



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to grant a packaged liquor licence to Liquorland (Australia) Pty Ltd in respect of the premises located at 735 Riversdale Road, Camberwell

**Commission:**

Mr Ross Kennedy, Chairperson

Ms Helen Versey, Deputy Chairperson

Dr Dina McMillan, Commissioner

**Date of Hearing:**

9 August 2018

**Date of Decision****and Reasons:**

20 September 2018

**Appearances:**

Mr John Larkins, Counsel for the Licensee (instructed by LGS Legal)

Ms Jeanette Rickards, Ms Mary Drost OAM, Ms Anna Carina, Ms Sally Harrison and Mr Bill Goodenough, Objectors

Ms Lilli Owens-Walton, Counsel Assisting the Commission

**Decision:**

The Commission has determined to affirm the decision of the delegate and grant the application for a packaged liquor licence

**Signed:**

A handwritten signature in black ink, appearing to read "Ross Kennedy".

Ross Kennedy

Chairperson

## REASONS FOR DECISION

### BACKGROUND

1. On 16 March 2018, Liquorland (Australia) Pty Ltd (the **Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for a packaged liquor licence in respect of the premises located at 735 Riversdale Road, Camberwell (the **Premises**) (**Application**).
2. The Application included the following materials:
  - (a) a completed application form received by the Commission on 16 March 2018 including a list of directors and executive officers of the Licensee.<sup>1</sup>
  - (b) documents from the responsible authority, the City of Boroondara (**Council**):
    - i. a copy of the notice of decision to grant a planning permit issued by Council for the Premises allowing use of the land for the sale of packaged liquor in accordance with the endorsed plan, dated 30 January 2018;
    - ii. a copy of the subsequent planning permit no. PP17/00992 issued by Council for the Premises allowing use of the land for the sale of packaged liquor in accordance with the endorsed plan, dated 15 March 2018 (**Planning Permit**); and
    - iii. copies of the endorsed plan identifying the proposed area of the licensed premises for Planning Permit PP17/00992 (**Redline Plan**), dated 15 March 2018;
  - (c) a copy of the declaration of the right to occupy the Premises, dated 14 March 2018;
  - (d) ASIC current and historical company extract for Liquorland (Australia) Pty Ltd, current as at 17 January 2017;
  - (e) a copy of the Redline Plan showing the proposed licensed area at the Premises;
  - (f) a copy of a newspaper advertisement, dated 21 March 2018, confirming publishing requirements of the Application; and
  - (g) a copy of the statement of display, provided to the Commission on 23 April 2018, confirming the public display of a notice of the Application.
3. In accordance with section 33(1) of the *Liquor Control Reform Act 1998* (the **LCR Act**)<sup>2</sup>, the Commission served a copy of the Application on the Chief Commissioner of Police (**Victoria**

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<sup>1</sup> The Licensee stated that all directors and executive officers had previously been approved by the Commission and on that basis, the Licensee did not submit the required liquor licensing questionnaire for the directors and executive officers.

<sup>2</sup> All references to legislation are references to the LCR Act unless stated otherwise.

**Police)** on 19 March 2018. On 20 April 2018, Victoria Police informed the Commission that it did not object to the grant of the Application.

4. Also on 19 March 2018, in accordance with section 33(2) of the LCR Act, the Commission served a copy of the Application on Council. On 26 April 2018, Council advised that it did not object to the grant of the Application.
5. The Commission received 19 objections to the Application from local residents (**Residents' Objections**), pursuant to section 38 of the LCR Act within the period for objection. The Residents' Objections were based on concerns regarding potentially detrimental impacts to the amenity of the area in which the Premises are situated. In summary, those detrimental impacts relevantly included threats to the safety of local residents, increased crime, vandalism, littering, loitering and other unwelcome behaviour, as well as detriment to the aesthetic character of the area due to the proposed signage at the Premises against the existing Heritage Overlay 191, Hassett's Estate. In addition to the above amenity-based concerns, the Residents' Objections also extended to impacts on the presence and movement of parking facilities and traffic movement and density in the Middle Camberwell shopping strip.<sup>3</sup>
6. The Residents' Objections also concerned a range of planning related matters, such as the presence of an existing packaged liquor outlet opposite the proposed subject site and the proximity of the Premises to local residences and schools.
7. In response to the Residents' Objections, the Licensee submitted:
  - (a) a statement which argued that (in summary):
    - i. the hours sought were not excessive as the Application was for trade only during 'Ordinary Trading Hours' as defined by section 3(1) of the LCR Act;<sup>4</sup>
    - ii. Council had already considered the matters raised in granting the Planning Permit for the sale of packaged liquor at the subject site, including its position proximate to residential housing, a bus stop frequented by school aged students and the prominence of the Premises due to having street frontage;

