

Decision and reasons for decision

In the matter of an application by Sergei Yuhnevich under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to accept an out of time objection to an application for an on-premises licence by Holy Trinity on Chapel Pty Ltd, in respect of the premises proposing to trade at 2A Brighton Road, St Kilda.

Commission: Deirdre O'Donnell, Deputy Chair
Des Powell AM, Commissioner
Andrew Scott, Commissioner

Date of Hearing: 17 September 2021

Date of Decision: 27 September 2021

Date of Reasons: 27 September 2021

Appearances: Sergei Yuhnevich, representing himself
Phil Cadman, Counsel for Holy Trinity on Chapel Pty Ltd instructed by Matthew Elefanty of BSP Lawyers
Lilli Owens-Walton, Counsel Assisting the Commission

Decision: The Commission has determined to affirm the decision of the Delegate and refuse to accept the out of time objection.

Signed:



Deirdre O'Donnell
Deputy Chair

Background

1. On 8 April 2021, Holy Trinity on Chapel Pty Ltd (**Proposed Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for an on-premises licence in respect of the premises proposing to trade at 2A Brighton Road, St Kilda (**Premises**) (**Licence Application**).
2. A delegate of the Commission notified the Proposed Licensee that the public display period for the Licence Application was 12 April to 10 May 2021. On 3 May 2021, the Proposed Licensee wrote to the Commission requesting that a new display period of 4 May to 1 June 2021 apply, asserting that a communication error meant the public display had not yet commenced. The Commission granted this request.
3. The public display period for the Licence Application was therefore a 28-day period between 4 May and 1 June 2021 (**Display Period**) and the public objection period for the Licence Application was therefore a 30-day period between 4 May and 3 June 2021 (**Objection Period**).¹
4. On 4 August 2021, Sergei Yukhnevich (**Applicant**) wrote to the Commission seeking to make a submission in objection to the Licence Application.
5. On 5 August 2021, staff at the Commission advised the Applicant that the Objection Period had concluded and therefore any submissions made at this stage may not be taken into consideration when assessing the Licence Application.
6. On 6 August 2021, the Applicant advised the Commission that he wanted to make a submission, which he did on 10 August 2021. In that submission, the Applicant said that the Licence Application had not been publicly advertised and had been lodged prior to a related Victorian Civil and Administrative Tribunal (**VCAT**) hearing regarding the planning permit being heard and decided.
7. On 12 August 2021, a delegate of the Commission refused to accept the objection out of time (**Original Decision**). In the email containing this Original Decision, the delegate said that the Commission had accepted, as had been submitted in the signed statement from the Proposed Licensee, that display of the Licence Application had taken place as required. The Delegate advised that the Commission would not take any further action regarding the display and any further submissions on that point would not change the Commission's position.

Application for Internal Review

8. On 12 August 2021, the Applicant applied for internal review of the Original Decision (**Review Application**) and requested a stay of the decision (**Stay Application**).
9. In the Review Application, the Applicant alleged that the Proposed Licensee had falsely declared that the Licence Application was advertised during the Display Period as there were no signs of advertising on display at that time. In support of this proposition, the Applicant said that the VCAT hearing into the planning permit was held on 3 May 2021 and that, during the following days and weeks (coinciding with the Display Period), the VCAT member and objectors visited the site and did not observe any signs of advertising.

Stay Application

10. In the Review Application, a request for a stay of Original Decision until the Review Application had been determined effectively sought to delay the Licence Application until it had been determined, on review, whether or not the objection should be accepted out of time. If the out of

¹ See section 38(2)(a) of the *Liquor Control Reform Act 1998* (Vic) (**the Act**).

time objection was accepted on review, the Licence Application would proceed as a contested application, rather than as an uncontested application.

11. On 23 August 2021, the Commission determined to grant the Stay Application.

Legislation and the Commission's task

The Commission's internal review power

12. Division 2 of Part 9 of the *Liquor Control Reform Act 1998* (the **Act**) governs internal review applications. Under section 152, the decision made by the delegate in the Original Application is a reviewable decision and the Applicant is an eligible person to apply for the review of that decision. The Review Application was made pursuant to section 153 of the Act.
13. Pursuant to section 157(1), 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.²
14. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the application for an out of time objection. In this case, the Commission must decide whether to:
- grant the out of time objection; or
 - refuse to grant the out of time objection.

