



REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Lager Sisters Pty Ltd for the internal review of a decision to refuse to grant a major event licence in respect of a business trading as Oktoberfest in the Gardens Melbourne 2017 at the premises known as Melbourne Show Grounds, Epsom Road, Ascot Vale, 3032.

Commission on review: Ms Deirdre O'Donnell, Deputy Chair
Mr Des Powell AM, Commissioner
Dr Dina McMillan, Commissioner

Date of hearing: 12 October 2017

Date of decision: 13 October 2017

Date of written reasons: 18 January 2018

Appearances: Mr John Larkins, Counsel for the Applicant (instructed by Mr Paul Ryan of Ryan Commercial Lawyers)
Senior Sergeant Philip Eager, for Victoria Police
Ms Amy Rudolph, Counsel Assisting the Commission

Decision: The Commission has determined to set aside the decision of the delegate and, in substitution, grant a major event licence subject to the conditions set out in Appendix One of the Decision dated 13 October 2017.

Signed:

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

Deirdre O'Donnell
Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. On 2 August 2017, Lager Sisters Pty Ltd (**the Applicant**) applied for a major event licence under section 14A of the *Liquor Control Reform Act 1998* (**the LCR Act**) for the event known as *Oktoberfest in the Gardens Melbourne 2017* (**the Event**) to be held at the premises located at Melbourne Showgrounds, Epsom Road, Ascot Vale, 3032 (**the Premises**).
2. The Applicant sought the licence to allow the supply of liquor at the Event at the Premises (**the Licence**) on 14 October 2017 between the hours of 2pm and 10pm for up to 15,000 patrons (**the Original Application**).

Prior to the Original Application

3. Prior to lodging the Original Application, on 7 June 2017, the Applicant initially applied for a major event licence to supply liquor at the Event at a different venue, Birrarung Marr in Melbourne, as it had done the previous year under licence 80000585 for the 2016 Oktoberfest event (**Initial Application**).
4. Pursuant to section 33 of the LCR Act¹, also on 7 June 2017, a copy of the Initial Application was given to City of Melbourne Council (**Council**), and the Chief Commissioner of Police and the Licensing Inspector for Victoria Police (together referred to as **Victoria Police**).²
5. On 15 June 2017, Victoria Police wrote to the Commission seeking an extension of time to consider the Initial Application and inform the Commission if it objected to the grant of the Initial Application. Pursuant to section 174(a), the Commission granted an extension of time request until 19 July 2017.
6. On 20 June 2017, Council wrote to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to advise that it objected to the Initial Application on the grounds that it did not support the facilitation of the Event at Birrarung Marr or any public open space managed by the Council.
7. On 7 July 2017, the Applicant wrote to the Commission seeking advice as to how to amend the Initial Application to host the Event at a new venue. On 18 July 2017, the Commission advised the

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

² LCR Act, section 33(3), paraphrased, provides that the Commission is not required to give a copy of the application to the Chief Commissioner of Police or the relevant municipal Council in applications for major event licences but the Commission may do so if it thinks fit.



Applicant that changing the venue required a new application with updated plans and management plans.

Original Application

8. Subsequently, on 2 August 2017, the Applicant lodged the Original Application seeking the grant of the Licence to conduct the Event at the Premises. Pursuant to section 33(3),³ on 2 August 2017 a copy of the Original Application was given to Victoria Police and Council on 3 August 2017.
9. On 18 August 2017, Council confirmed that it did not object to the grant of the Original Application.
10. On 12 September 2017, by way of an application lodgement notification to the Commission, Victoria Police objected to the grant of the Original Application on the basis of amenity⁴ and that it would be conducive to or encourage the misuse or abuse of alcohol⁵ (**Objection**). Upon receiving the Objection, pursuant to section 47(3)(c) the Commission wrote to the Applicant advising it of the Objection and inviting a response by 26 September 2017. The Applicant amended the Original Application to address Victoria Police concerns by reducing patron numbers from 15,000 to 10,500, removing the schnapps bar, removing the bar in the silent disco, engaging an independent Responsible Service of Alcohol (RSA) Compliance Manager, and reducing the maximum number of drinks per serve from four to two. On 28 September 2017, the Applicant confirmed in writing that it did not intend to submit any further material in response to the Objection.
11. On 1 October 2017, the Commission received notification from Victoria Police that it maintained its Objection to the Original Application. Victoria Police also sought to include the following additional grounds of objection:⁶
 - (a) that the Applicant is not a suitable person to be the holder of a licence due to an inability to responsibly conduct other Oktoberfest events and due to having unsuitable associates;
 - (b) that the grant of the Licence would be contrary to the object contained in section 4(1)(iv)⁷ of the LCR Act due to the Applicant and its associates' history of conducting Oktoberfest events involving unacceptable levels of irresponsible consumption of alcohol and risky drinking; and

³ LCR Act, section 33(3), paraphrased, provides that the Commission is not required to give a copy of the application to the Chief Commissioner of Police or the relevant municipal Council in applications for major event licences but the Commission may do so if it thinks fit.

⁴ LCR Act, section 38(1).

⁵ LCR Act, section 38(1A).

⁶ LCR Act, section 78(1) provides that Chief Commissioner may object to the grant of an application to which this Division applies on any grounds he or she sees fit.



- (c) that the grant of the Licence would not contribute to the responsible development of the liquor, licensed hospitality or live music industries⁸ because the event is likely to result in unacceptably high levels of irresponsible consumption of alcohol and risky drinking.

12. Victoria Police also lodged written submissions dated 1 October 2017, and filed evidence and documentation in support of its Objection and grounds of objection as set out at paragraph 11 above (**Victoria Police Objections**).