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<sup>3</sup> These factors were repealed from section 3A(2) of the LCR Act by the *Liquor and Gambling Legislation Amendment Act 2018* as 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 the area. However, the LCR Act states that the list is not exhaustive and therefore the Commission is not prevented from considering them anyway, see paragraph.

<sup>4</sup> LCR Act, section 3(1) defines Ordinary Trading Hours, in relation to a packaged liquor licence as, (i) the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and (ii) the hours between 10 a.m. and 11 p.m. on Sunday; and (iii) the hours between 12 noon and 11 p.m. on ANZAC Day.

- iii. consumption of liquor will not occur on the Premises and as such there will be minimal impact to the amenity of the surrounding area;
  - iv. the Residents' Objections did not contain specific evidence connecting an increase in anti-social behaviour to this Application;
  - v. the local community has a consistently low level of reported alcohol-related violence and incidents as concluded by the Council officer recommending to grant the Planning Permit;
  - vi. there is only one other packaged liquor outlet within a 500 meter radius of the Premises which would not create outlet density but would add choice and diversity to packed liquor services within the area; and
  - vii. section 38(3)(c) of the LCR Act states that 'insufficient need to justify the grant of the licence' it is not a valid ground of objection.
- (b) a copy of Council's Statutory Planning Officer's Report relating to planning application PP17/00992 dated 29 January 2018 that showed Council had already considered many matters raised in the Residents' Objections by approving the Planning Permit;
- (c) Coles Liquor internal policy and procedure documents including:
- i. School Uniform Policy;
  - ii. Responsible promotion and advertising of alcohol policy; and
  - iii. Responsible service of alcohol and tobacco policy; and
- (d) a copy of the Commission's Code of Conduct – Packaged Liquor Licensee, for which Coles Liquor is a Committee Member.
8. Before the Application was determined, an authorised delegate of the Commission (**the Delegate**) determined that the Licensee had complied with all application requirements, including a public notice display and the newspaper advertisement.
9. On 17 May 2018, the Delegate determined to grant the Application for a packaged liquor licence on the condition that it grant of the Licence is 'not-effective subject to the Licensee completing building works by 31 December 2018' (being, the building of the shop at the Premises) (**the Original Decision**).
10. The Delegate's reasons in relation to the Original Decision were (in summary):

- (a) the Applicant is an experienced licensee operating 238<sup>5</sup> other packaged liquor outlets in Victoria with an excellent record of compliance with the LCR Act and the principles of Responsible Service of Alcohol (**RSA**);
  - (b) the Commission did not receive any evidence regarding existing amenity issues related to the supply of packaged liquor as defined in section 3AA of the LCR Act at this location;
  - (c) Victoria Police and Council did not object to the grant of the Application; and
  - (d) that matters raised in the Residents' Objections are properly matters for Council, which dealt with them during the planning application process and saw fit to grant the Planning Permit to the Licensee.
11. From 21 May 2018 to 10 June 2018, nine of the 19 local residential objectors to the Application referred to in paragraph 5 above, lodged applications for internal review of the Original Decision (**the Review Applications**). Those objectors were:
- Mr Phil Riley & Ms Andrea Gallant
- Ms Mary Drost OAM
- Mr John Constable
- Ms Kaye Bignell
- Ms Anna Carina
- Ms Anne Watkinson
- The Hon Ms Wendy Baden-Powell
- Ms Jeanette Rickards
- Mr Colin Harrison and Mrs Sally Harrison
- (together, the **Objectors**).
12. Some of the Review Applications included requests to stay the effect of the Original Decision (**Stay Applications**). The Stay Applications were refused by the Commission on the basis that, in summary, there were no compelling grounds raised as to why a stay of the Original Decision should be granted. Most relevantly, this was because the Licence granted would not be effective

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<sup>5</sup> At the Hearing, Mr Brett Stallworthy submitted that Coles operated 217 packaged liquor licences in Victoria however this discrepancy in numbers is not material to the Review Application or these reasons for decision.

until the building works were certified as complete by the Commission, in accordance with the conditions on the Licence. Works were yet to be completed at that time.