Exercising the internal review power

15. 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 Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.³
16. The objects of the Act are set out at section 4(1) and provide that:

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

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

³ Section 9(3) VCGLR Act and section (4) the Act.

(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.

17. Section 4(2) of the Act further provides 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 alcohol⁴.

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

- a. must consider all the information, material and evidence before the original decision maker;⁵ and
- b. may consider further information or evidence.⁶

19. Division 5 of the Act provides grounds for different persons to object to liquor licence applications. Section 38 states:

(1) Any person may object to the grant, variation or relocation of a licence on the ground that the grant, variation or relocation would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated.

...

(2) An objection must—

(a) be made to the Commission in writing within 30 days after the day on which notice of the application for the grant, variation or relocation was first displayed under section 34(1); and

(b) state the reasons for the objection

20. Section 3A of the Act provides the following definition of 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—

* * * * *

(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.

⁴ 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).

⁵ The Act, section 157(2).

⁶ The Act, section 157(3).

21. Section 3AA provides the following as to 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.

22. The Commission has discretion under section 174 of the Act to accept late objections as follows:

At the request of any person, the Commission may—

(a) extend the time for making an objection under this Act in respect of any particular application; or

(b) accept an objection made after the time under this Act for making that objection has expired.

Conduct of an inquiry

23. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate.

24. During the conduct of an inquiry, section 25(3) of the VCGLR Act provides that the Commission is not bound by the rules of evidence, however must comply with the rules of natural justice.

Material before the Commission

25. The Commission on review had before it all the information and material before the delegate who made the Original Decision including:

- a. Statement of Display submitted by the Proposed Licensee, dated 2 June 2021 (**Statement of Display**);
- b. email submissions by the Applicant dated 4 August 2021, 6 August 2021 and 10 August 2021; and
- c. four photographs showing the public notice of the Licence Application on display (**Public Notice**), submitted to the Commission by the Proposed Licensee on 12 August 2021.

26. The Commission on review also had before it and considered:

- a. the Review Application, dated 12 August 2021;
- b. submissions by the Applicant:
 - i. in support of the Stay Application and Review Application, dated 19 August 2021 attaching a copy of the VCAT decision in the proceedings brought by the Applicant for review of the planning permit for the Premises dated 5 July 2021 *Yukhnevich v Port Phillip CC [2021] VCAT 663* (**VCAT Decision**);
 - ii. notifying the Commission of construction works at the Premises, dated 31 August 2021; and
 - iii. requesting a public hearing, dated 8 September 2021;
- c. submissions by the Proposed Licensee:

- i. on the Stay Application, dated 19 August 2021;
 - ii. on the Review Application, dated 27 August 2021, attaching witness statements from Reverend Kathryn Watt dated 25 August 2021 and other visitors to the Premises during the Display Period including:
 1. Helen Guscott, dated 25 August 2021;
 2. Nicholas Reilly, dated 25 August 2021;
 3. Robin Anderson, dated 25 August 2021;
 4. John Dyett, dated 25 August 2021; and
 5. Brian Mueller, dated 25 August 2021.
 - iii. including, in the further attachments to the submission dated 27 August 2021, the curriculum vitae of the Proposed Licensee's sole director and character references for the director;
 - iv. regarding whether the matter should be heard on the papers, dated 7 September 2021;
 - v. in opposition to the public hearing, dated 9 September 2021; and
 - vi. showing a screen shot of a Facebook post by the Applicant promoting the details of the Commission's remote hearing into the Review Application, dated 13 September 2021.
- d. Photographs of the doors where the Public Notice is said to have been displayed at the Premises taken by Commissioner Scott when he visited the Premises on 22 August 2021.

