



DECISION AND REASONS FOR DECISION

In the matter of an application by Ms Cassandra Chrisp under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to grant an application by Mr Deon Warner to relocate a renewable limited licence.

Commission:

Ms Deirdre O'Donnell, Deputy Chair

Mr Des Powell AM, Commissioner

Dr Dina McMillan, Commissioner

Date of Hearing:

16 May 2018

Date of Decision:

2 July 2018

Date of Reasons:

2 July 2018

Appearances:

Ms Cassandra Chrisp, the Applicant

Mr Deon Warner, the Licensee

Ms Michelle Miller, Counsel Assisting the Commission

Decision:

The Commission has determined to vary the Delegate's decision and grant the application to relocate the renewable limited licence subject to the conditions as set out in Appendix A.

Signed:

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

Deirdre O'Donnell

Deputy Chair

REASONS FOR DECISION

BACKGROUND

1. On 21 December 2017, the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) received an application from Mr Deon Warner (**the Licensee**) to vary renewable limited licence no. 36114213 (**the Licence**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)¹. The Licensee applied to relocate his existing licence from its original location at 1/12 Matthieson Street, Highett, to a new address at 5/1-5 Dobell Drive, Chelsea (**Proposed Location**) (**Original Application**).
2. The Licence, the subject of the Original Application, is informally referred to as a “catering licence” and authorises the Licensee, trading as Cocktails By Design, to supply liquor at pre-booked functions only. The Licence does not allow the supply or consumption of liquor at public events that are attended by the general public.
3. The Licensee operates a mobile cocktail business whereby he transports a mobile bar, glassware, alcohol and other supplies to a venue for the purpose of supplying cocktails at private, pre-booked functions.
4. The Proposed Location is a residential unit in a block of 12 units. The block has some common property, which is subject to Owners Corporation rules governing its use and outlining dispute resolution processes between owners or occupiers.
5. On 27 December 2017, a copy of the Original Application was forwarded to Victoria Police and the Kingston City Council (**the Council**) in accordance with section 33(3). Victoria Police, on 16 January 2018, and the Council, on 25 January 2018, advised the Commission that they did not object to the Original Application.
6. The Commission received four objections to the Original Application. The objections were submitted by residents that live in the same block of units as the Proposed Location. The general nature of the objections was that the conduct of the licensed business from the Proposed Location would be detrimental to the amenity of the area. One of the objectors was Ms Cassandra Chrisp (**the Applicant**). The objectors raised the following concerns:
 - The layout of the Proposed Location is not suitable if the operation of the business requires the Licensee to “constantly and at all hours” park on the common area lawn to unload and load;

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



- Parking on the common lawn area would make a mess of the lawn and cause a disturbance to residents;
 - Accessing the common area lawn is contrary to the Owners Corporation rules unless there are special circumstances;
 - The Licensee has been conducting the business from the Proposed Location since 2014 and has been using his unit rather than his garage for storage;
 - On many occasions the Licensee has returned from a function in the early hours of the morning and proceeded to park on the common area lawn to unload his van.
7. One of the objectors advised the Commission that the public display of the licence variation application² was not displayed in the correct manner. The Commission wrote to the Licensee on 17 January 2018, directing them to redisplay the notice for a further 28 days from 22 January 2018 to 19 February 2018.
8. A written submission was received on 23 January 2018, from Ms Jessie Caudry, a resident of the block of units, who identified herself as the secretary of the Owners Corporation committee. The submission stated that the Applicant is the owner of the unit next to the Licensee but does not currently live in the unit and that the Owners Corporation committee does not object to the application.
9. The Licensee's initial response to the objections, received on 28 January 2018, was that:
- The Applicant does not live at the premises and he doesn't understand how she can make some of the comments regarding the day to day living activity;
 - No alcohol will be sold or supplied from the premises;
 - The public notice has been repositioned;
 - All alcohol and equipment is stored in the garage with the exception of glassware and perishable supplies and vehicle access is not an issue.
10. On 24 January 2018, the Commission received correspondence from the Applicant in relation to the submission from Ms Jessie Caudry. The Applicant advised the Commission that Ms Caudry was not the current secretary of the Owners Corporation committee but that the Applicant was the secretary. The Applicant advised the Commission that the content of Ms Caudry's submission

² Required under s34(7) of the LCR Act



was not discussed with all committee members before being submitted to the Commission. The Applicant requested that the Commission disregard the submission.

