



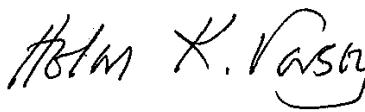
Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by Brunswick Zebras Football Club Inc under section 153 of the *Liquor Control Reform Act 1998* for an internal review of the decision to refuse to grant a renewable limited licence for the premises, trading as Brunswick Zebras Football Club, located at Sumner Park Pavilion, Alister Street, Brunswick East.

Commission:	Ms Helen Versey, Deputy Chair Ms Deirdre O'Donnell, Deputy Chair Mr Des Powell AM, Commissioner
Date of Hearing:	21 August 2019
Date of Decision:	30 September 2019
Date of Reasons:	30 September 2019
Appearances:	Mr Carlo Carli and Ms Carol Fabian on behalf of the Applicant Mr Ramon Collodetti, Objector Mr Cameron Warfe as Counsel Assisting the Commission

Decision:	The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for a renewable limited licence subject to the conditions set out in Appendix One.
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Signed: 

Helen Versey

Deputy Chairperson



REASONS FOR DECISION

BACKGROUND

1. On 8 February 2019, Brunswick Zebras Football Club Inc (**Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for a renewable limited licence (**Original Application**) under the *Liquor Control Reform Act 1998* (**LCR Act**)¹ in relation to premises located at Sumner Park Pavilion, Alister Street, Brunswick East, trading as Brunswick Zebras Football Club (**the Premises**).
2. In the Original Application, the Applicant sought to supply liquor at the Premises to members of the Applicant or a guest of a member for consumption on the Premises during February to October and during the days and hours of:

Monday to Friday	Between 6pm and 11pm
Saturday	Between 12 noon and 11pm
Sunday	Between 12 noon and 10pm

3. The Applicant also sought a permanent underage approval for senior matches on Saturdays and Sundays between 12 noon and 7pm, and a point of sale for senior matches on Saturdays between 12 noon and 7pm.
4. On 8 February 2019, a copy of the Original Application was forwarded to Victoria Police and to the Moreland City Council (**Council**) in accordance with section 33(3) of the LCR Act. On 25 February and 4 March 2019 respectively, Victoria Police and the Council advised the Commission that they did not object to the grant of the Original Application.
5. The Commission received six objections from members of the public (**Objectors**) on the basis that granting the Original Application would be detrimental to the amenity of the area in which the Premises is situated. These objections were based on residents' existing concerns regarding noise, parking and traffic congestion, litter and concerning behaviour of players and spectators at the Premises, and that the grant of the Original Application would exacerbate such concerns.
6. The Objectors also alleged that the Applicant had not complied with the public display requirements under the LCR Act. Subsequently, the Commission directed the Applicant to redisplay the Original Application in accordance with the LCR Act, which it did to the satisfaction of the Commission.

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



7. On 14 June 2019, an authorised delegate of the Commission (**Delegate**) determined to refuse the Original Application on the basis that the supply of liquor at the Premises for the hours sought in the Original Application would detract from or be detrimental to the amenity of the area (**Original Decision**).
8. On 10 July 2019, the Applicant applied for an internal review of the Original Decision (**Review Application**).

LEGISLATION AND THE TASK BEFORE THE COMMISSION

The Commission's power of internal review

9. Division 2 of Part 9 of the LCR Act governs internal review applications. In accordance with section 152 of the LCR Act, the Original Decision is a reviewable decision. The Review Application is made under section 153 of the LCR Act. The Applicant is an eligible person to apply for an internal review.²
10. 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 Original Decision; or
 - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.
11. In effect, the Commission, on internal 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 decide whether to grant a renewable limited licence to the Applicant and, if so, whether to do so subject to conditions.³ The Commission must consider all the information, material and evidence before the original decision maker.⁴ It may also consider further information, material or evidence as part of making its decision.⁵
12. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. Pursuant to section 3(1), a contested application relevantly includes “*an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objection is received under Division 5 of Part 2 within the period set out in that Division for those objections (or that period as extended under section 174)*”.

² Section 152(b), LCR Act.

³ Sections 44, 49 and 157, LCR Act.

⁴ Section 157(2), LCR Act.

⁵ See section 157(3), LCR Act.



13. In accordance with the requirement under the LCR Act,⁶ the Commission wrote to Victoria Police, the Council and the Objectors on 15 July 2019 notifying them of the receipt of the Review Application and requesting confirmation whether they objected or not to the grant of the Original Application. On 15 July 2019, Victoria Police confirmed that it did not object.
14. Between 15 and 30 July 2019, each of the Objectors confirmed with the Commission that they maintained their objection to the grant of the Original Application.
15. On 1 August 2019, the Council informed the Commission that, although it did not object to the grant of the Original Application before the Delegate, it now objected to the grant of the Original Application. However, the Council would support the Application if the proposed trading hours were reduced to 10pm on any day to reduce potential detriment to the amenity of the area.
16. The Original Application was contested and it remains contested on review. Therefore, the Commission must proceed to determine the matter as a contested application in accordance with section 47 of the LCR Act.