13. Noting the Objectors submissions to the Application had already been made in writing and noting that the Licensee requested the matter be determined without the need for a hearing, the Commission on review advised the Objectors that it considered the matter could be determined ‘on the papers’<sup>6</sup> and sought consent from the Objectors to this approach. However, some Objectors requested the right to be heard by way of a public inquiry. Accordingly, the matter was listed for a public hearing.

## **LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION**

14. Under the LCR Act, an application for a licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act, a contested application means,
 

“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)”.<sup>7</sup>
15. Under section 38(1), any person may object to the grant of a licence on the ground that it would detract from or be detrimental to the amenity of the area in which the proposed licensed premises are situated or, in the case of a packaged liquor licence, under section 38(1A), where the grant would be conducive to or encourage the misuse and abuse of alcohol.
16. Provision is also made under the LCR Act for notification and consideration of an objection made by the Chief Commissioner of Police, the municipal council in which the premises are situated, and/or the licensing inspector.<sup>8</sup> In accordance with the Commission’s process, the Commission notified Victoria Police and Council that it had received the Review Applications. Both parties advised the Commission that they maintained their respective positions of ‘no objection.’
17. The Review Applications are made pursuant to section 153 of the LCR Act. The Original Decision made by the delegate is a reviewable decision and the Objectors are eligible persons under Division 2 of Part 9 of the LCR Act.

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<sup>6</sup> An ‘on the papers’ hearing is a meeting of the Commission through which a determination is made as to the review application, without the parties giving oral evidence or submissions to the Commission.

<sup>7</sup> 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)*”.

<sup>8</sup> See LCR Act, section 154.

18. Under section 157(1), the specific task for the Commission with respect to the Review Applications is to make a fresh decision that:
- (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.
19. The Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the Application. In doing so, it must consider all the information, material and evidence before the original decision maker.<sup>9</sup> It may also consider further information, material or evidence as part of making its decision.<sup>10</sup>

#### Conduct of an inquiry

20. 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.”

#### Determination of a contested application

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

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<sup>9</sup> LCR Act, section 157(2).

<sup>10</sup> See LCR Act, section 157(3).

"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."

22. Section 47(3) 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."

23. 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."<sup>11</sup>

24. 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."<sup>12</sup>

25. 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
    - (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."

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<sup>11</sup> There are no objects specified in the VCGLR Act itself.

<sup>12</sup> Pursuant to section 9(4) of the VCGLR Act, the Commission has had regard to the Decision-Making Guidelines relating to the assessment of the cumulative impact of licensed premises, dated 7 June 2012, and the Decision-Making Guidelines relating to the grant of licenses for the sale of packaged liquor, dated 7 June 2012, however, the Commission does not consider them to be relevant to this Application as the circumference of the Application is to vary the expiration date of the non-effective period as specified on the Licence.

26. 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.”

27. 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.*”<sup>13</sup> 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.*”<sup>14</sup>

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

- (a) 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)); and
- (b) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii)).

29. 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.*’<sup>15</sup> Factors that may be taken into account in determining whether the proposed licence would detract from or be detrimental to the amenity of the area include:

...

- (c) the possibility of nuisance or vandalism;
- (d) the harmony and coherence of the environment; and
- (e) any other prescribed matters.<sup>16</sup>

However, the definition of ‘amenity’ for the purposes of the LCR Act is not limited by these factors.<sup>17</sup>

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<sup>13</sup> See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

<sup>14</sup> See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

<sup>15</sup> LCR Act, section 3A(1).

<sup>16</sup> LCR Act, section 3A(2). Until the recent legislative amendment, the Commission could also consider the following factors as evidence of detriment to the amenity of the area: (a) the presence (or absence) of parking facilities; (b) traffic movement and density; (c) noise levels.

<sup>17</sup> LCR Act, section 3A(3).