13. On 6 October 2017, the Commission received a further submission from the Applicant in response to the Victoria Police Objections containing further evidence in support of the Original Application.

DELEGATE'S DECISION

14. On 10 October 2017, an authorised delegate of the Commission (**the Delegate**) determined to refuse to grant the Licence sought in the Original Application (**the Original Decision**).

15. The Delegate did not accept the Applicant's submission that because the liquor licences for past Oktoberfest events were held by a separate entity, Nokturnl Events Pty Ltd (**Nokturnl**), the volume of historical material put forward by Victoria Police detailing a consistent pattern of poor management at past Oktoberfest events was irrelevant. This was due to the fact that:

- (a) Nokturnl would still have a considerable degree of influence at the Event through the status of its directors as Associates⁹ of the Applicant and the role of their company as owner/promoter and producer of the Event; and
- (b) the majority of incidents that occurred in past Oktoberfest events in Melbourne were, at least to some degree, attributable to the intoxication levels of patrons who were supplied liquor by staff under the management of the Applicant through its role providing bar services to Nokturnl.

16. The Delegate did not consider that the changes proposed by the Applicant to address the Victoria Police Objections were satisfactory for the following reasons:

- (a) reducing trade to a single day with a capacity of 10,500 (down from 15,000 in the Original Application) did not alleviate concerns because the previous Oktoberfest events in Melbourne were not adequately controlled with fewer patrons in attendance in the same period; and

⁷ LCR Act, section 4(1)(iv) sets out one of the objects of the LCR Act which is 'encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community'.

⁸ LCR Act, section 4(1)(c).

⁹ The directors of Nokturnl were disclosed as Associates on the Original Application. Associate is defined at section 3AC of the LCR Act.



- (b) imposing a condition to limit the involvement of Nokturnl in the supply of liquor and control of security was likely to be unenforceable and therefore it did not rectify the issue of the Applicant's involvement with bar management at previous Oktoberfest events in Melbourne with reportedly high levels of intoxication.

17. In consideration of the primary object of the LCR Act being harm minimisation¹⁰ and the number of alcohol-related incidents and resulting harm arising from past Oktoberfest events in Melbourne detailed in the Victoria Police Objections, the Delegate was not satisfied that the interests of the Applicant and over 200 staff scheduled to work at the Event outweighed the interests of the wider community, Police and emergency services who, in his view, would not be served by the grant of the Licence.

18. Accordingly, the Delegate refused the Original Application under sections 44(2)(b)(i) and 44(2)(b)(ii) of the LCR Act on the grounds that the grant of the Licence would detract from or be detrimental to the amenity of the area in which the Premises are situated and would be conducive to or encourage the misuse and abuse of alcohol.

APPLICATION FOR INTERNAL REVIEW

19. On 10 October 2017, the Applicant applied for an internal review of the Original Decision to refuse to grant the Licence (**the Review Application**).

LEGISLATION AND THE TASK BEFORE THE COMMISSION

20. Under the LCR Act, an application for grant of a licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act, 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 objections are 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)*".¹¹

In this matter, the Original Application was contested and it remains contested on review.

21. The Review Application is made pursuant to section 153 of the LCR Act. The Original Decision of the Delegate is a reviewable decision under section 152 of the LCR Act and the Applicant is an eligible person under Division 2 of Part 9 of the LCR Act.

¹⁰ LCR Act, section 4(1)(a)

¹¹ Conversely, an "uncontested application" is defined in section 3(1) as being "*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)*".



22. Pursuant to section 157(1) of the LCR Act the specific task for the Commission with respect to the Review Application is to make a fresh decision that either:

- (a) affirms or varies the reviewable decision; or
- (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.¹²

23. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the Review Application. The Commission, on review, is also required under section 157(2) of the LCR Act to consider all the information, material and evidence that was before the original decision maker. It may also consider further information, material or evidence as a part of making its decision.¹³

Conduct of an inquiry

24. Section 34 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**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.”*

¹² Sub-sections 157(2)-(5) of the Act further prescribes the manner in which the Commission is to undertake internal reviews.

¹³ Section 157(3) of the LCR Act.



Determination of a contested application

25. Where an application is a contested application, pursuant to section 47(1) of the LCR Act:

“Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.”

26. Section 47(3) of the LCR Act provides that, before granting or refusing a contested application under subsection (1), the Commission:

- “(a) may have regard to any matter the Commission considers relevant; and*
- (b) may make any enquiries the Commission considers appropriate; and*
- (c) must give the applicant and each objector a reasonable opportunity to be heard.”*

27. Section 9(3) of the 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.”¹⁴

28. 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.”

29. Accordingly, in exercising its discretion to either grant or refuse a contested application under section 47(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act.

30. The objects of the LCR Act are set out in section 4(1), which provides:

- “(1) 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*

¹⁴ There are no objects specified in the VCGLR Act itself.



- (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.”*

31. Section 4(2) of the LCR Act 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.”

32. 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*’.¹⁵ 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*’.¹⁶

33. Pursuant to sections 47(2) and 44(2) of the LCR Act, the Commission may refuse to grant the Original Application on the grounds, *inter alia*,

- (a) that the applicant for the grant of a licence is not a suitable person to hold or carry on business under the licence (section 44(2)(a) of the LCR Act);
- (b) that the grant 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 (section 44(2)(b)(i) of the LCR Act); and
- (c) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii) of the LCR Act).

34. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.¹⁷ Factors that may be taken into account in

¹⁵ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

¹⁶ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

¹⁷ LCR Act, section 3A(1).



determining whether a proposed variation would detract from or be detrimental to the amenity of the area include:

- (a) the presence (or absence) of parking facilities;
- (b) traffic movement and density;
- (c) noise levels;
- (d) the possibility of nuisance or vandalism;
- (e) the harmony and coherence of the environment; and
- (f) any other prescribed matters.¹⁸

However, the definition of 'amenity' for the purposes of the LCR Act is not limited by these factors.¹⁹

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

Major event licences

36. The grant of a major event licence is subject to sections 14A, 14B and 26A of the LCR Act. Under the LCR Act, a major event means '*an event determined or taken under section 14B of the LCR Act to be a major event.*'²⁰ Relevant to this application, section 14B(3) of the LCR Act states that an event is taken to be a major event if the Commission determines the event is likely to attract more than 5,000 patrons, which the Commission may determine by considering a range of factors in section 14B(5). For the purposes of the Original Application and Review Application, the Commission was informed that the Event had already sold almost 10,000 tickets.

37. The grant of a major event licence is governed by section 26A of the LCR Act which states that the Commission may only grant a major event licence if satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature, see paragraph 94 below. Further, in accordance with section 14A of the LCR Act, a major event licence is subject to any other condition determined by the Commission and specified in the licence.

¹⁸ LCR Act, section 3A(2).

¹⁹ LCR Act, section 3A(3).

²⁰ LCR Act, section 3(1).



MATERIAL BEFORE THE COMMISSION AND PUBLIC HEARING

38. The Commission on review had before it, and considered, all of the material before the Delegate, including:

- a) Initial Application for the major event licence received 7 June 2017;
- b) Written objection from Council dated 20 June 2017;
- c) Original Application for the major event licence received 2 August 2017;
- d) Alcohol Management Plan versions 4.1, and 5.1;
- e) Updated plan of the Premises (red-line plan) received 6 October 2017;
- f) Written submissions from Victoria Police dated 10 October 2017; and
- g) Written submissions from the Applicant dated 28 September 2017.

39. The Commission also considered the following documents:

- a) Decision and Reasons for Decision of the Delegate dated 10 October 2017;
- b) Application for internal review dated 10 October 2017;
- c) Written submissions from the Applicant dated 6 October 2017;
- d) Alcohol Management Plan version 5.2 (**the Alcohol Management Plan**);
- e) Written submissions from the Applicant dated 12 October 2017; and
- f) Written submissions from Victoria Police dated 12 October 2017.

40. On 12 October 2017, the Commission conducted a public hearing in relation to the Review Application (**the Hearing**). At the Hearing, the Applicant was represented by Mr John Larkins of Counsel, instructed by Mr Paul Ryan of Ryan Commercial Lawyers. For the Applicant, Ms Tracey Wall and Mr Ross Drennan gave evidence to the Commission. Victoria Police were represented by Senior Sergeant Philip Eager, and Licensing Inspector Simon Mark Stevens gave evidence to the Commission for Victoria Police.

41. At the Hearing and via written submissions, the Applicant confirmed that the Review Application sought the grant of the Licence and that the Commission consider the following conditions:

- a. operation of Licence – Saturday 14 October 2017 from 2pm to 10pm;
- b. patron capacity – 10,500;



- c. drinks – limited to a maximum of two per person at any one time;
- d. reduction in beer cup size from 520ml to 425ml;
- e. removal of the schnapps bar;
- f. removal of the bar in the silent disco; and
- g. engagement of an independent, accredited RSA Compliance Manager.

URGENT DECISION

42. As the Event was scheduled to take place on 14 October 2017, the Commission considered the Review Application as a matter of urgency and made its decision to set aside the decision of the Delegate and, in substitution, grant the Licence subject to the conditions contained in Appendix One of the decision dated 13 October 2017 (**Decision**). The conditions are also reproduced at Appendix One of these Reasons for Decision.

CONSIDERATIONS OF THE COMMISSION

MISUSE OR ABUSE OF ALCOHOL

43. As stated at paragraph 33(c), the Commission can refuse the grant of the application for a licence where it would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii) of the LCR Act). The minimisation of harm arising from misuse and abuse of alcohol is also a primary object of the LCR Act.²¹

Victoria Police submissions

44. While Victoria Police objected to the Original Application and the Review Application on the basis of a number of grounds as discussed at paragraphs 10 and 11 above, its written and oral submissions centred on its concerns related to the risk of misuse or abuse of alcohol.

45. Victoria Police characterised the Event as a 'beer drinking festival' and submitted that this is inherently linked to the likelihood of harm arising from the misuse or abuse of alcohol and that events of the type proposed were inconsistent with community expectations regarding the development of the liquor, licensed hospitality and live music industries.

²¹ See further paragraphs 30 to 32 of these Reasons.



46. Victoria Police submitted that the past performance of the Applicant in conducting events of the type proposed in the Original Application and Review Applications is the best determinant of future behaviour. It asserted that the Applicant had a history of poor performance in managing the risk of misuse or abuse of alcohol during its role providing bar services for Nokturnl at past Oktoberfest events in Melbourne.

47. The Commission accepted that the Applicant's roles and responsibilities as Licensee for this Event were different from its roles and responsibilities from previous Oktoberfest events, where Nokturnl was Licensee. The Commission therefore only considered Victoria Police evidence that was limited to Events where the Applicant provided bar services including:

(a) 2014 Oktoberfest – Birrarung Marr, Melbourne.