Exercising the internal review power

17. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides that:

"The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission."⁷

18. Section 9(4) of the VCGLR Act further provides that:

"The Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5."⁸

19. Accordingly, in exercising its discretion to either grant or refuse a renewable limited licence, the Commission must have regard to the objects of the LCR Act, as set out in section 4(1):

"(1) The objects of this Act are—

(a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—

⁶ Section 154, LCR Act.

⁷ There are no objects specified in the VCGLR Act itself.

⁸ There are no decision-making guidelines relevant to the determination of this matter.



- (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*
 - (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.”*

20. Section 4(2) provides further 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.”

21. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”.⁹ However, as was also noted by the Court of Appeal, “this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects”.¹⁰
22. Section 44(2) of the LCR Act also sets out specific grounds upon which the Commission may refuse to grant an uncontested application:
- (a) the applicant is not a suitable person to hold or carry on business under the licence or BYO permit;¹¹
 - (b) that the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which application relates are situated;¹²

⁹ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

¹⁰ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

¹¹ Section 44(2)(a)

¹² Section 44(2)(b)(i).



- (c) that the granting of the application would be conducive to or encourage the misuse and abuse of alcohol;¹³
 - (d) the applicant does not have adequate knowledge of the LCR Act;¹⁴ or
 - (e) that the application has not been made, displayed or advertised in accordance with the LCR Act.¹⁵
23. The Commission considers that while the grounds of refusal outlined in section 44(2) of the LCR Act are a relevant consideration, the ultimate determination of the Review Application is to be made pursuant to section 44(1) and section 157(1) of the LCR Act at the discretion of the Commission, with reference to the objects of the LCR Act as set out in section 4.

Conduct of an inquiry

24. Section 34 of the VCGLR Act provides that subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter include:
- (a) section 33 of the VCGLR Act, which provides, *inter alia*:
 - "(1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.*
 - ...
 - (3) When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed by the Governor in Council and Division 5 of Part I (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly."*
 - (b) section 25(3) of the VCGLR Act, which provides:

"In performing a function or duty the Commission—

 - (a) except when exercising a power under Division 5 of Part I of the Evidence (Miscellaneous Provisions) Act 1958, is not bound by the rules of evidence but may inform itself in any way it thinks fit;*
 - (b) is bound by the rules of natural justice."*

¹³ Section 44(2)(b)(ii).

¹⁴ Section 44 (2)(b)(iii)

¹⁵ Section 44(2)(b)(v).



Restriction on the grant of limited licences

25. 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.
26. Section 26 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.

MATERIAL BEFORE THE COMMISSION

27. The Commission on review had before it, and considered, all of the material before the delegate, including:
 - (a) the Original Application, which contained:
 - i. a completed Application Form;
 - ii. a completed Questionnaire and a Declaration of Associates from Carlo Carli;
 - iii. a completed Questionnaire and a Declaration of Associates from Kevin Thomas;
 - iv. a completed Questionnaire and a Declaration of Associates from Daniel Roca;
 - v. a completed Questionnaire and a Declaration of Associates from Robert Barrese;
 - vi. a completed Questionnaire and a Declaration of Associates from Bridget McPherson;
 - vii. a completed Questionnaire and a Declaration of Associates from Mirela Matthews;
 - viii. a Declaration of Associates from the Applicant dated 17 January 2019;
 - ix. an ASIC Current & Historical Company Extract for the Applicant;
 - x. a copy of the Applicant's Constitution and Bylaw 1 titled 'Compliance with Liquor Licensing Requirements';
 - xi. a copy of a letter from the Council to the Applicant confirming allocation of the Premises for its use dated 13 February 2019;
 - xii. copies of VCGLR certificates evidencing that Carlo Carli, Robyn Thomas and Aoife Hannan completed an approved responsible service of alcohol (**RSA**) course on 13 November 2017;