30. The Commission considers that while the grounds of refusal outlined in sections 47(2) and 44(2) 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.
31. Under section 49 of the LCR Act, the Commission may impose any condition it thinks fit on the grant of an application. Further, the LCR Act provides, *inter alia*, that pursuant to section 16:
- “(1) Subject to subsection (2), it is a condition of every licence and BYO permit that the use of the licensed premises does not contravene the planning scheme that applies to the licensed premises under the Planning and Environment Act 1987.
  - (2) Subsection (1) does not apply to a pre-retail licence, a limited licence or a major event licence.”

#### **MATERIAL BEFORE THE COMMISSION AND PUBLIC HEARING**

32. The Commission on review had before it, and considered, all of the materials received by the Delegate and which are detailed in paragraphs 5 to 10 above.
33. The Commission also received the following documents:
- (a) the Decision and Reasons for the Original Decision, dated 17 May 2018;
  - (b) the Review Applications received by the Commission from 21 May 2018 to 10 June 2018 from the Objectors listed in paragraph 11, consisting of:
    - (i) the internal review application forms; and
    - (ii) Objectors submissions on those forms.
  - (c) an email from Council, dated 8 June 2018, confirming that it did not object to the grant of the Application and attaching its previous correspondence considered by the Delegate;
  - (d) email communications between the parties to the Review Application regarding the refusal of the Stay Applications dated 30 May 2018 and 8 June 2018;
  - (e) correspondence from the Licensee, dated 15 June 2018, requesting that the matter be dealt with ‘on the papers’ and in an expeditious manner in consideration of costs associated with delays to construction;
  - (f) email communications between the Commission and Objectors regarding the Licensee’s request and Commission’s view that the Review Application could be conducted ‘on the papers,’ dated 20, 21, 23 and 26 June 2018, as discussed in paragraph 13;

- (g) email communications between the parties dated 29 June 2018 regarding the Commission's procedural timetable for submission of materials and the date of the hearing, which was originally scheduled to be 25 July 2018 (the **Hearing**). One objector, Ms Anna Carina (**Ms Carina**), requested that the Commission postpone the Hearing until after the July school holiday period, but not before 8 August 2018 to ensure that an Objector who was overseas, Ms Mary Drost, would be able to attend. The Commission accordingly issued a revised procedural timetable on 2 July 2018;
- (h) written submissions from Ms Drost, dated 11 July 2018;
- (i) written submissions from Ms Jeanette Rickards, dated 18 July 2018;
- (j) two requests from Ms Carina seeking an extension of time to make her submission, which were granted by the Commission on 16 and 24 July 2018 respectively, and the subsequent written submission from Ms Carina dated 3 August 2018;
- (k) the Licensee's submission in response to the Objectors' submissions, dated 2 August 2018, attaching:
  - i. a report from town planner, Ms Laura Thomas, director of Urbis Pty Ltd, dated 2 August 2018 (the **Urbis Report**);
  - ii. witness statement of Mr Brett Stallworthy, State Operations Manager at Coles, dated 2 August 2018, attaching:
    - i. certificate evidencing completion of an approved RSA program by Mr Stallworthy dated 17 August 2017;
    - ii. the Licence – packaged liquor licence no 32067773 and the approved plan of the Premises;
    - iii. an artist's impression of the Premises;
    - iv. security layout of the Premises;
    - v. a Coles internal policy and procedure document entitled 'Licensing and Safe Trading Booklet,' and
    - vi. a Coles internal policy document entitled House Policy for the responsible service of alcohol and tobacco (also including in the original material considered by the delegate in the Application).
- (l) a further written submission by Ms Carina dated 7 August 2018, in response to the Licensee's submissions of 2 August 2018;

34. On 9 August 2018, the Commission conducted the public Hearing in relation to the Review Application. Ms Rickards, Ms Drost, Ms Carina, Mrs Sally Harrison and Mr Bill Goodenough attended the Hearing and made oral submissions. Mr H Watkinson attended the Hearing as an observer. Mr Phil Riley & Ms Andrea Gallant, Mr John Constable, Ms Kaye Bignall, Ms Anne Watkinson and the Hon Ms Wendy Baden-Powell were apologies. Ms A.J. Carina, while not a party to the proceedings, was permitted by the Commission to make a submission at the Hearing.
35. The Licensee was represented by Mr John Larkins of Counsel at the Hearing who called Ms Thomas and Mr Stallworthy as witnesses.