- (i) The Applicant was responsible for bar service operations;
- (ii) Victoria Police noted misuse and abuse of alcohol concerns including risky behaviour by patrons including throwing objects at police, climbing structures, fighting, assaulting police and general public order issues; and
- (iii) Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) compliance records in relation to this event showed that Nokturnl was issued with infringement notices for supplying liquor other than in accordance with the licence and a warning notice for failing to comply with RSA requirements.

(b) 2015 Oktoberfest – Birrarung Marr, Melbourne.

- (i) The Applicant was responsible for bar service operations, and Safety in Numbers (the risk management business of which Ms Wall was a director) was the promoter and provided risk management services;
- (ii) Victoria Police noted misuse and abuse of alcohol concerns including intoxicated patrons fighting, being attended to by St John's Ambulance and being evicted; and
- (iii) VCGLR compliance records showed that Nokturnl, the licensee for this event, was issued with a warning notice for failing to display signage and for supplying liquor in a sealed container in breach of a licence condition.



(c) 2016 Oktoberfest – Birrarung Marr, Melbourne.

- (i) The Applicant was responsible for bar service operations and Ms Wall was listed as site safety officer;
- (ii) Victoria Police noted misuse and abuse of alcohol concerns including multiple instances of assault, fighting, injuries, police assault, drunken patrons and intoxication, approximately 90 evictions and lewd conduct in public toilets; and
- (iii) St John's Ambulance first aid data showed that of the 45 patrons requiring medical attention, most persons were suffering from abrasions and intoxication. Two patrons were hospitalised.

48. In respect of the 2017 Royal Melbourne Oktoberfest – Exhibition Building, Melbourne, the Applicant was the licensee for this event. Although it was marketed as a '*newer, smaller family-friendly traditional Oktoberfest*', Victoria Police noted misuse and abuse of alcohol concerns including large numbers of intoxicated patrons, patrons passed out outside the venue, poor monitoring by security, and an unwillingness by crowd controllers to engage with intoxicated and unruly patrons.

49. With the exception of 2017 Royal Melbourne Oktoberfest when it was licensee, the Applicant provided bar services to each of the events listed above. Victoria Police argued that, due to its role providing bar services, the Applicant was inherently responsible for this misuse and abuse of alcohol at these events. Ejections due to alcohol at Nokturnl events where the Applicant had provided bar services, risk management, or even served as licensee were high in relation to crowd numbers. Victoria Police contrasted these events with the 2017 Grand Final at the Melbourne Cricket Ground where Victoria Police's witness, Inspector Stevens, estimated that there were between four and five ejections for 105,000 patrons.

50. Victoria Police submitted that conditions would not make a beer drinking festival a safe event, stating that:

There is ample evidence to show that the endorsement of conditions on the licence is incapable of overcoming the alcohol related violence and disorder which inevitably occurs at large-scale Oktoberfest events.

On the basis that the Applicant's past record could be said to be indicative of future conduct, Victoria Police urged the Commission to uphold the Delegate's refusal.



Applicant submissions

51. The Applicant submitted there were numerous features as to the management and operational procedures for the Event that would distinguish it from other events in the past.
52. At the Hearing, the Applicant submitted that it was a Melbourne-based company with a strong record in managing high-risk public events. Therefore, its appointment as Licensee, as opposed to Nokturnl who was not locally based, reduced the risk of misuse or abuse of alcohol associated with the Event. Furthermore, the security company that would be employed was also locally based and experienced in dealing with high-risk events such as the Event.
53. The Applicant's witnesses submitted that engaging the Applicant's preferred, local, security provider would enable better management of the risk of misuse and abuse of alcohol. In particular, Ms Wall stated that the security provider she had appointed was experienced in delivering major events and she was familiar with them having worked with them since 2014.
54. Despite having called the Event an 'alcohol related event' in its Alcohol Management Plan, the Applicant's witnesses submitted that the Event was more of a German cultural event. It went on to provide details of complementary activities that would be provided at the Event and that it submitted would minimise the emphasis on drinking alcohol and the potential for associated harm, such as entertainment comprised of German entertainers from Sydney and Perth and all of the German entertainers based in Melbourne, food vendors from Victoria and roving entertainers including stilt walkers.
55. The Applicant submitted that its Alcohol Management Plan contained measures that would effectively reduce the risk of misuse and abuse of alcohol. Most relevantly, this included:
- (a) a new approach to security (see detail about this submission below at paragraph 75);
 - (b) appointment of experienced RSA Compliance Manager, Mr Cetin Must;
 - (c) queue corralling to 'slow' bar service and give crowd controllers more time to monitor for intoxicated patrons or those approaching intoxication;
 - (d) CCTV footage accessible from the Functional Event Management Centre to assist with coordination;



- (e) introduction of a system where a person will lose their right to order alcohol if deemed by security to be approaching intoxication. This will be indicated by the replacement of the normal Event wristband with a red wristband;
- (f) increased variety, quantity and quality of food outlets; and
- (g) increased entertainment options with a third 'variety' stage for greater emphasis on the cultural and German folk music elements of the Event.

56. The Applicant's witnesses gave evidence that relocating the Event to the Premises would help to minimise any risk of misuse or abuse of alcohol. Specifically, Mr Drennan explained that, based on his recent experience with the Oktoberfest event in Adelaide, moving a major event to a contained premises, such as a showground, enabled crowd controllers to assist with the responsible service of alcohol because they could rove through the crowd and were not confined to monitoring the perimeter.