Public hearing

27. On 7 September 2021, the Commission wrote to the Applicant and the Proposed Licensee to advise that it considered the Review Application could be heard on the papers. The Commission invited the parties to make a submission on whether they consented to this.
28. The Proposed Licensee consented to the hearing being on the papers. The Applicant requested a public hearing. On 17 September 2021, the Commission held a public hearing via remote videoconference in relation to the Review Application (**Hearing**).

Reason for decision on review

Issues for determination on review

29. There are no statutory goal posts in the Act setting out the considerations of the Commission when determining whether to exercise its discretion under section 174 to accept an out of time objection.
30. The Commission therefore considers it appropriate to satisfy itself that:
 - a. there is an objection that, but for the time it was lodged, would otherwise be valid under section 38; and
 - b. there are compelling reasons to accept the out of time objection having regard to the objects of the Act and all relevant circumstances.

Is there an objection?

31. As extracted in paragraph 18, section 38 of the Act provides for any person to object to a liquor licence application on the grounds that the grant of the licence would detract from or be detrimental to the amenity of the area in which the proposed licensed premises are situated. The amenity of an area is defined in section 3A(1) as the quality that the area has of being pleasant

and agreeable and at section 3A(2) there are factors that the Commission can consider when determining whether an application would detract from or be detrimental to the amenity of the area.

32. In his initial correspondence to the Commission on 4 August 2021, the Applicant said:

The Port Phillip Council approved application (875/2019) for a 300 seat licensing venue (with 150 seat outdoor area) operating from 7am till as late as 1am. The licensing venue (2A Brighton Road, St Kilda) will be next to the St Kilda Primary School (2B Brighton Road, St Kilda). The venue will have parking facilities for one car, it [is] thought that it will be safe for the patrons to park on the streets around the school.

33. The Commission notes that the definition of amenity in section 3A of the Act previously included the presence or absence of parking facilities as a consideration when determining whether the grant of a licence would detract from or be detrimental to the amenity of an area.⁷ This was removed in 2018 by legislative amendment as Parliament determined that those factors better fell within the remit of local council considerations. However, the Commission notes that the definition of amenity specifically states that it is not limited to those factors in section 3A(2).

34. After that initial submission, the Applicant's submissions regarding his objection were primarily concerned with the alleged lack of display of the Public Notice, which was proffered as the reason that he considered the Commission should accept his objection out of time.

35. At the Hearing, the Commission sought to confirm whether it was accepted by the parties that the Applicant's objection was based on amenity. Counsel for the Proposed Licensee stated its view that the grounds for the Applicant's objection had not clearly been defined and therefore were not clearly based on concerns about amenity, though it was inferred by the Proposed Licensee⁸ that amenity was likely to be the nature of the objection. Counsel for the Proposed Licensee submitted that VCAT had already considered potential amenity concerns and that there were protections in the planning permit to address these concerns.

36. At the Hearing, the Applicant asked the Commission for a definition of the grounds of amenity, which was provided by Counsel Assisting. In response, the Applicant said that he provided that the primary reason for his objection in the Review Application itself was to get, not just his own objection accepted, but to highlight to the Commission that the Public Notice had not been displayed properly and therefore the local community had not had the opportunity to object to the Licence Application.

The Commission's view

37. The Commission considers that the Applicant likely intended to make an objection on the ground of amenity by citing the size of the proposed licensed Premises (300 persons) and in the context of its location being close to a primary school and with parking for a single car only.

38. However, without the assistance of further information at the Hearing or in written submissions, the Commission cannot conclusively find that concerns about the amenity of the area are the grounds upon which the Applicant seeks to object.

39. The Commission further notes the Applicant's evidence at the Hearing – after the definition of amenity was read aloud – was that the (alleged) lack of advertising during the Display Period was the essence of his objection.

40. Therefore, the Commission is not persuaded that this objection is made on the basis of section 38, though it is arguable and at best it is inferred (as submitted by Counsel for the Proposed Licensee).

⁷ Section 3A(2) used to include three additional 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: (a) presence or absence of parking facilities, (b) traffic movement and density and (c) noise levels until these factors were repealed by the *Liquor and Gambling Legislation Amendment Act 2018*.