## **ISSUE FOR DETERMINATION**

36. In determining this Review Application, the Commission must consider whether to affirm, vary or set aside the Delegate's decision to grant a packaged liquor licence. In doing so, the Commission must consider the matters set out at paragraph 29 above with respect to factors that may be taken into account when considering whether the granting of the Application would detract from or be detrimental to the amenity of the area in which the Premises are situated, or would be conducive to, or encourage, the misuse and abuse of alcohol. Until the recent legislative amendment, the Commission could also consider amenity factors including the presence (or absence) of parking facilities, traffic movement and density and noise levels as evidence of detriment to the amenity of the area. While these factors have been repealed from section 3A(2), the list is not exhaustive so the Commission is not prevented from considering these factors.
37. In making its decision, the Commission may also have regard to the suitability of the Licensee to hold or carry on business under the Licence<sup>18</sup> and whether a director of the Licensee has an adequate knowledge of the LCR Act.<sup>19</sup> Finally, as discussed in paragraph 27, the Commission must have regard to harm minimisation, the primary regulatory object of the LCR Act.

### **Amenity and misuse and abuse of alcohol**

#### *Objectors' submissions*

38. At the Hearing, the Objectors argued that the Application should not be granted because it would be detrimental to the amenity of the area. The Objectors argued that selling packaged liquor from the Premises would:

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<sup>18</sup> See LCR Act section 44(2)(a).

<sup>19</sup> See LCR Act section 44(2)(b)(iv).

- (a) increase litter in the area. Mrs Harrison, who lives nearby the Premises, regularly collects both empty and full liquor bottles from her garden. Mrs Harrison submitted that on the day before the Hearing, she had collected 10 such bottles and she foresaw that the addition of a second packaged liquor outlet would at least double this yield, particularly due to the fact that the Premises was on the same side of Riversdale Road as her property;
- (b) increase nuisance and vandalism in the area. One Objector, Mr Goodenough, who lives a short walk from the Premises, stated at the Hearing that the last business in that lot of the Middle Camberwell Shopping strip, was a 7/11 convenience store trading until 11pm. Mr Goodenough submitted that this attracted undesirables to the area who, in the past 10 years, had removed up to 30 palings off his picket fence. Mr Goodenough submitted that a similar nuisance would occur if a packaged liquor outlet was to be located there;
- (c) disrupt the streetscape, which could arguably be considered the ‘environment’ in which the Premises are located, in that Premises signage of illuminated yellow and red lettering would be in stark contrast to the aesthetic of the Heritage Overlay 191, Hassett’s Estate. Also in relation to the harmony of the environment in which the Premises are situated, Ms Carina submitted that since the demolition works have occurred at the subject site, she is required to use her car to access certain services which were previously accessible by foot and that many elderly people in the local community are no longer able to walk to the local doctor;
- (d) increase the likelihood for binge-drinking in the local parks, particularly by school aged students due to the increased availability of packaged liquor. The Objectors argued that this would result in detriment to the amenity of those areas due to drunkenness and nuisance as well as increasing the risk of misuse and abuse of alcohol; and
- (e) attract school students due to the position of the Premises being near to a bus stop which local students regularly use and because it is visible from the street being on the ground floor.

39. The Objectors also submitted that there has been an increase in crime in the local community including road rage, burglaries, assaults, stalking and an increased presence of undesirables in the Middle Camberwell shopping strip since the demolition of the former facilities and services in order to develop the Premises. While this may be considered an amenity concern as it relates to the character of an area as being pleasant and agreeable, construction works leading to the development of a range of shops and services are not concerned with the supply of liquor therefore this is not a relevant amenity concern for the Application.