57. The Applicant submitted that its proposal regarding security at the Event would assist it to manage the risk of misuse and abuse of alcohol due to the following measures:

- (a) employing a high ratio of crowd controllers to patrons of up to 1:70 after 5:00pm;
- (b) the layout of the Premises, in that it is fully contained, meaning that crowd controllers would no longer be diverted to managing the perimeter, as they were at Birrarung Marr the previous year, and could better focus on monitoring the risk of patron intoxication;
- (c) appointment of a local security company with experience in major events as opposed to bouncers with experience in licensed premises only;
- (d) inclusion of crowd controllers with three years of RSA compliance experience to be allocated to positions of heightened responsibility at the Event (RSA Marshals) to sit above ordinary crowd controllers and assist with early identification of intoxicated patrons;
- (e) implementation of a plan as to the positioning of crowd controllers so that any person approaching the bar will pass two crowd controllers; and
- (f) using RSA Marshals in the security hierarchy to ensure crowd controllers are more proactive in managing the risk of patrons who may be approaching intoxication.



58. Ms Wall gave evidence that there would be no involvement from Mr Drennan or his business partner Mr Drew Flanagan in the operation of the Event. She said this would ensure that the Applicant (under direction of herself and the security management structure employed for this Event) would be the point of contact for the management and supply of liquor and would be fully responsible for all aspects of operation of this Event.
59. In oral evidence, Ms Wall explained that there would also be a new approach to evictions which would further aid in the minimisation of the risk of misuse and abuse of alcohol. This new approach would see RSA Marshals and other crowd controllers asking people who they believed to be intoxicated to leave the Premises voluntarily as opposed to forcibly ejecting them. This would be consistent with a licensee's obligations under section 108(4)(a) of the LCR Act which prohibits a licensee from supplying liquor to a person who is in a state of intoxication.
60. Ms Wall gave evidence of her experience and practices as a labour provider which would be central to the effective implementation of the new security measures and the Alcohol Management Plan. In particular, Ms Wall oversaw staff training, ran pre-event briefings to ensure confidence in her employees and had in place a structured communications plan.

Commission findings

61. The Commission assessed the material before it in relation to the issue of misuse and abuse of alcohol. The Commission acknowledges that past incidents at previous Oktoberfest events are concerning and therefore it is reasonable to have concerns in relation to this Event. However, having said that, there are numerous features that distinguish the proposed management of RSA and security at this Event from previous ones. Whilst the Commission acknowledges that the Event is a festival at which German beer is celebrated, this year there appears to be more focus on additional activities such as food, entertainment options and the German cultural and folk music elements which will reduce the emphasis on drinking.
62. The Commission considers that the measures proposed by the Applicant in relation to security, the Alcohol Management Plan and overall management and control of the Event (as set out in paragraphs 51 to 58), in conjunction with the conditions listed in the Appendix to the Decision (also extracted in these reasons), will mitigate the risk of misuse and abuse of alcohol at the Event (see paragraph 66).
63. The Commission is satisfied that in appointing the Applicant as Licensee, the Event is being conducted under a new business model which gives the Applicant full control of both front and



back of bar and all management aspects of the Event. This reflects an approach to the management of the risk of misuse and abuse of alcohol that differs from past Oktoberfest events (with Nokturnl as licensee) where the Applicant had control of bar services only including ordering and staffing. Control over the front of bar enables a licensee to monitor for the risk of intoxication as patrons approach the bar. Consequently, the Applicant will be in a position to manage the risk of misuse and abuse of alcohol in a way it also had at the 2017 Royal Melbourne Oktoberfest, where no infringement notices were issued relating to the supply of alcohol.

64. The Commission does not agree that the history of poor performance in events of this type should be attributed to the Applicant, due to its limited role in previous events conducted by Nokturnl. Consequently, the Commission is of the view that the Applicant's performance in major events of this type is seen through its management of events including roles as:
- (a) licensee for the final two years of the Big Day Out (patron capacity 55,000);
 - (b) licensee of Docklands Firelight (patron capacity 12,000); and
 - (c) event risk manager for Soundwave and St Jerome's Laneway Festival.
65. The Commission gave considerable weight to the security procedures contained in the Alcohol Management Plan and is satisfied that the risk of harm can be managed through the Alcohol Management Plan in conjunction with the conditions imposed on the Licence. The conditions proposed by the Applicant can be summarised as:
- (a) limitations on the supply of alcohol through capping the maximum number of drinks to two per person, removing higher strength beers from the menu and reducing the size of containers;
 - (b) removal of bars deemed to be high risk by Ms Wall such as the silent disco, and the schnapps bar which supplied spirits;
 - (c) improved security procedures as stated in paragraph 57 including deploying higher numbers of crowd controllers as the Event progresses;
 - (d) appointing an RSA Compliance Manager and RSA Marshals to oversee RSA compliance;
 - (e) adherence to the Alcohol Management Plan; and
 - (f) a reduction in Event hours.

The Commission accepts that these conditions will assist in minimising the risk of harm associated with misuse and abuse of alcohol, however considers it necessary to include additional conditions regarding:



- (a) positioning of the crowd controllers to ensure entry and exit points to licensed areas are adequately monitored;
- (b) specifying the number of RSA Marshals to supervise RSA functions and provide a high level of patron engagement and intervention (the Commission mandates six RSA Marshals);
- (c) proof of age checking for all patrons appearing to be under the age of 25 rather than those suspected to be under the age of 18;
- (d) while still managers and promoters, the exclusion of Mr Drennan and Mr Flanagan from management and control of the supply of liquor, provision of security, RSA practices and any decision-making with respect to those matters;
- (e) removal of schnapps from menus;
- (f) improved communication protocols with Victoria Police and mandated compliance with any Victoria Police directions;
- (g) RSA requirements including certificate display; and
- (h) a review of the Event detailing incidents, amenity issues and the management structure to be submitted to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) and Victoria Police.