⁸ Transcript, page 3 line 7.

Whether to accept the out of time objection

41. Notwithstanding the above finding that the objection does not satisfy the requirements of section 38, the Commission has considered the other circumstances relevant to the Review Application and whether the objection should be accepted out of time. In this task, the Commission has considered:
- a. whether the Public Notice was appropriately displayed; and
 - b. the public confidence in the Commission's administration of the liquor licensing regime having specific regard to:
 - i. the importance of observing a statutory time limit; and
 - ii. whether the Applicant's circumstances outweigh the importance of observing a statutory time limit.

Whether the Public Notice was appropriately displayed

42. In submissions to the delegate and in his written and oral submissions as part of the Review Application, the Applicant stated that the Public Notice was not displayed during the Display Period and that the Statement of Display was therefore fraudulent. In support of this allegation, the Applicant relied on:
- a. the Proposed Licensee's admission that it did not display the Public Notice during the display period originally mandated by the Commission of 12 April 2021 – 10 May 2021;
 - b. the impact of pandemic restrictions on public awareness of the Licence Application, including that:
 - i. the lockdown coincided with the Display Period as it started on 27 May 2021. He said that lockdown affected people's lives, including the community's ability to meet and discuss the Public Notice – if it was displayed – and whether action should be taken; and
 - ii. due to the then current restrictions related to the pandemic, public attention to the Licence Application was reduced and it would be prudent to request that the Proposed Licensee advertise it again once restrictions are lifted to ensure community awareness and preservation of public interest;
 - c. his assertion that the VCAT member (referred to by the Applicant as a 'government official' in his written submissions) and objectors to the VCAT proceedings attended the site after the VCAT hearing and did not see the Public Notice. The Applicant submitted the VCAT Decision was in support of this assertion and noted that the VCAT member did not mention or refer to the Public Notice being on display at the time of their visit and was thus evidence that it was not on display at that time;
 - d. the location of the Public Notice – if it was displayed – was on doors of the Premises that are set back from the street and obscured by plants and therefore did not invite public attention as required by the Act. The Applicant submitted that the doors were five to eight metres away from Brighton Road and were fully obscured by the growth of plants; and
 - e. the Public Notice – if it was displayed – should have been displayed on the public notice board next to the doors, which invited public attention more than the doors as it was not obscured by plants.
43. As part of its written submissions the Proposed Licensee submitted photographic evidence in support of its Statement of Display which showed the Public Notice was displayed on two doors at the Premises. The Proposed Licensee submitted that these two frontages were selected to ensure maximum public attention noting that the Brighton Road frontage was intended to be the front entrance of the Premises and the Chapel Street frontage had high foot traffic and was near to sensitive uses. The Proposed Licensee submitted that its decision to display the Public Notices on two frontages surpasses the requirements in the Act for display of the Public Notice.

44. The Proposed Licensee submitted further evidence of the Public Notice being displayed during the Display Period in the form of multiple witness statements from individuals who regularly attend the Premises and did so during the Display Period, and which confirmed that the Public Notice was on display when they attended the Premises during the Display Period for various activities⁹. This included a statement from the Priest in Charge at Holy Trinity Balaclava and Elwood Anglican Church (**Church**), which is located on the same title of land to the north of the Premises. The Church owns the land that the Premises are intended to operate on and will be the landlord when the Premises begins trading, if the Licence Application is granted.
45. Counsel for the Proposed Licensee submitted that the Proposed Licensee is an experienced operator of licensed premises in Victoria and that the allegations of fraud regarding the Statement of Display are grave and unsubstantiated.
46. Counsel for the Proposed Licensee submitted that the Applicant's submissions at the Hearing conceded that he just did not see the Public Notice was not a basis for objection under the Act or reason for the Commission to accept an out of time objection.