## Other

40. The Objectors also made other submissions in relation to the Application including, in summary, that:

- (a) Council and the Licensee favour the profits of big business over the needs of the community of Middle Camberwell (**local community**);
- (b) the local community is already well serviced by packaged liquor outlets, particularly because of the Woolworths' owned BWS directly opposite the subject site on Riversdale Road;<sup>20</sup>
- (c) the local community falls within a 'dry'<sup>21</sup> area of Victoria, one of only two remaining. While aware that the regulatory requirements regarding dry areas do not apply to packaged liquor licences, the Objectors see this as nevertheless reflective of the local community's attitude to alcohol generally, hence why a second packaged liquor outlet in the Middle Camberwell shopping strip is both excessive and offensive;
- (d) the Middle Camberwell shopping strip will be transformed by the inclusion of a second major supermarket in lieu of smaller shops and services that the local community frequented;
- (e) the developer made promises that the businesses that would inhabit the three tenancies under the new Coles supermarket would be "independent specialty shops" and that this did not come to fruition;
- (f) approval of the Application would increase the availability of alcohol for reasons such as the size of the Premises, the long trading hours and the likely price-war between Liquorland and BWS, and that research indicates that the availability of alcohol has negative impacts in general including on families and children;
- (g) research indicates that packaged liquor licence outlets have a higher than average impact in terms of delivering social harm than other licensed venues, with a particular emphasis on domestic violence; and
- (h) public policy concerns about the legal drinking age in Australia in consideration of harms caused by alcohol consumption on brain development.

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<sup>20</sup> LCR Act section 38(3)(c), paraphrased, that the fact there is insufficient need or demand to justify the grant, variation or relocation of the licence is not a valid reason for an objection on the ground of amenity under section 38.

<sup>21</sup> Under the LCR Act, as a designated 'dry' area, applications for certain liquor licence types must not be granted by the Commission unless first approved by the local community in a poll conducted by the Victorian Electoral Commission. A packaged liquor licence is not subject to the poll requirement under the LCR Act.

41. The above matters, while not an exhaustive list, summarise the Objectors' concerns in relation to the Application. Many of the assertions were accompanied by newspaper articles and links to research articles about subjects such as crime, alcohol-related crime, alcohol-related health impacts, availability of alcohol, underage drinking and violence. Due to the parameters of the Commission's power under the LCR Act and the generalised nature of the Objectors' submissions, the Commission is limited in the weight it can place on material of this nature when determining the Application.

*Licensee's submissions*

**Amenity and misuse and abuse of alcohol**

42. In response to the Objectors' submissions, Mr Larkins, on behalf of the Licensee, submitted (in summary) at the Hearing:
- (a) that the Review Application is not a factual dispute but rather a 'difference of opinion' and that the Commission is obliged to follow the legislation which limits it to an objective determination of the amenity impacts of the application;
  - (b) that, despite the crime statistics and material submitted, Victoria Police and Council were absent from the Hearing as they had not objected to the Application;
  - (c) that the Licensee has a strong compliance record regarding its regulatory requirements and he pointed to the 'ID 25 policy,'<sup>22</sup> the School Uniform Policy and the Responsible Advertising Policy; and
  - (d) the fact that pricing was determined by head office and a Riversdale Road-specific price war, which would lead to the availability of cheap liquor, is not possible because individual store managers did not have the power to set prices.
43. Mr Larkins submitted that the conclusions in the Urbis Report were that the granting of the Application would not result in detriment to the amenity of the area in which the Premises are situated. At the Hearing, the author of the Urbis Report, Ms Thomas, affirmed the contents of the Urbis Report as her evidence and, in particular, referred to the conclusions she drew on page 25 as the best summary of her evidence. Relevantly, Ms Thomas is of the view that certain characteristics about the Application reduce its potential for amenity impacts or the misuse or abuse of alcohol. In particular (in summary),
- (a) the Licensee's policies and procedures to support the responsible service of alcohol;

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<sup>22</sup> Internal policy whereby all patrons who appear to be under the age of 25 must be asked to produce identification.

- (b) the Planning Permit, which indicates that issues regarding parking, noise and hours of operation have been considered;
  - (c) concerns around the purchase of alcohol for consumption in public spaces are mitigated by Council's local laws and the ability of the police to enforce them;
  - (d) location of the Premises is not the immediate proximity of drug or alcohol support services and not directly proximate to schools;
  - (e) the position of the premises on Riversdale Road will result in people having knowledge of a liquor outlet, but this is not significantly different to the current scenario where BWS is located in the shopping strip; and
  - (f) the statistics around crime and alcohol related health impacts do not give rise to a concern that this area is suffering significant alcohol related harm.
44. Ms Thomas also submitted, in her written material, that it was her opinion that a packaged liquor outlet is likely to have a lesser potential for detriment to the amenity of the area as the licence type does not permit the consumption of liquor on the Premises.
45. At the Hearing, Mr Stallworthy gave evidence regarding predicted sales characteristics in relation to the Premises, in response to concerns raised by Objectors about binge-drinking and bulk purchases. Relevantly, Mr Stallworthy submitted that, the nature of this particular outlet – compared to some others within the Coles packaged liquor outlet portfolio such as First Choice – would be likely to result in the purchase of single products as opposed to bulk purchases (also known as "big box"). He stated that the Liquorland brand was a convenience offer that provides value for money to customers as an addendum to a supermarket shop. He said the majority of customers would generally pick up a bottle of wine or a six pack of beer to take home and consume with their dinner.
46. In response to some further specific concerns of the Objectors regarding litter, Mr Stallworthy also gave evidence in relation to the issue of litter in the area, by pointing out that the nature of the packaged liquor outlet is such that the product would not be consumed on the Premises or nearby, but rather would be taken home.

