



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision made to impose a condition on an On Premises Liquor Licence for the premises known as Belleville, located at Level 1, 230 Swanston Street, Melbourne.

**Commission on review:** Mr Ross Kennedy, Deputy Chairman  
Ms Kate Hamond, Commissioner  
Mr Robert Kerr, Commissioner

**Date of decision:** 23 September 2014

**Decision:** The Commission has determined to:

- vary the decision of the Delegate to remove two conditions imposed by the Delegate and impose two conditions in substitution, as outlined in paragraph 24; and
- In all other respects, affirm the decision of the Delegate.

**Signed:**

Ross Kennedy  
**Deputy Chairman**



## REASONS FOR DECISION

### BACKGROUND

1. On 15 April 2014, Globe Alley Pty Ltd (**the Applicant**) applied for an on-premises liquor licence under the *Liquor Control Reform Act 1998* (**the Act**) for the premises located at Level 1, 230 Swanston Street, Melbourne (**the Premises**).
2. At the time of making the application, the Applicant indicated that it was still awaiting finalisation of the permit from the responsible authority, the City of Melbourne (**the Council**).
3. On 16 April 2014, the Council approved a planning permit (TP-2013-945) (**the permit**) authorising the Applicant's proposed use of the land as a tavern. However, the permit contained certain conditions to restrict noise emanating from the Premises. In particular, two conditions of the permit required that "all external windows must be kept closed from 11pm until the close of business" and that "no loudspeaker, amplifier, relay or other audio equipment may be installed or used outside the premises."
4. As required under the Act, the Council and Victoria Police were notified of the application and neither objected. Further, there were no public objections to the application.
5. On 22 April 2014, the Applicant advised the Commission's Delegate (**the Delegate**) that the Applicant was currently in discussions with the Council to amend some of the conditions of the permit but that the proposed amendments did not concern any "significant" conditions.
6. On 13 June 2014, the Delegate wrote to the Applicant requesting two outstanding documents, being a submission concerning the external area and the Council-endorsed plans for the premises. On 4 July 2014, the external area submission was provided but the Applicant advised that Council had not yet finalised the endorsed plans.
7. On 8 July 2014, the Applicant provided a copy of the endorsed plans for the Premises and stated that "this completes lodgement of the documents requested by the VCGLR to be lodged in support of [the Applicant's] application."

### Decision of the Delegate

8. On 17 July 2014 the Delegate determined the application and granted an on-premises licence (numbered 32320105) to the Applicant.
9. The Delegate placed two conditions on the licence, as permitted by section 49 of the Act, being that:



- 9.1 All external windows must be kept closed from 11 pm until the close of business; and
- 9.2 No loudspeaker, amplifier, relay or other audio equipment may be installed or used outside the premises.

### **Internal Review Application**

10. On 15 August 2014, the Applicant applied for Internal Review of the Delegate's decision with respect to the first condition. The Applicant submitted that:
  - 10.1 On 16 July 2014, Council issued an amended permit for the Premises (TP-2013-945/A) (**the amended permit**) Relevantly, Council had amended the condition requiring all windows to be closed after 11pm. Council now permitted windows to remain open at the Premises during business hours, except during live amplified music performances.
  - 10.2 Due to the timing of the amended planning permit and the grant of the Licence by the Delegate, there was no opportunity for the Applicant to lodge the amended planning permit for consideration by the Delegate.

### **Delegate's reasons for decision**

11. On 1 September 2014, the Delegate provided written reasons for the decision. In relation to the conditions imposed, the Delegate noted that the permit specified certain conditions for the use of the land which were intended to safeguard the amenity concerns of local residents and nearby businesses. The Delegate was satisfied that the conditions to be placed on the licence were designed to minimise the impact on the amenity of the area.

### **Legislative Framework**

12. Section 157 of the Act sets out the powers and obligations of the Commission in relation to decisions on internal review.
13. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision. This matter, being an uncontested application to grant a liquor licence, must be determined in accordance with section 44 of the Act.
14. Section 44(4) 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 permits the Commission to impose any conditions the Commission thinks fit on the grant of an application.



### Material before the Commission

15. The Commission on review had before it and considered all of the information, material and evidence before the Delegate.
16. Additionally, the Commission had before it information submitted by the Applicant as part of the internal review application, being:
  - 16.1 the amended Planning Permit (TP-2013-945/A) (**the amended permit**), as amended by the Council on 16 July 2014;
  - 16.2 a Bar Restaurant and Noise Assessment Report dated 10 April 2014, prepared by Marshall Day Acoustics (**the acoustic report**); and
  - 16.3 a copy of a letter from Marshall Day Acoustics dated 1 May 2014 to the Council which clarified the acoustic report results.

### Decision and reasons for decision

17. The Commission notes that the decision of the Delegate was made prior to the subsequent amendment to the permit by Council and following correspondence from the Applicant advising that all documents had been submitted.
18. The Commission has closely considered the acoustic report and the likely noise assessment. The Commission notes that the acoustic report found that “background music”, as defined in the Act, can be played within the proposed venue in compliance with the relevant noise limit<sup>1</sup> during the day, evening and night periods with the venue’s windows open. In the case of live amplified music performances, however, the venue will be likely to comply with the relevant noise limit only if its windows are closed during those performances.
19. The Commission notes that the amended permit reflects the acoustic report’s findings. If the Commission was to retain the first condition currently placed on the Licence, it would effectively restrict the operation of the Premises more than the acoustic report and amended permit suggests is necessary.
20. Whilst the Commission may impose a condition on a licence which exceeds a similar requirement of a planning permit, any such departure should be imposed for a specific reason, for example, to reduce amenity concerns or to encourage responsible consumption of alcohol.
21. In this case and in light of the amendments to the permit and acoustic report results, the Commission considers that the requirement for windows to close at the Premises after 11 pm is no longer necessary. As such, the Commission has decided to vary this condition to allow

<sup>1</sup> Being the *State Environment Protection Policy (Control of Music Noise from Public Premises) No N-2*.



the Premises to open its external windows whilst trading, except during live amplified music performances. This variation reflects the findings of the acoustic report.

22. The Commission notes that the Applicant did not seek review of the second condition (which concerns loudspeaker, amplifier, relay or other audio equipment being installed or used outside the premises) and further notes that, in any event, Council did not amend the permit with respect to this matter.
23. The Commission notes that it is a legislated condition of all licences that the use of the licensed premises does not contravene the planning scheme applying to the Premises.<sup>2</sup> As a result, the provisions of the amended permit are deemed to be conditions of the liquor licence. Despite this, the Commission considers that, in this instance, it is desirable to continue to display the amended conditions on the licence to serve as a reminder to the Licensee and others.<sup>3</sup>
24. The Commission has determined to vary the decision of the Delegate and remove both conditions imposed by the Delegate. In substitution, the Commission imposes the following two conditions on the licence:
  - 24.1 External windows must be kept closed during live amplified music performances; and
  - 24.2 No loudspeaker, amplifier, relay or other audio equipment may be installed or used outside the premises.
25. In all other respects, the Commission affirms the decision of the Delegate.

***The preceding document is a true copy of the Reason for Decision of Mr Ross Kennedy (Deputy Chairman), Ms Kate Hamond (Commissioner) and Mr Robert Kerr (Commissioner).***

---

<sup>2</sup> See section 16 of the Act.

<sup>3</sup> Section 101 of the Act requires that the Licensee to display a copy of the most recently issued licence in a conspicuous place on the licensed premises in a manner that invites public attention.