The Commission's view

47. The Commission finds that the Public Notice of the Licence Application was displayed in accordance with the Act. The Commission accepts the Statement of Display dated 2 June 2021 after the Display Period as conclusive evidence that the display was discharged according to the Act.
48. The Commission finds that there is ample evidence in support of the Public Notice having been advertised during the Display Period including the Statement of Display and witness statements submitted by the Proposed Applicant. The Commission finds there is no direct evidence to support the Applicant's assertion that it was not displayed during that period, besides his own evidence under affirmation at the Hearing in which he alleged that the Public Notice was not displayed.
49. The Commission does not consider that the reasons for decision in the VCAT permit appeal, where the member failed to comment on having seen the Display Notice during their inspection of the site, carries any weight as evidence that the Public Display did not occur or that the Statement of Display was fraudulent. Similarly, the Commission does not attribute any weight to the indirect evidence that the Public Notice was not displayed because members of the public who visited the site after the VCAT hearing did not observe it.
50. The Commission does not accept that the doors of the Premises are "five to eight" meters from the footpath on Brighton Road and that the Public Notice is therefore not visible from the street. The Commission acknowledges that the photos of the display show there are plants along the path near the doors but it does not accept that, during the Display Period, the doors were obscured by those plants.
51. The Commission notes that neither the Commission's nor the Act's expectations have changed with respect to the requirements for displaying the public notice in a 'manner that invites public attention' as a result of the lockdown. However, the Commission notes that, during the Display Period, the lockdown was only in place for six of the 30 day Display Period (from 27 May to 1 June 2021) and therefore it finds that, if the lockdown had somehow affected the public display, the vast majority of the Display Period was not affected by it.
52. The Commission also finds that government restrictions in place would not have unreasonably affected the community's ability to view the Public Notice given community members within a five kilometre radius of the site would have been able to pass by when leaving their homes for the permitted reasons under the Chief Health Officer's directions.
53. Notwithstanding its findings above that the Display Notice was visible from the street and was not obscured by plants, the Commission accepts that the Applicant did not see the Public Notice. However, this does not mean the Public Notice was not displayed in accordance with the Act and

⁹ Those activities included running a dance class four times per week, attending Sunday service, attending the office, gardening and maintenance and to use the facilities adjacent to the hall.

it is not a reason, in itself, to allow an out of time objection unless there are other compelling reasons to accept it out of time, which will be discussed in the following paragraphs.

Public confidence in administration of the Act

Importance of observing statutory time limits

54. In his submission at the Hearing, the Applicant contended that it is not in the spirit of the Act for the Commission to be so limited in the current proceedings as to only consider whether to accept *his* objection out of time given there are potentially many other objectors. The Applicant said that the community will have to carry on living with this development for years, and they need an opportunity to have a say.
55. The Applicant submitted that the Commission should require the Proposed Licensee to readvertise the Public Notice after the pandemic restrictions are eased, to ensure that the community is aware of the Licence Application and that the public interest is preserved.
56. In written and oral submissions, the Proposed Licensee accepted that the Commission has the discretion under section 174 of the Act to accept out of time objections and said the Commission must consider whether the exercise of that discretion is 'appropriate', noting that the following factors are relevant to this determination:
- a. time limits in any public approval process are necessary to facilitate the timely conduct of business and are expected to be observed;
 - b. the Commission ought not exercise the discretion purely upon request;
 - c. an equivalent discretion exists in the *Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act)* at section 126(1) and that, notwithstanding some distinctions between the provisions, the general principles for use of section 162(1) of the VCAT Act should be adopted by the Commission in its application of section 174 of the Act¹⁰.
57. The Proposed Licensee submitted that the current Application for acceptance of an out of time objection would not satisfy the general principles for use of section 162(1) of the VCAT Act, if they were applied to section 174 of the Act.

The Commission's view

58. The Commission was assisted by the parties' submissions about how it should exercise its discretion to determine whether to allow an out of time objection under section 174 of the Act.
59. The Commission considers that the liquor licensing industry is entitled to certainty in the application process and that this applies to the imposition of time periods for objection by various representatives of the community – the public, Victoria Police and the local council. Once the relevant time period has passed, while noting that the discretion in section 174 of the Act exists to allow out of time objections, the Commission considers it is reasonable for a proposed licensee to assume that its licence application has not been objected to, and for it to act accordingly.
60. The Commission finds that public confidence in the Commission's administration of the liquor licensing regime insofar as this applies to the application of time limits in the Act may be eroded if the Commission accepts objections that are well out of time without compelling reasons for doing so. In this Review Application, the Applicant has not satisfied the Commission that those compelling reasons exist, as will be detailed in the following paragraphs.