#### **Other**

47. The Applicant submitted that it has an enviable record as an experienced and trusted packaged liquor outlet operator in Victoria and Australia. Mr Stallworthy stated that there are 217 Liquorland stores in Victoria.

48. In relation to the density of packaged liquor outlets near to the Premises, Mr Larkins, on behalf of the Licensee, submitted (in summary) that the LCR Act facilitates the principles of competition in contrast to previous liquor regulation legislation in Victoria. In particular, Mr Larkins referred to the 1987 liquor legislation (raised by Ms Carina in her submissions) which enabled decision-makers to consider the economic and public interest impacts of a new application on existing licensees and operated as a high bar for new licensees entering the hospitality business, which is no longer a relevant concern. Cumulative impact concerns are discussed below at paragraphs 50 to 54.
49. The Applicant submitted that the Commission's task in the Review Application is limited to the specific application in Camberwell and what the outcomes or non-outcomes of that are likely to be. On behalf of the Applicant, Mr Larkins argued that the Commission is not dealing with the ills that alcohol might bring on the community in a general sense.

### **Cumulative impact considerations**

50. Decision-making guidelines titled “*Assessment of the Cumulative Impact of Licensed Premises*” dated 7 June 2012 were issued by the then Minister for Consumer Affairs and Minister responsible for administering the LCR Act (**Cumulative Impact Guidelines**) apply to this Application. The Cumulative Impact Guidelines state, *inter alia*, that,

*‘It is the policy of the Victorian Government that the Victorian Commission for Gambling and Liquor Regulation may assess the contribution of a new licensed premises, or the variation or relocation of an existing licensed premises, to the cumulative impact of a concentration of licensed premises in an area.’*

51. The Licensee submitted Council’s cumulative impact assessment regarding the Application. Council concluded that, given there is only one other packaged liquor outlet within 500 meters of the Premises and the proposal will not increase the hours of liquor sale within the area, it had formed the view that the Application would not result in a ‘cluster’ of packaged liquor outlets and will not result in any unreasonable impacts to the amenity of the surrounding area.
52. In relation to cumulative impact, Ms Thomas also submitted that there should be no concern regarding impact and saturation in relation to the density of licensed premises where the Premises are located, which was due to the fact that, as shown in the Urbis Report, there is one other packaged liquor outlet within 500 meters of the Premises.
53. The Commission does not deem it necessary to exhaustively consider cumulative impact because Council has extensively considered these matters and because there is only one other packaged liquor outlet within 500 meters of the Premises.

54. The Commission has had regard to the Cumulative Impact Guidelines in relation to the Premises and is satisfied that the density of licensed premises in the area does not cause concern in terms of cumulative impact or concentration.

## **DECISION AND REASONS FOR DECISION**

55. The Commission considered all the materials submitted by the parties in determining the Review Application. The Commission notes that its role with respect to the Review Applications was to consider whether to affirm, vary or set aside the Delegate's decision which involves the determination of whether it is appropriate to grant or refuse to grant the Application having regard to the grounds set out in section 44(2) of the LCR Act and the objective of harm minimisation.