- xiii. plans of the Premises depicting the proposed licensed area;
 - xiv. a Declaration of Right to Occupy dated 17 January 2019; and
 - xv. written submissions in relation to the scope of the supply of liquor proposed in the application dated 20 January 2019 and 12 February 2019;
- (b) a Victoria Police notification, dated 25 February 2019, advising it does not object to the Original Application;
 - (c) a letter from the Council, dated 4 March 2019, advising it does not object to the Original Application;
 - (d) written objections by six residents in close proximity to the Premises;
 - (e) correspondence between the Applicant and the Delegate regarding the public display of the Original Application;
 - (f) a written submission from the Applicant dated 3 April 2019, in response to the public objections.
28. The Commission on review also received the following documents:
- (a) the decision and reasons for decision of the delegate in relation to the Original Application, dated 14 June 2019;
 - (b) the Review Application, dated 10 July 2019, including a further written submission in support of the Review Application;
 - (c) email confirmation and further submissions from each of the Objectors, indicating that they maintain their objection to the grant of the Original Application;
 - (d) emails from two additional members of the public indicating objection to the grant of the Original Application on the same grounds as outlined by the Objectors;
 - (e) email from the Council dated 1 August 2019 indicating its objection to the grant of the Original Application; and
 - (f) email from the Applicant dated 16 August 2019, reducing the trading days and hours sought as part of the Review Application (as outlined in paragraph 29 below).

THE REVIEW APPLICATION

29. One aspect of the Review Application which differed significantly from the Original Application was the trading hours sought by the Applicant. In the written submission provided on 16 August 2019, the Applicant said that in the Original Application they had sought greater trading hours



than they required on the advice of Council officers. The Review Application sought the following, more limited trading hours:

Monday to Tuesday	No trade
Wednesday to Friday	Between 6pm to 10pm
Saturday	Between 12 noon and 10pm
Sunday	Between 12 noon and 10pm

30. The Review Application also contained further information in response to the amenity concerns cited as a ground for refusal by the Delegate, namely that:
 - (a) the Applicant did not intend to utilise the Premises during all available trading hours, but rather to provide flexibility as to when the Applicant may utilise the licence to supply liquor during club events across the season;
 - (b) the Applicant has utilised temporary limited licences for a number of years without complaint of detrimental impact on the amenity of the area, and therefore the granting of the Original Application is not likely to create or exacerbate any impact on the area's amenity;
 - (c) certain concerns raised in the objections do not relate to the Applicant's members or guests, but rather members of the public that utilise the public reserve as an open space; and
 - (d) the Applicant works in conjunction with the Council to address the parking and traffic concerns around the Premises, and any concerns should be directed to the Council to rectify as required.

THE HEARING

31. The Commission conducted a public inquiry on 21 August 2019 to consider the Review Application (**the Hearing**). Carlo Carli and Carol Fabian attended the hearing on behalf of the Applicant and made oral submissions to the Commission.
32. Ramon Collodetti, one of the Objectors, attended the hearing and made oral submissions to the Commission. Further, a local resident in close proximity to the Premises also attended the hearing and, with leave of the Commission, made oral submissions in objection to the Original Application.



DETERMINATION OF THE REVIEW APPLICATION

Issues for determination

33. In order for the Commission to make its decision on review, two issues require consideration:
 - (a) firstly, whether the Commission is satisfied that the scale and scope of the proposed supply of liquor is limited in nature; and
 - (b) secondly, whether the Commission should exercise its discretion under section 47(1) of the LCR Act to grant a renewable limited licence, having regard to the objects of the LCR Act, in particular harm minimisation, which is the primary object.

Limited in scale and scope

34. The first issue for the Commission is whether it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature, in accordance with section 26 of the LCR Act.
35. The Commission has carefully considered the evidence before it in the Review Application. The Commission notes that the scale and scope of the proposed supply of liquor is considerably less than what was proposed in the Original Application.
36. The Commission has had regard to the reduced days and hours of proposed trading, the operational months of the licence (i.e. February to October), the relative size of the Premises and the restrictions associated with club rules in considering whether the scale and scope of the supply of liquor the subject of the licence is limited in nature. While the Applicant gave evidence that it intended to only supply a limited range of liquor types and ranges, the Commission does not consider it necessary to impose a condition limiting the type or range of liquor in order to satisfy the requirements of section 26 of the LCR Act.
37. The Commission is satisfied, having regard to the combination of matters above, together with the conditions in Appendix One, that in all the circumstances the proposed scale and scope of the supply of liquor the subject of the licence sought in the Review Application is limited in nature and therefore meets the requirement in section 26 of the LCR Act.

Grounds of refusal set out in section 44(2) of the LCR Act and general discretion

38. The Commission has considered the objects of the LCR Act, as well as the grounds for refusal identified in section 44(2) of the LCR Act, in determining the Review Application and whether to set aside the Original Decision and exercise its discretion to grant a renewable limited licence.



