


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Alexandria Tea Rooms Pty Ltd for an internal review of a decision to refuse an application for the grant of a temporary limited licence for the premises known as Alexandria Tea Rooms & Receptions, located at 30 Lydiard Street North, Ballarat

Commission:	Ms Fran Thorn, Chair Ms Deirdre O'Donnell, Deputy Chair Mr Andrew Scott, Commissioner
Date of Hearing:	4 March 2022
Date of Decision:	4 March 2022
Date of Reasons:	11 March 2022
Decision:	The Commission has determined to set aside the decision of the Delegate and, in substitution, grant a temporary limited licence subject to the conditions set out in Appendix A
Signed:	
	Fran Thorn Chair

Background

1. Alexandria Tea Rooms & Receptions is a café and reception venue located at 30 Lydiard Street North, Ballarat (**the Premises**). It is promoted as particularly catering for occasions such as weddings, cocktail and high tea events, and pre-planned conferences. It is also regularly used as a late-night bar with a dance floor and pool room.
2. On 20 October 2021, the Commission received an application by Alexandria Tea Rooms Pty Ltd (**the Applicant**) for the grant of a temporary limited licence (**the Original Application**) under section 14 of the *Liquor Control Reform Act 1998 (the LCR Act)*¹ in order to supply liquor as part of a home delivery service during the period of Victoria's declared 'state of emergency' in response to COVID-19.
3. According to the Original Application, the quantity of liquor proposed to be supplied, if the Application was granted, would be limited to:
 - two 750 ml bottles of wine or 12 sealed containers (not more than 375 ml per container) of beer, cider or premixed spirits (**Smaller Containers of Liquor**) per delivery; or
 - a combination of one 750 ml bottle of wine and 6 sealed Smaller Containers of Liquor per delivery.
4. The hours during which liquor was proposed to be delivered under the Original Application, if granted, would be:
 - On any day
 - Between 9am and 3am (the next day).
5. The Applicant is already a late night (on-premises) licensee in respect to the Premises which allows it to trade up to 3am.
6. The Applicant's sole director, Mr Frankie Lagana, completed responsible service of alcohol (**RSA**) training on 7 March 2020.
7. Having regard to the Applicant's compliance history at the Premises over the past two years, the delegate of the Commission (**the Delegate**) decided to provide a copy of the Original Application to the Chief Commissioner of Police on 26 July 2021 pursuant to section 33(3) of the LCR Act. The Chief Commissioner of Police and the licensing inspector² (together, **Victoria Police**) informed the Delegate on 18 August 2021 that they did not object to the Original Application.
8. However, on 23 August 2021, Victoria Police withdrew their position of 'no objection' to the Original Application and confirmed on 24 August 2021 that they did object to the Original Application on the basis that granting the Original Application would be detrimental to the amenity of the local area due to lack of sufficient controls to

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

² Section 3 defines "licensing inspector" as a person appointed as a licensing inspector under section 172.

ensure the responsible service of alcohol and prevent the consumption of liquor in the street.³

9. Within this objection, Victoria Police submitted that they would withdraw their objection if the Applicant agreed to the following conditions for the proposed licence:
- (a) The licensee is only permitted to supply sealed packaged liquor to residential and accommodation premises via home delivery.
 - (b) The quantity of liquor must not exceed more than two 750 ml bottles of wine or 12 sealed Smaller Containers of Liquor per delivery, or a combination of one 750 ml bottle of wine and 6 sealed Smaller Containers of Liquor per delivery.
 - (c) The licensee must ensure that delivery arrangements comply with relevant provisions regarding:
 - i. the prohibition on the supply of liquor to a person under the age of 18 years;
 - ii. requiring proof of age to be sighted where appropriate;
 - iii. the liquor is not delivered and left at unoccupied premises; and
 - iv. liquor is not delivered to anyone who appears to be intoxicated.
 - (d) Liquor must not be delivered or supplied to a person under the age of 18 years. The licensee must ensure that its delivery staff comply with the relevant provisions regarding the supply of liquor to minors.
 - (e) The licence is not transferable.
 - (f) Trading hours only to be ordinary trading hours.
10. Pursuant to section 28(3), on 24 August 2021, the Delegate requested the Applicant to provide information in relation to what it had done to address the following incidents of non-compliance of the LCR Act as detected by gambling and liquor authorised officers of the Commission over the past two years:
- (a) A failure on 23 March 2021 to notify the Commission of a cessation of a body corporate director within 14 days of cessation;
 - (b) A failure on 22 March 2021 to ensure staff that were selling, offering for sale or serving liquor had completed an RSA program within the last three years; and
 - (c) A failure on 27 November 2019 to maintain CCTV footage in accordance with the conditions of the licence.
11. On 30 August 2021, the Delegate also sought a response from the Applicant to Victoria Police's notice of objection. The Delegate particularly sought information from the Applicant in relation to how it has addressed

³ Delegate's Statement of Reasons for the Decision, dated 29 October 2021, paragraphs 7, 8 and 28.

the purported lack of sufficient controls for ensuring the responsible service of alcohol and for preventing the consumption of liquor in the street as asserted by Victoria Police in their notice of objection.