66. The Commission considers that, because the aim of the LCR Act is harm minimisation, the imposition of appropriate conditions can serve to minimise harm associated with the misuse and abuse of alcohol.²² The Commission is satisfied that the review conditions, which require the Applicant to provide a report to Victoria Police and the VCGLR after the event detailing incidents, amenity issues identified and any relevant action taken, and a list of persons who held positions in the management structure of the licensee which accorded with the Alcohol Management Plan, impose an additional level of accountability which should assist with minimisation of harm associated with misuse and abuse of alcohol.

67. The Commission is satisfied that the Event is a major event as provided for by the major event licence under section 14B(3) of the LCR Act on account of the number of tickets already sold to the Event at the date of the Hearing. While acknowledging that events of this type involve risk, they are able to be licensed under the LCR Act. When effectively managed, major events

²² See *Kordister* [2012] VSCA 325, at [12-15].



contribute to the objects of the LCR Act, including the responsible development of the liquor, licensed hospitality and live music industries.²³

AMENITY

Victoria Police submissions

68. The second element of Victoria Police's Objection is amenity.²⁴ In much of the evidence provided, the amenity concerns arise out of or are related to the misuse and abuse of alcohol issues referenced above at paragraph 46.

69. As detailed at paragraph 46, Victoria Police submitted that past behaviour is the best predictor of future behaviour, and consequently the Applicant's failure to effectively manage amenity issues in its capacity as risk manager and when providing bar services for Nokturnl is similarly illustrative of its likely inability to do so in regard to this Event.

70. With the exception of the 2017 Royal Melbourne Oktoberfest when it was licensee, the Applicant provided bar services to each of the events referenced above at paragraph 46. Victoria Police argued that detriments to the amenity of the areas surrounding those events were primarily due to patron intoxication for which the Applicant was inherently responsible due to its role providing bar services. Victoria Police pointed out that all of the events listed at paragraph 46 were heavily conditioned by the Commission to no avail in reducing detriment to amenity.

Applicant submissions

71. The Applicant's written submissions responded to amenity concerns raised by the Victoria Police and the Delegate. In particular, the Applicant submitted that, in contrast to the 2016 Oktoberfest event at Birrarung Marr, it would be easier to preserve and protect the amenity of the area at the Event in 2017 due to the characteristics of the new Premises, the Melbourne Showgrounds. The Applicant contended that the Premises were purpose built for a major event such as this, with superior facilities for managing waste and litter, public transport, hygiene and security before, during and after the Event.

²³ LCR Act section 4(1)(c).

²⁴ LCR Act, section 38(1).



72. The Applicant elaborated on the benefits of the Premises in managing amenity issues through its oral submissions at the Hearing. In particular:

- (a) the physical characteristic of the Melbourne Showgrounds, being completely contained by a fence, meant that security was not diverted to managing the perimeter;
- (b) on-site parking, on-site taxi drop off and an on-site train station (combined with the dedicated train service to and from the Event) at the Premises would address issues regarding traffic movement and density; and
- (c) the risk of nuisance and vandalism would be addressed by the engagement of a risk management company with experience in events conducted at the Premises and within the niche market of major event security. This includes the allocation of 18 crowd controllers to patrol the exterior of the Premises.

73. The Commission was also informed by the Applicant that there would be external toilets to enable patrons leaving the Premises to access toilet facilities prior to utilising public transport.

74. The Applicant also gave evidence as to the importance of sufficient access to public transport when running an event like this. Access to public transport had been one of the advantages of the Birrarung Marr location proposed in the Initial Application. The Premises are one of few alternative venues in Melbourne with equally good or better access to public transport and with the added advantage whereby patrons do not have to leave the venue to travel, compared to Birrarung Marr where patrons needed to walk back through parts of Melbourne CBD to get to public transport. The Applicant submitted this would assist with management of the amenity of the area.

Commission findings

75. The Commission considers that amenity concerns related to the Event are associated with the concerns over the risk of misuse and abuse of alcohol or alcohol related violence. As discussed at paragraph 63, the Commission is satisfied the Applicant's role is different in this Event as compared to previous events.

76. The Commission is satisfied that the Applicant's role providing bar services for Nokturnl at the events listed at paragraph 46 was limited to ordering supplies and employing and managing the bar staff. This limited role reduced the Applicant's ability to monitor and manage the risk of intoxication of patrons, which was the responsibility of the licensee at those events. Much of the



previous amenity related issues were related to intoxicated patrons. The Commission also noted the significance of the role of monitoring the front of the bar while patrons are approaching in order to prevent intoxicated patrons from being supplied liquor. During the events where the Applicant provided bar services only, the Applicant did not have oversight of crowd controllers who were monitoring patrons as they approached the bar or in other areas of the events.

77. Regarding the 2017 Royal Melbourne Oktoberfest when the Applicant was licensee, the Commission notes that there were no infringement notices or warnings issued by VCGLR compliance inspectors following that event. Further, the Commission notes that the Alcohol Management Plan proposed for this Application and the appointment of RSA Marshals and crowd controllers experienced dealing with major events would mitigate any detrimental impact on the amenity of the area in which the Premises are located.

78. The Commission is satisfied that adherence to the Alcohol Management Plan, in conjunction with the endorsement of conditions on the licence, in particular, crowd controllers, no pass-outs and cooperation with Victoria Police, will effectively mitigate the risk of detriment to the amenity of the area. The Commission is also satisfied that the characteristics of the Premises serve to mitigate many of the amenity risks that occurred at past Oktoberfest events that the Applicant has been involved in.