11. On 6 February 2018, one of the objectors withdrew their objection to the Original Application.
12. On 13 March 2018, a delegate of the Commission (the Delegate) determined to grant the Original Application (**Original Decision**). In granting the application the Delegate stated that:
 - neither the Council or Victoria Police objected to the grant;
 - the Licensee has redisplayed the public notice to the Delegate's satisfaction;
 - the information provided by the Owners Corporation did not directly affect the outcome;
 - the amenity concerns raised by the objectors had been brought to the attention of the Licensee; and
 - it is the Licensee's responsibility to comply with the Owners Corporation rules.
13. On 21 March 2018, the Commission received an application from the Applicant for an internal review of the Original Decision (**Review Application**). The Review Application states the grounds for requesting a review as "Information provided to the Commission was not properly considered and the decision is therefore flawed and biased towards the Licensee".

LEGISLATIVE FRAMEWORK AND THE COMMISSION'S TASK

The Commission's internal review power

14. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Delegate's decision in respect of the Original Application is a reviewable decision, and the Applicant is eligible to apply for review of that decision. The Review Application was made under section 153.
15. 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:
 - affirms or varies the reviewable decision; or
 - sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.³

³ Sections 4(2) and 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe the manner in which the Commission is to undertake internal reviews.



16. Under the LCR Act, an application for a renewable limited licence may be contested or uncontested. Pursuant to section 3(1), a contested application is:

“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);...”

17. The Original Application was a contested application as three objections were received (not including the objection that was withdrawn) and the Review Application remains contested.
18. The Commission on review stands in the shoes of the original decision maker and, in respect of a contested application, must either:
- grant the application (and may do so subject to conditions);⁴ or
 - refuse to grant the application.⁵

Exercising the internal review power

19. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁶
20. The objects of the LCR Act are set out in section 4(1), which provides:

“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*
 - (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.”*

⁴ Sections 44, 47, 49 and 157

⁵ See section 44 and 47

⁶ VCGLR Act, section 9(3) and (4)



21. 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.”⁷

22. In exercising the internal review power, the Commission:

- must consider all the information, material and evidence before the original decision maker;⁸ and
- may also consider further information, material or evidence;⁹ and
- in respect of contested applications on review, may have regard to any matter the Commission considers relevant¹⁰, make any enquiries the Commission considers appropriate¹¹ and must give the Licensee and each objector, including the Applicant, a reasonable opportunity to be heard.¹²

23. The Commission considers that while the grounds of refusal outlined in sections 47(2) and 44(2) of the LCR Act are relevant considerations, the ultimate determination of a contested application is to be made pursuant to sections 47(1) and 157(1) at the discretion of the Commission with reference to the objects of the LCR Act.

24. Sections 47(2) and 44(2)(b) of the LCR Act empower the Commission to refuse to grant the Original Application on various grounds including:

- (a) that the application has not been made, displayed or advertised in accordance with the LCR Act;
- (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 the application relates are situated; or
- (c) that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

⁷ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

⁸ Section 157(2)

⁹ Section 157(3)

¹⁰ Section 47(3)(a)

¹¹ Section 47(3)(b)

¹² Section 47(3)(c)



25. Section 3A of the LCR Act defines the term 'amenity' and section 3AA sets out examples of evidence constituting detraction from or detriment to amenity of area, as follows:

3A What is amenity?

(1) For the purposes of this Act, the amenity of an area is the quality that the area has of being pleasant and agreeable.

(2) Factors that may be taken into account in determining whether the grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an 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;*
- (f) any other prescribed matters.*

(3) Nothing in subsection (2) is intended to limit the definition of amenity.

3AA Evidence constituting detraction from or detriment to amenity of area

For the purposes of this Act, evidence of any of the following factors, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to, that premises, are taken to constitute evidence of detraction from, or detriment to, the amenity of the area in which the licensed premises is situated —

- (a) violent behaviour;*
- (b) drunkenness;*
- (c) vandalism;*
- (d) using profane, indecent or obscene language;*
- (e) using threatening, abusive or insulting language;*
- (f) behaving in a riotous, indecent, offensive or insulting manner;*
- (g) disorderly behaviour;*
- (h) causing nuisance;*
- (i) noise disturbance to occupiers of other premises;*
- (j) obstructing a footpath, street or road;*
- (k) littering.*



26. Further, given that the Licensee has applied to relocate a renewable limited licence, the Commission must be satisfied that the scale and scope of the supply of liquor that is the subject of the licence remains sufficiently limited in nature in accordance with section 26(1) of the LCR Act.

