the Applicant has breached its current licence conditions due to the fact that it sells various wines via direct sales contrary to the conditions of its licence, such as Blewitt Springs Wine Co. rose, which is available through its wine club. The Applicant has responded that Blewitt Springs Wine Co. does not have a distribution network and has not yet opened a cellar door. The Applicant has provided similar explanations for the wines it sells which were identified in the AHA submission (i.e. - some have cellar doors, but do not have an established distribution network, etc). I accept the Applicant's explanation.

I have considered the application to vary the conditions, in light of the objects of the Act, and am of the view that the variations sought pose a very low risk of harm to the community, and that granting the variations sought (with some modification) is likely to facilitate the responsible development of the licensed liquor industry and associated industries, in a manner consistent with the objects of the Act.

Consequently, the application to vary conditions is granted, but modified such that the sale and supply of liquor for consumption off and for direct sales is limited to South Australian producers who do not have a cellar door and an established distribution network.

I vary the conditions as set out below.

The trading hours are varied to: Monday to Sunday 7am to 12am (midnight)

The conditions are varied to:

- The sale and supply of liquor for consumption on the licensed premises.
- The sale and supply of liquor for consumption off the licensed premises is restricted to liquor produced by South Australian producers that do not have a cellar door and an established distribution network.
- The sale and supply of liquor through direct sales transactions is restricted to liquor produced by South Australian producers that do not have a cellar door and an established distribution network.

The condition below is removed from the licence:

- Liquor shall only be sold or supplied for consumption off the licensed premises to persons who have attended

prebooked workshops or tasting events.

Under Delegation from the Liquor and Gambling Commissioner



Paul Bertram

Hearings Delegate

27 Oct 2020