SUITABILITY OF APPLICANT

79. The final element of Victoria Police's Objection relates to the suitability of both the Applicant and its associates (Nokturnl).

80. Suitability is not defined by the LCR Act and consequently it should be interpreted in the context of the LCR Act and its objects.

Victoria Police submissions

81. On 1 October 2017 Victoria Police wrote to the Commission to maintain its Objection and sought leave to add an additional ground for the objection, namely suitability of the Applicant. Victoria Police submitted that:

Based on past performance, the Applicant and its Associates have demonstrated overwhelmingly that they do not have the requisite ability to conduct large, high-risk events of the type proposed in the application [*Siguenza v Secretary to the Department of Infrastructure*].



82. Victoria Police submitted that the Applicant was not a suitable person to hold the Licence in its own right and due to having unsuitable associates. In making this contention, Victoria Police relied primarily on the historical instances of misuse and abuse of alcohol when Nokturnl was licensee for events in other states in Australia dating back to 2014, as well as those events listed in paragraph 46 above. Victoria Police submitted that Nokturnl would be in a position to influence the Applicant with respect to its duties under the licence, despite no longer being the proposed licensee for the Event.
83. With regard to the suitability of the Applicant, Victoria Police maintained that it was not a suitable person to hold the Licence, relying on previous poor performance as bar manager for past Nokturnl Oktoberfest events and in providing risk advice to Nokturnl.

Applicant submissions

84. The Applicant did not agree with Victoria Police's assessment. In response, the Applicant submitted that it was a suitable person to hold the Licence on the basis that it had successfully conducted high risk events in various capacities including as licensee and through the provision of risk management advice. In support of this submission, Ms Wall cited her effective management of liquor supply as licensee for the high-risk major events including those listed above in paragraph 64.
85. The Applicant submitted that its role providing bar services for past Nokturnl events should not be used as an indicator of its ability to effectively perform the role of licensee of this Event because it did not have any control over the front of bar operations (i.e. patrons approaching the bar) in those other events.
86. Ms Wall submitted that her previous role providing risk management advice to Nokturnl through Safety in Numbers was also not determinative of her ability to undertake the functions of a licensee at this Event on the basis that her role involved providing written advice and plans provided prior to events rather than the complete operation and management of the events.
87. Mr Drennan, the Director of Nokturnl, disputed Victoria Police's evidence that Nokturnl was an unsuitable person to hold a major event licence and by virtue of this, the Applicant was also unsuitable. The Commission did not consider it necessary to make a determination regarding the suitability of Nokturnl as Associate.



88. Ms Wall provided evidence as to how the Event would be managed and confirmed the Applicant would have complete control over the aspects of the Event to be performed by the Licensee. She confirmed that Nokturnl, Mr Drennan and Mr Flanagan would not be involved in those aspects of the Event.

Commission findings

89. Section 44(2)(a) of the LCR Act provides that the Commission may refuse an application if, paraphrased, 'in the case of a grant of a licence, that the applicant is not a suitable person to hold or carry on business under the licence.'

90. In light of the time available to the Commission, and on the basis that Nokturnl and its directors were not going to be involved in the Event, the Commission did not need to consider the suitability of Nokturnl. While noting that issues relating to past events are relevant, the concerns put forward by Victoria Police primarily relate to Nokturnl and not the Applicant. The Commission did not make a determination regarding the suitability of Nokturnl because it was satisfied that the business model proposed by the Applicant removed all influence and as such it was unnecessary to consider this issue. Further, the Commission considers that the conditions on the Licence limiting the involvement of Mr Drennan and Mr Flanagan in the operation of this particular Event will ensure this change in management structure must be observed.

91. The Commission notes that the management structure of this Event is substantially different to previous events run by Nokturnl with which the Applicant was involved. Specifically, the Commission noted that the Applicant's previous role was limited to ordering and staffing the bar. While the Commission noted that the Applicant's role in providing these bar services inherently carried with it a responsibility for the supply of alcohol, the Commission was satisfied that appointing the Applicant as Licensee would give the Applicant oversight over the entire bar operations and control of the Event. This included managing crowd controllers who would be monitoring intoxication of patrons approaching the bar.

92. The Commission is satisfied that, for the purpose of the Licence the subject of this Review Application, the Applicant is suitable to hold or carry on the business under the Licence.

Other considerations



93. Section 14A of the LCR Act provides that the grant of a major event licence is subject to section 18 (approval of directors)²⁵ and any other conditions determined by the Commission. With regard to section 18, having established through the Hearing that the Applicant is a suitable person to hold the Licence, the Directors are accordingly approved by the Commission for the purpose of section 14A. With regard to the conditions, these are set out in Appendix One.

Limitations on the supply of liquor

94. Section 26A of the LCR Act provides that the Commission may grant a major event licence only if satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature. The Review Application proposed that the supply of liquor was limited in that the trading hours for supplying liquor were limited to eight hours only on a single day for a one-off Event. The Commission was therefore satisfied that the supply of liquor was limited for the purpose of section 26A of the LCR Act.

General discretion

95. In addition to the harm minimisation object contained in section 4(1)(a), the objects of the LCR Act also include: to facilitate the development of a diversity of licensed facilities reflecting community expectations,²⁶ and to contribute to the responsible development of the liquor, licensed hospitality and live music industries.²⁷ In consideration of these objects, in conjunction with the evidence presented to it and the imposition of appropriate conditions provided at Appendix One, the Commission is minded to apply the general discretion it has to approve an application on internal review. The Commission is satisfied that the objective of harm minimisation will be met through the Applicant's adherence to the conditions, including the review condition as discussed at paragraph 66.