Conduct of an inquiry

27. 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.

28. Relevant provisions governing the conduct of an inquiry by the Commission in this matter are:

- 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.*

...”

- 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. (Note omitted)”

MATERIAL BEFORE THE COMMISSION

29. The Commission on review had before it and considered all of the material before the Delegate, which included:

- (a) the Original Application, consisting of:
 - i. an application to relocate an existing licence or permit to a new address, received 21 December 2017;
 - ii. declaration of right to occupy the premises, dated 12 December 2017;



- iii. statement of display, dated 7 February 2018, for the period 22 January to 19 February 2018;
 - (b) an objection dated 9 January 2018 from the Applicant;
 - (c) notification from Victoria Police, dated 17 January 2018, advising that it has no objection to the Original Application;
 - (d) notification from Kingston City Council, dated 25 January 2018, advising that they have no objection to the Original Application;
 - (e) a submission dated 23 January 2018 from Ms Jessie Caudry as secretary of the Owners Corporation governing the block of units that the Proposed Location is located within;
 - (f) an objection dated 24 January 2018 from L J Lester;
 - (g) an objection dated 24 January 2018 from Rita Piyadasa;
 - (h) a submission dated 24 January 2018 from the Applicant in response to Ms Caudry's submission;
 - (i) a further submission dated 29 January 2018 from the Applicant in response to the content of Ms Caudry's submission;
 - (j) an objection dated 25 January 2018 from Lourdes Doyle;
 - (k) a submission dated 28 January 2018 from the Licensee in response to the objection from the Applicant;
 - (l) correspondence dated 2 February 2018 from Rita Piyadasa withdrawing her objection dated 24 January 2018; and
 - (m) a submission dated 26 February 2018 from the Licensee in response to the objections from Ms Lester and Ms Piyadasa.
30. The Commission also had before it and considered additional information and evidence including:
- (a) the Original Decision and reasons for decision, dated 13 March 2018;
 - (b) the Review Application, received 21 March 2018 (including a written submission in support);
 - (c) submissions from the Licensee dated 29 April 2018 and 7 May 2018 (including a letter of support from Ms Natalia Anguita);
 - (d) submissions from and on behalf of the Applicant, dated 1 May 2018 and 10 May 2018;



(e) submission from Ms Gay Proudman, dated 5 May 2018 in support of the Original Application.

31. The Commission also received information from both parties that related to matters outside the jurisdiction of the Commission. This information was noted by the Commission but was not considered in reaching its determination. The Commission notes that the Owners Corporation has a role in protecting the amenity of the common areas and the Commission expects that the Owners Corporation rules would be complied with by residents.
32. The Commission received correspondence from the Licensee that appeared to have been sent on 11 May 2018, however, was not received until 3 June 2018. The Commission has noted this correspondence in making its determination.
33. The Review Application was heard at a public inquiry on 16 May 2018 (**the Hearing**). The Licensee and the Applicant gave evidence before the Commission. The Applicant's mother, Ms Christine Chrisp, was also called to give evidence to the Commission as she had, on occasion, acted as proxy for the Applicant in relation to Owners Corporation matters.

REASONS FOR DECISION ON REVIEW

Issues for determination on review

34. In making its decision on review, the Commission must consider several matters, namely:
 - whether the relocation of the renewable limited licence would detract from or be detrimental to the amenity of the area in which the Premises are to be located;¹³
 - whether the Commission is satisfied that the scale and scope of the supply of liquor the subject of the Licence is limited in nature;¹⁴ and
 - whether the Original Application should be granted or refused, having regard to the objects of the LCR Act and, in particular, harm minimisation, which is the primary object.¹⁵

Each of these issues is discussed in turn.