12. The Applicant did not submit a response to the Delegate's requests for information.
13. Having received no response, on 29 October 2021, the Delegate consequently decided that she had insufficient information to complete an assessment of the Original Application, particularly in relation to the issue of amenity, and therefore refused the Original Application on the basis that it was not made in accordance with the LCR Act (**the Original Decision**).⁴
14. In her written reasons for decision, the Delegate stated that, in summary, the proposed supply of liquor was in her opinion, sufficiently limited in scale and scope, there was no evidence that granting the Original Application would be conducive to or encourage the misuse or abuse of alcohol or that the Applicant lacked sufficient controls to be able to ensure responsible service of alcohol and prevent the consumption of liquor in the street. Nevertheless the Delegate considered that it remained unclear whether the Applicant would comply with the conditions of the licence and therefore unclear whether granting the Original Application would detract from or be detrimental to the amenity of the local area.

Application for Internal Review

15. On 17 November 2021, the Applicant applied for internal review of the Original Decision (**the Review Application**), and Victoria Police confirmed on 1 December 2021 that they maintained their objection.
16. On 23 November 2021, Mr Dennis Galimberti, solicitor, on behalf of the Applicant, submitted that the Applicant would agree with the conditions as proposed by Victoria Police on 24 August 2021 being imposed on the licence, if the licence were granted.⁵
17. On 18 January 2022, Victoria Police informed the Commission that they no longer maintained their objection.
18. On 22 February 2022, Mr Galimberti lodged further documents on behalf of the Applicant, in support of the Review Application, namely:
 - (a) a letter confirming proposed delivery hours, if the licence is granted, would be 12 noon to 10pm on any day (with a note that the Applicant's business model is to provide the delivery service as an after lunch and after dinner service, with the majority of deliveries to be between 2pm to 4pm and 8pm to 10pm); and
 - (b) the Applicant's management plan in relation to off-site deliveries, including details as to:
 - i. directorship and management;
 - ii. maintaining an RSA training register;
 - iii. regular staff meetings on RSA issues;

⁴ LCR Act, section 44(2)(b)(v).

⁵ See paragraph 9 above.

- iv. the Applicant's RSA policy;
- v. staff training; and
- vi. compliance with all imposed conditions, if the licence is granted.

Legislation and the Commission's task

The Commission's internal review power

19. Division 2 of Part 9 governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
20. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
- (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁶
21. 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 temporary limited licence. In this case, the Commission must decide whether to:
- (a) grant the temporary limited licence, and if so, whether to do so subject to conditions;⁷ or
 - (b) refuse to grant the temporary limited licence.⁸

Determination of an uncontested application

22. Under the LCR Act, an application for the granting of a temporary limited licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

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).⁹

⁶ Section 157(2) to (5) of the LCR Act and section 25(3) of the *Victorian Gambling and Casino Control Commission Act 2011* (VGCCC Act) further prescribe the manner in which the Commission is to undertake internal reviews.

⁷ LCR Act, sections 44, 49 and 157.

⁸ LCR Act sections 44 and 157.

⁹ Conversely, a "contested application" is defined in section 3(1) of the LCR Act as being "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).

23. The Review Application is uncontested as Victoria Police have confirmed that they no longer maintain their objection and no other objections were received under Division 5 of Part 2 within the period set out in that Division (or the period as extended under section 174).

Exercising the internal review power

24. Section 9 of the *Victorian Gambling and Casino Control Commission Act 2011* (**VGCCC 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 VGCCC Act.¹⁰
25. The objects of the LCR Act are set out in section 4(1) and provide that:

- “(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.”*

26. 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.”¹¹

¹⁰ Section 9(3) and 9(4) of the VGCCC Act.

¹¹ 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 licencing decisions (although not to the exclusion of others).

27. In exercising the internal review power, the Commission:
- (a) must consider all the information, material and evidence before the original decision maker;¹²
 - (b) may consider further information or evidence;¹³ and
 - (c) may, in respect of uncontested applications on review, have regard to any matter the Commission considers relevant, make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.¹⁴
28. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.
29. Section 44(2) provides a list of the grounds on which the Commission may refuse to grant an uncontested application.
30. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the ultimate determination of an uncontested application is to be made pursuant to sections 44(1) and 157(1) at the discretion of the Commission with reference to the objects of the LCR Act.