DECISION AND REASONS FOR DECISION

96. The Commission took into account the material before it and has determined to set aside the decision of the Delegate and, in substitution, grant the application for the Licence subject to the conditions set out at Appendix One to the Decision.

²⁵ LCR Act section 14A(2)(a).

²⁶ LCR Act section 4(1)(b).

²⁷ LCA Act, section 4(1)(c).



97. The Commission considers that it had more information on review as well as the opportunity to conduct a hearing with additional material. This put the Commission in a better position to make the decision than the Delegate who had reviewed the Original Application on the papers.
98. The Commission acknowledges that a beer festival may not have as many protective characteristics as some other major events. However, the Commission considers that the risk of alcohol related harm at this Event would be effectively managed by the conditions imposed on the Licence, measures in the Alcohol Management Plan, in particular the RSA Compliance Marshals, the contained nature of the Premises and the experience of the Applicant in managing major event liquor licences. The Commission also considered it would be beneficial to impose the review condition to analyse how the Event was conducted and the extent to which the conditions minimised the risk of harm or amenity concerns. If in future another similar licence is applied for, this would be instructive to the Commission.
99. The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for the Licence subject to the conditions set out at Appendix One to the Decision dated 13 October 2017.

The preceding ninety-nine (99) paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Mr Des Powell AM, Commissioner and Dr Dina McMillan, Commissioner.



Appendix One

CONDITIONS

TYPE OF LICENCE

This licence is a major event licence and authorises the licensee to supply liquor for consumption on the licensed premises at the event known as Oktoberfest in the Gardens Melbourne 2017.

NOISE AND 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 to which the licence relates during or immediately after the trading hours authorised by this licence.

SUPPLY OF LIQUOR

The licensed area is the area marked on the plan as approved by the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**).

Liquor may not be removed from the licensed area.

Liquor supplied may only be served in plastic containers or opened cans, not exceeding 425ml in volume, and is also limited to the following:

- The licensee shall not serve more than two (2) containers/cans of liquor per customer at any one time.
- Any beer supplied shall not exceed 5.4% ABV.

CROWD CONTROLLERS

Crowd controllers, licensed under the *Private Security Act 2004* and trained in responsible service of alcohol (**RSA**) are to be employed as follows:

- At least 100 crowd controllers between 2pm and 5pm.
- At least 150 crowd controllers from 5pm onwards, or once 7000 or more patrons are present, whichever is earlier.
- At all times, crowd controllers are to be positioned at every entry/exit point to the licensed area and substantially in accordance with the site plan provided to the Commission at its hearing on 12 October 2017.



- In addition, at all times, a minimum of six (6) crowd controllers licensed under the *Private Security Act* and trained in RSA are to operate as RSA Marshalls to supervise RSA functions of crowd controllers and provide a high level of patron engagement and intervention.
- At all times, the licensee must ensure that it sights an adequate proof of age document for any patron that appears to be 25 years or younger.

MANAGEMENT AND CONTROL OF THE EVENT

The licensee must ensure that its management and control of the event, including the supply of liquor, the provision of security and RSA practices, is independent of both Ross Drennan and Drew Flanagan.

The licensee must ensure that Ross Drennan and Drew Flanagan are not able to make decisions with respect to the above matters.

The licensee must ensure that Ross Drennan and Drew Flanagan do not hold any of the positions listed in the management structure of the licensee as set out at page 10 of the Alcohol Management Plan version 5.2 provided to the Commission at its hearing on 12 October 2017 (**Alcohol Management Plan**).

The directors of the licensee must be present on the licensed premises during the trading hours specified below.

OTHER

Schnapps shall not be supplied to patrons.

The licensee must ensure that a bar that supplies liquor is not position within the silent disco area indicated in the plan before the Commission.

The licensee must take reasonable steps to ensure it communicates appropriately with Victoria Police in relation to any incidents that may occur and comply with any reasonable direction received from Victoria Police concerning operation of the event.

Free drinking water must be provided at every bar that supplies liquor.

A3 sized signs must be prominently displayed at every bar area that supplies liquor that read "Free drinking water is available at this bar upon request".

No pass outs are permitted, except with the permission of the police commanding officer in charge of the event.

All patrons of or over the age of 18 years are to be provided with a suitable wristband to indicate their proof of age.



The licensee must not supply liquor to a patron who is not wearing an appropriate wristband in accordance with the Alcohol Management Plan.

To the extent that a matter is not already dealt with in this licence, it is a condition of this licence that the licensee comply with all requirements of its Alcohol Management Plan.

RESPONSIBLE SERVICE OF ALCOHOL

All staff engaged in the serving of liquor in the licensed area will have undertaken an RSA course within the preceding three years approved by the Victorian Commission for Gambling and Liquor Regulation.

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.

A roster of all staff engaged in the supply of liquor for the duration of the event must accompany the copies of the RSA certificates and must be available for inspection upon request by a member of Victoria Police or a VCGLR Inspector.

A copy of the licence must be displayed at every bar that supplies liquor.

MAXIMUM CAPACITY

10,500 patrons.

PERIOD OF LICENCE AND TRADING HOURS

This licence has effect and continues in force during the period specified below:

- 14 October 2017 between the hours 2pm and 10pm.

REVIEW

Within 45 days following the event, the licensee must provide a report to Victoria Police and the VCGLR detailing:

- a copy of all incident reports relating to the event.
- a report detailing any amenity issues identified by the licensee during or following the event, including any actions taken by the licensee in response.
- a list of persons who held positions in the management structure of the licensee in accordance with page 10 of the Alcohol Management Plan.