Whether the Applicant's circumstances outweigh the importance of observing statutory time limits

61. At the Hearing, the Applicant said that the community had been aware that a licensed premises was due to open at that site since 2019, however the proposal was for a small-scale restaurant, not a 300 person bar as is now proposed.

¹⁰ Proposed Licensee submission dated 27 August 2021, page 6, referencing *Katsanis v Wyndham (Red Dot) [2005] VCAT 824 (4 May 2005)*.

62. The Applicant said that he became aware of the new scale of the proposed licensed premises through the VCAT planning process, for which he appealed against the issue of a permit. The Applicant's permit appeal was heard by VCAT on 3 May 2021 (prior to the Display Period), but he did not approach the Commission about the associated liquor licence application at that time because he asserted that he was told by the local council to wait until after the VCAT process was over.
63. The Applicant said that the VCAT Decision approving the planning permit was handed down on 5 July 2021 but he did not receive it until a few weeks later during lockdown so it was not possible to contact the appropriate persons at that time.
64. Counsel for the Proposed Licensee said that a full two months had passed between the end of the Objection Period and the date of the Applicant's objection. He submitted that section 174 of the Act is a remedial provision which is intended to accommodate a 'near miss' or a 'stymied attempt' to object when an objector is not able to meet the statutory time period for objection. Counsel submitted that the Review Application was neither a near miss nor a stymied attempt given two months had passed before the Applicant objected and nothing – including lockdown - prevented him from objecting during the Objection Period.
65. Counsel for the Proposed Licensee submitted that the evidentiary basis for accepting an out of time objection should increase as the time between the end of the Objection Period to the date of the objection extends. He said that after two months, the burden on an objector should be heavy to justify an out of time objection, to counter the significant prejudice likely to be suffered given the Proposed Licensee is entitled to assume at that stage that – in the absence of an objection during the objection period – the prospects of the liquor licence being granted are otherwise good and therefore certain investments can be made on that assumption.

The Commission's view

66. The Commission is not satisfied that the objection is one based on amenity as required by Section 38 of the Act.
67. Even if it was satisfied that the objection was based on amenity, it considers that the reasons for whether the out of time objection should be accepted must be compelling. This is particularly so in the current circumstances where an extended time has elapsed between the end of the Objection Period and the submission of the objection.
68. The Commission finds that the Applicant was aware of a proposal to open a licensed premises at the Premises since 2019 and that the proposal had increased in size since that time. The Commission accepts the Applicant's submission under affirmation at the Hearing that he was told by the local council and VCAT to wait until the planning permit appeal process was over before raising an objection with the Commission.
69. The Commission does not find it likely that there was a delay of weeks in receiving the VCAT Decision if it was conveyed electronically given the Applicant was the Applicant in that matter also. The Commission does not see how lockdown would have prevented the Applicant from determining whether to lodge an objection between 5 July 2021 when the VCAT Decision was handed down and 4 August 2021 when the Applicant first approached the Commission.
70. The Commission finds that given the Applicant was aware of the Licence Application in early May 2021 when the VCAT matter was heard, he had the opportunity to approach the Commission earlier than 4 August 2021 to raise his objection. The Commission finds that it is reasonable to expect that he would have done so within the Objection Period if he was concerned about the amenity impacts of the Licence Application, even if he had not observed the Display Notice which contains information about how to submit an objection.
71. In this Review Application, the Applicant has not satisfied the Commission that compelling reasons exist to override the importance of the statutory time limit for objecting to a liquor licence application and accept his objection out of time.

Decision on review

72. The Commission has determined to affirm the decision of the Delegate and refuse the out of time objection.

The preceding 72 paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Mr Des Powell AM, Commissioner and Mr Andrew Scott, Commissioner.