Conduct of an inquiry

31. Section 34 of the VGCCC Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate.
32. During the conduct of an inquiry, section 25(3) of the VGCCC Act provides that the Commission is not bound by the rules of evidence, however must comply with the rules of natural justice.

Other sections of the LCR Act relevant to this matter

Limited licences

33. A limited licence may be a temporary limited licence or a renewable limited licence. Pursuant to section 14(1A), a temporary limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence, and is not renewable. A limited licence may further be subject to any conditions determined by the Commission and specified on the licence.¹⁵
34. Section 26 provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).

¹² LCR Act, section 157(2).

¹³ LCR Act, section 157(3).

¹⁴ LCR Act, section 44(4).

¹⁵ LCR Act, section 14(2).

Material before the Commission

35. The Commission on review had before it, and considered, all the materials received by the Delegate. The Commission also received and considered the following materials:
- (a) Original Decision and Reasons of the Delegate, dated 29 October 2021;
 - (b) Review Application, received 17 November 2021;
 - (c) email communication from Victoria Police confirming that they maintained their objection, dated 1 December 2021;
 - (d) letter from the Applicant's solicitors confirming the Applicant's agreement to the conditions as proposed by Victoria Police, if the licence were granted, dated 23 November 2021;
 - (e) email communication from Victoria Police confirming that they no longer maintained their objection, lodged 18 January 2022;
 - (f) letter from the Applicant's solicitors, dated 22 February 2022, proposing amended delivery hours, outlining the Applicant's business model for an after lunch and after dinner delivery service, and submitting that the Review Application could be determined 'on the papers'; and
 - (g) Applicant's Management Plan For Off-site Deliveries, undated.

On-the-Papers determination of the Review Application

36. On 22 February 2022, the Applicant's solicitors submitted that the Commission could determine the Review Application 'on the papers', without a hearing or an appearance by the Applicant. On 4 March 2022, the Commission convened to determine the Review Application 'on the papers'.

Reasons for decision on review

Issues for determination on review

37. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the temporary limited licence that is the subject of the Review Application, the Commission must consider:
- (a) whether the Commission is satisfied that the scale and scope of the supply of liquor the subject of the proposed licence is limited in nature;¹⁶ and

¹⁶ LCR Act, section 26(1)

- (b) whether the Review 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.¹⁷

38. Each of these issues is discussed in turn.

Limited in scale and scope

- 39. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions the Commission has considered “*the nature, location, duration or frequency of the hours of operation of a licence in question*” as relevant to the Scale and Scope Requirement.¹⁸
- 40. In this Review Application, the proposed supply of liquor for which the proposed licence is sought is different from that which was before the Delegate. In particular, what is a significantly greater limitation compared with that contained in the Original Application is the following additional restriction proposed by the Applicant:
 - (a) the delivery of liquor would be limited to 12 noon to 10pm on any day (with a note that the Applicant’s business model is to provide the delivery service as an after lunch and after dinner service; with the majority of deliveries between 2pm to 4pm and 8pm to 10pm). (In the Original Application, the Applicant had requested the supply of liquor between the hours of 9am and 3am (the next day)).
- 41. In this instance, the Commission accepts that the supply of liquor would be sufficiently restricted particularly given the Applicant’s submissions as to its business model being to provide a delivery service as an after lunch and after dinner service, with the majority of deliveries between 2pm to 4pm and 8pm to 10pm.
- 42. The Commission also notes that the supply of liquor would (now) be as part of a home-delivery service only, with no packaged liquor supplied from the Premises.¹⁹
- 43. While the Commission notes that the Applicant has proposed delivery hours of 12 noon to 10pm on any day, considering that the liquor is not proposed to be supplied in conjunction with food to further minimise the risk of harm, and having regard to the Applicant’s submissions as to its business model being to provide the delivery service as mainly an after lunch and after dinner service, the Commission considers it appropriate for the liquor delivery hours to be restricted to 2pm to 4pm and 8pm to 10pm on any day.
- 44. The Commission also notes that the Applicant accepts a quantity limitation being imposed on the licence of:

two 750 ml bottles of wine or 12 sealed Smaller Containers of Liquor per delivery; or

¹⁷ The Commission notes that in determining this matter, it has also considered each of the grounds set out in LCR Act, section 44(2).