39. The Commission considers that, without adequate controls, there is the potential for particular amenity concerns to arise from the proposed supply of liquor at the Premises. Specifically, this is due to the proximity of the Premises to the residential areas of Alister Street and the potential noise emanating both from the Premises as well as members and guests departing the Premises at the conclusion of events. Noting that the Applicant has already agreed to reduce the proposed trading hours to 10pm on each day of trade, the Commission also intends to impose external trading hours that conclude at 9pm on each night of trade. This means that consumption of liquor in the external areas of the licensed premises is to cease at 9pm, however may continue in the internal areas of the licensed premises until 10pm. This condition is to ensure that potential noise from members and guests consuming liquor in the external areas does not unreasonably impact on the nearby residents on Alister Street. Further, the imposition of the standard amenity condition will provide an additional measure of protection relevant to the amenity of the area.
40. At the Hearing, the Applicant gave evidence that the proposed trading hours on Wednesday to Friday nights were solely for the purpose of conducting club social events, as no club training occurred at the soccer pitch located at the Premises at those times. Mr Carli, on behalf of the Applicant, estimated that the club may hold approximately one event every fortnight across the season (which consists of approximately 40 weeks). As a further control to mitigate any potential impact on the amenity of the area, the Commission will impose a condition limiting the total number of club events on Wednesday to Friday nights to 20 events each season (from February to October each year).
41. For the avoidance of doubt, the Commission has taken into account the concerns of the Objectors in relation to traffic and parking concerns. The Commission considers that the Applicant has taken reasonable precautions in this regard, and agrees that any non-compliance with parking restrictions is a matter to be raised with and addressed by the Council. Further, the Commission considers that these concerns should not be exacerbated by the granting of the Review Application.
42. In relation to the application for permanent underage approval, the Commission is satisfied that it is appropriate to grant the approval for the limited days and times sought for the purpose of attendance at senior matches at the Premises on those days. This approval will also apply for the purpose of presentation functions, however will not extend to any other club event held during the relevant times.
43. The Commission considers that the sporting focus of the Applicant is a positive factor that contributes positively to the development of a diversity of licensed facilities and the responsible development of the licensed hospitality industry.



44. The responsible members of the Applicant's committee have provided evidence of undertaking and successfully completing the relevant Responsible Service of Alcohol (RSA) training and also demonstrated sufficient knowledge of the LCR Act and a commitment to conducting their business in a manner that does not encourage the misuse and abuse of alcohol.

DECISION

45. After considering all the material before it, and taking into account all necessary considerations under the legislative framework, the Commission has determined to set aside the decision of the Delegate and substitute a decision to grant the renewable limited licence subject to the conditions set out in Appendix One.

The preceding 45 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Ms Deirdre O'Donnell, Deputy Chair, and Mr Des Powell AM, Commissioner.

Appendix One

TYPE OF LICENCE

This licence is a renewable limited licence and subject to the conditions specified in this licence authorises the licensee to supply liquor:

- on the licensed premises to a member of the club or a guest of a member for consumption on the licensed premises;
- to a person from a specified point/s of sale during a sporting event.

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 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.

CLUB REQUIREMENTS

The rules of the club shall comply with Schedule 1 of the Liquor Control Reform Act 1998.

LIQUOR SUPPLIED AT POINT OF SALE DURING A SPORTING EVENT

The licensee is authorised to supply liquor during a sporting event from a specified point/s of sale, restricted to:

- four cans or plastic cups of light or heavy beer per person opened at the point of sale;
- two cans or plastic cups of spirit-based drinks per person opened at the point of sale.

Sales must cease no later than 30 minutes after the event ceases.

TRADING HOURS

On the licensed premises for internal areas

Wednesday to Friday	Between 6pm and 10pm
Saturday	Between 12 noon and 10pm
Sunday	Between 12 noon and 10pm

On the licensed premises for external areas

Wednesday to Friday	Between 6pm and 9pm
Saturday	Between 12 noon and 9pm
Sunday	Between 12 noon and 9pm

From the point of sale

Saturday & Sunday	Between 12 noon and 7pm
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PERIOD OF LICENCE - SECTION 50(2)

This licence is only in force during February to October inclusive.

SUPPLY OF LIQUOR AT A CLUB SOCIAL FUNCTION

The licensee will maintain a register of club social functions to which this licence applies with the register detailing the date and time of each function held.

A maximum of 20 club social functions is permitted during each period of licence outlined above.



APPROVALS/CONSENTS

Section 120(2)(e) Persons under the age of 18 years are permitted on the licensed club premises other than in the company of a responsible adult only during the trading hours specified below:

Saturday & Sunday Between 12 noon and 7pm

This approval does not include social activities but does include presentation functions.