Whether the grant would detract from or be detrimental to the amenity of the area

35. The Commission must determine whether the relocation of the renewable limited licence to the Proposed Location would detract from or be detrimental to the amenity of the area in which the

¹³ See LCR Act, ss 44(2)(b)(i) and 47(2).

¹⁴ Section 26(1)

¹⁵ The Commission notes that in determining this matter, it has also considered each of the grounds set out in section 44(2).



Premises are located. If the Commission considers that the relocation would have an amenity impact, it may give rise to a ground of refusal under sections 47(2) and 44(2) of the LCR Act.

36. The Applicant raised concerns that go to the amenity of the area. These concerns were primarily in relation to the Licensee driving onto the common area lawn in front of his unit to load or unload his van. At the Hearing, the Applicant gave evidence to the Commission that the Licensee had parked on the common area lawn for extended periods of time despite being reminded that it is contrary to the Owners Corporation rules. The Applicant and Ms Christine Chrisp gave oral evidence to the Commission in relation to an incident in 2015 where the Licensee was observed parking on the common lawn area for an extended period of time. Evidence was submitted that, on being reminded of the Owners Corporation rule on the matter, the Licensee became aggressive towards Ms Christine Chrisp and did not move his vehicle.
37. Within the supporting submission to the Review Application, the Applicant submitted that the Licensee has stored supplies and liquor for the licensed business in his unit which has resulted in him driving and parking on the common area lawn at all hours of the day or night. The Applicant advised the Commission at the Hearing that she had raised the issue formally with the Owners Corporation on at least two occasions but was advised that it was a personal matter between herself and the Licensee.
38. At the Hearing, the Licensee submitted that the incident in 2015 was an isolated incident and that he only parks on the common area lawn to load supplies for functions, but noted that he does park the vehicle on the lawn while he prepares for a function and loads supplies as they are ready rather than preparing everything and loading the vehicle all at once. This increases the time that the vehicle is parked on the common area lawn and the duration of any potential noise disturbance.
39. The Licensee conceded that unloading his van at the end of a function may be an issue because it might be very late and could wake up residents. The Licensee suggested to the Commission that he could leave the supplies in the van until the next day.
40. The Licensee submitted to the Commission, in writing and in oral evidence, that he has a limited number of functions each year. The Licensee advised the Commission that he had 10 functions in 2017 and at the time of the Hearing, he had only had three functions in 2018.
41. The Commission notes that the definition of 'amenity' in the LCR Act is broad when determining whether an application will detract from or be detrimental to the amenity of the area. While most



of the factors listed in sections 3A and 3AA¹⁶ have previously been applied in relation to patron behaviour associated with licensed premises (rather than behaviour of the Licensee themselves), the Commission is of the view that there is the potential for there to be detriment to the amenity of the area from the loading and unloading of supplies and equipment related to the operation of the business.

42. The Commission accepts the Applicant's evidence that the Licensee parking on the common area lawn has resulted in a detriment to the quiet enjoyment that she expected when she purchased the property. The Applicant gave oral evidence that there was more than one instance of noise disturbances that resulted in her being woken up in the early hours of the morning by doors opening and closing and the noise of glasses and objects being carried inside. The Applicant noted that she moved out of the unit in February 2017 and could not provide any evidence of activity since that date.
43. The Commission accepts the Licensee's evidence that his business is limited to a small number of functions per year, however, there is conflicting evidence as to how often and for how long the Licensee parks his vehicle on the common area lawn. The Commission also heard from two of the residents from the block of units in support of the Licensee and from a former neighbour of the Licensee in relation to the conduct of his business at its previous location.
44. After reviewing all the evidence before it, the Commission does not consider that the risk to amenity is such that it warrants refusing to grant the relocation of the Licence. However, the Commission feels that it would be appropriate to add a special condition to the Licence to limit the times that the Licensee can load or unload supplies related to the licensed business. The condition is designed to limit the Licensee to load and unload supplies or equipment relating to the supply of liquor under the Licence at the proposed location during the trading hours specified on the Licence.
45. The Commission is of the view that it is the Licensee's responsibility to otherwise comply with Owners Corporation rules and that the Owners Corporation committee should be supportive of residents that are impacted by non-compliance with those rules.