### **Amenity and misuse and abuse of alcohol**

56. The Commission is not satisfied that granting the Licence would detract from or be detrimental to the amenity of the area in which the Premises are situated or be conducive to or encourage the misuse or abuse of alcohol. The Commission had regard to the concerns raised regarding harm minimisation from consumption of alcohol but finds that in the case of this packaged liquor licence, appropriate control will be achieved by granting this licence to a licensee who is well equipped to manage the responsible supply of liquor in accordance with the LCR Act, such as the Licensee.
57. The Commission notes that the submissions made by the Objectors focused on matters falling within the purview of Council or public policy with respect to the consumption of alcohol generally in Australia.
58. The Commission considers that the submissions made by the Objectors in relation to the harms associated more generally with consumption of alcohol are not without merit, however the object of harm minimisation in the LCR Act is directed to potential harms in relation to this Application.
59. The Commission considers that the Licensee has adequate processes in place to protect against the potential harms identified, such as minors being exposed to, or sold liquor.
60. The Commission notes that there is a substantial history<sup>23</sup> to this Application prior to the approval of the Premises by Council as suitable for the sale of packaged liquor, including:

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<sup>23</sup> A summary of these planning activities was provided by Ms Thomas in the Urbis Report.

- (a) planning permit application by the parent company of the Licensee, Coles, for a mixed-use development at the site comprising a Coles supermarket and dwellings, 18 July 2014;
- (b) Council refused the mixed-use permit application, 10 November 2014;
- (c) application by Coles for review of the mixed-use permit refusal decision to Victorian Civil and Administrative Tribunal (**VCAT**), 8 January 2015;
- (d) without prejudice meetings held between Coles and local objectors to the VCAT appeal (five of whom are parties to this Review Application) between 21 May 2015 – 19 June 2015;
- (e) application by Coles for review to VCAT withdrawn, 16 October 2015;
- (f) planning permit application by Coles for a retail only development, 15 December 2015;
- (g) Council grants retail-only permit subject to two conditions regarding signage, 20 July 2016 (three parties to that process are Objectors to this Review Application); and
- (h) one condition regarding signage is removed on appeal to VCAT, 16 March 2017.

Of relevance to the use of the Premises for the sale of packaged liquor:

- (a) application for permit to use the land to sell packaged liquor lodged by a developer (on behalf of Coles), 18 September 2017. 13 objections received;
  - (b) Planning Permit PP17/00992 issued by Council, 15 March 2018; and
  - (c) Licence granted by the delegate, 17 May 2018.
61. The Commission notes that while 13 objections were received in relation to the application for a permit to sell packaged liquor at the Premises, the objectors did not appeal the Council decision to grant the Planning Permit to VCAT. In the Commission's view this would have been an appropriate forum to raise matters in relation to amenity that are not associated with the supply of liquor.
62. The Commission has taken into account the Objectors' concerns as expressed in their written and oral submissions in relation to their Review Applications. The Commission is not satisfied from the material before it that there is specific evidence to find the granting of the Application for these Premises would impact negatively on the amenity of the area or pose a risk of harm arising

out of the misuse or abuse of alcohol that would support the contention that the Application should not be granted.

## **Other**

63. The Commission makes the above decision having regard to the strong record of compliance by the Licensee managing its other packaged liquor outlets and the Licensee's policies and procedures in place to mitigate the risk of underage drinking. The Commission finds that the Licensee is suitable to hold a packaged liquor licence and discharge its regulatory obligations.
64. The Commission accepts the evidence of the Licensee that the socio-demographic profile of the local community, which consistently shows lower levels of reported domestic violence and crime, would operate as a protective factor in relation to the alleged harms associated with alcohol consumption.
65. While the Commission notes the depth of feeling of the Objectors in relation to the grant of this Application and the associated impact on the diversity of shops and services in the Middle Camberwell shopping strip, according to section 38(3)(c) of the LCR Act, it is not a reasonable ground of objection that there is "*insufficient need or demand to justify the grant...*" and therefore the argument that because there is another packaged liquor licensed opposite the Premises and purportedly no market need for these Premises is not a relevant consideration.
66. In conclusion and for the reasons discussed above, the Commission is satisfied that it is appropriate to affirm the decision of the Delegate and grant Licence because it has not been shown that granting the Licence would detract from or be detrimental to the amenity of the area in which the Premises are situated or be conducive to or encourage the misuse or abuse of alcohol.
67. Having regard to the objects of the LCR Act, in particular the object of harm minimisation, and taking into account all relevant considerations, the Commission has determined to affirm the Original Decision to grant the application for a packaged liquor licence. For the avoidance of doubt, all original conditions imposed by the Delegate will remain on the Licence.

***The preceding 67 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chairperson, Ms Helen Versey, Deputy Chairperson and Dr Dina McMillan, Commissioner.***