Limited scale and scope of liquor supply

46. The Commission may only grant a renewable limited licence if the Commission is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature.¹⁷ Although granting the Original Application would amount to a variation of the Licence and not the granting

¹⁶ See paragraph 25

¹⁷ Section 26(1) of the LCR Act.

of a new limited licence, the Commission still considered whether the variation would alter the nature of the supply of liquor to such an extent that it would no longer be sufficiently limited.

47. The Commission notes that the Licensee's business model is to supply cocktails only at pre-booked functions rather than a broader range of liquor.
48. In assessing the sufficiency of limitation in scale and scope of the supply of liquor, the Commission has had regard to the Licensee's business model and reviewed the standard conditions for a licence of this type (off-site catering) and determined that the conditions on the Licence had the effect of sufficiently limiting the scale and scope of supply. The relocation of the address of the licensed premises did not alter the effect of the licence conditions. As such, the Commission is not precluded, pursuant to section 26, from granting the relocation of the renewable limited licence.

Whether to grant or refuse the licence having regard to the objects of the LCR Act

49. Although now satisfied as to the requirements of section 26(1), the Commission is still required to exercise its discretion to determine whether to grant or refuse the application to relocate the licence that is the subject of this Review Application. In doing so, the Commission is required to have regard to the objects in section 4 of the LCR Act.¹⁸
50. The Commission is mindful of the need to ensure that appropriate regard be given to the harm minimisation object,¹⁹ recognising that it is the primary object of the LCR Act. The Commission notes that the Licence currently includes conditions that limit the supply of liquor to pre-booked functions and that the Licence does not permit supply to the general public. The Licence also requires that any person serving alcohol under the Licence must have a current Responsible Service of Alcohol qualification and that there is an amenity condition that requires the Licensee to not cause or permit undue detriment to the amenity of the area where a function is being held.
51. Accordingly, the Commission considers that the grant of the application to relocate the renewable limited licence and the impact of the Licence itself would not be contrary to the primary object of harm minimisation. Further, the Commission also considers that allowing the Licensee to continue his business would facilitate the development of a diversity of licensed facilities reflecting community expectations, in furtherance of the object outlined in section 4(1)(b) of the LCR Act.
52. Having regard to all the above factors and the objects of the LCR Act, the Commission does not consider it appropriate to exercise its discretion to refuse to grant the Original Application.

¹⁸ See section 9(3) of the VCGLR Act

¹⁹ Sections 4(1)(a) and 4(2)



DECISION ON REVIEW

53. The Commission has decided to vary the Delegate's decision to grant the application to relocate the renewable limited licence subject to the conditions as set out in Appendix A.

The preceding 53 paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Mr Des Powell, Commissioner and Dr Dina McMillan, Commissioner.

Appendix A

TYPE OF LICENCE

This is a renewable limited licence and authorises the licensee to supply liquor at the times and in the manner specified below.

SUPPLY OF LIQUOR

This licence authorises the licensee to supply liquor for consumption at pre-booked functions only.

The function must be held in an area of a premises that is set aside for the exclusive use of persons who have booked the function which is attended only by those persons and their guests.

This licence does not allow the supply or consumption of liquor at public events which are attended by the general public.

Any premises where the supply and/or consumption of liquor occurs under this licence is considered to be a licensed premises for the purposes of the Liquor Control Reform Act 1998. The area set aside for the exclusive use of persons who have booked the function for the supply and/or consumption of liquor must be clearly delineated from any other area. This condition does not apply to private residential premises.

This licence does not authorise the supply of liquor for consumption on the following premises:

- a premises already licensed under the Liquor Control Reform Act 1998
- a premises where the current licence has ceased to be in force within the previous 6 months or has been suspended
- a premises where the Commission is currently considering an application for a licence

RESPONSIBLE SERVICE OF ALCOHOL

All staff involved in the service of liquor must have completed an approved RSA training program within the previous three years. Licensees must ensure evidence of completion of the RSA training program (e.g. certificates) is available for inspection at the request of Victoria Police or a gambling and liquor inspector.

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 where the supply and/or consumption of liquor occurs under this licence.



TRADING HOURS

ANZAC Day

Between 12noon and 11pm

On any other day (except Good Friday & Christmas Day)

Between 11am and 11pm

SPECIAL CONDITION

The Licensee will not load or unload supplies or equipment relating to the supply of liquor at the Licensed premises address listed above outside of the trading hours.