¹⁸ See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

¹⁹ In the Original Application, the Applicant had requested to supply liquor as part of both a home-delivery service and a take-away service from the Premises.

a combination of one 750 ml bottle of wine and 6 sealed Smaller Containers of Liquor per delivery.

45. Subject to the condition referred to in paragraph 44 above being limited to 'per delivery address per day', the Commission considers that the nature of the proposed supply of liquor under the Review Application would be sufficiently limited in scale and scope, and would also be consistent with the Applicant's submission that the proposed delivery of packaged liquor would only be a small part of the Applicant's business.²⁰
46. Subject to the limitations as referred to in Appendix A, the Commission is satisfied that the Scale and Scope Requirement is met.

Discretion to grant or refuse the Review Application

47. The Commission has a discretion under section 44(1) of the LCR Act to grant or refuse the Review Application. In exercising this discretion, the Commission must have regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
48. The Commission may also refuse to grant the Review Application on the basis of any of the matters listed in section 44(2)(a) and (b), which relevantly include that the granting of the application would detract from or be detrimental to the local area or be conducive to or encourage the misuse and abuse of alcohol.²¹

Amenity

49. The Commission may refuse, pursuant to section 44(2)(b), to grant an uncontested application on the ground that, among other things, it would detract from or be detrimental to the amenity of the area in which the premises to which an application relates are situated.
50. In her written reasons, the Delegate stated that it remained unclear to her whether the Applicant would comply with the conditions of the licence and therefore unclear whether granting the Original Application would detract from or be detrimental to the amenity of the local area.
51. The Commission notes that there have been more than one incident of non-compliance by the Applicant over the past two years as set out in paragraph 10 above.
52. The Applicant's lack of response to the Delegate's request under section 28(3) for information about those specific incidents of non-compliance resulted in the Delegate deciding that she had insufficient information to complete an assessment of the Original Application, and refusing the Original Application on the basis that it was not made in accordance with the LCR Act.²²
53. If the Commission requests an applicant under section 28(3) to give any other information with respect to an application, the applicant must comply with the request. The Commission expects the Applicant to be aware

²⁰Letter from Applicant's solicitors, 22 February 2022. The Applicant's core business is provision of a venue that is promoted as particularly catering for occasions such as weddings, cocktail and high tea events, and pre-planned conferences.

²¹ LCR Act, section 44(2)(b)(ii).

²² LCRA Act, section 44(2)(b)(v).

of its obligations, and to adhere to all of its legislative obligations at all times.

54. That said, the Applicant's Management Plan For Off-Site Deliveries, which was lodged after the Original Decision, indicates that the Applicant has turned its mind to putting measures in place, were the licence to be granted, so as to avoid further incidents of non-compliance, including staff training and regular RSA staff meetings.
55. The Commission also notes that where nothing was substantiated within the Applicant's compliance history regarding alleged incidents of non-compliance as investigated by gambling and liquor authorised officers, no weight has been put on such matters for the purposes of determining this Review Application.
56. While Victoria Police had lodged an objection in August 2021 on the basis that the grant of the proposed licence would be detrimental to the amenity of the local area, the Commission notes that they no longer maintained that objection after the Applicant agreed with Victoria Police's proposed licence conditions, were the licence to be granted.
57. Having regard to the Applicant's Management Plan For Off-Site Deliveries, and subject to all conditions as set out in Appendix A, the Commission does not consider any such detriment to be a sufficient ground to refuse the Review Application.

Misuse and abuse of alcohol

58. As previously stated, the Applicant accepts a quantity limitation being imposed on the licence of:

two 750 ml bottles of wine or 12 sealed Smaller Containers of Liquor per delivery; or
a combination of one 750 ml bottle of wine and 6 sealed Smaller Containers of Liquor per delivery.
59. Subject to this condition being limited to 'per delivery address per day' as mentioned in paragraph 45 above, and taking into account the Applicant's submissions regarding its business model being to provide the delivery service as mainly an after lunch and after dinner service, together with the Applicant's Management Plan For Off-Site Deliveries, the Commission considers, subject to all conditions as set out in Appendix A, that in all circumstances the risk of misuse and abuse of alcohol would be minimal.
60. The Commission accepts from the Applicant's submissions that the delivery service will only form a small part of its business, and also notes that the Applicant's sole director, Mr Lagana, the Applicant's venue managers, Mr Lachlan Pellegrino and Mr Andrew Howlet, and the RSA officer, Mr Bruce Terrill, have all completed RSA training.
61. For a combination of the above reasons, the Commission does not consider any potential for the misuse and abuse of alcohol to be a sufficient ground to refuse to grant the Review Application.

Other factors

62. The Commission may also consider whether to refuse the Review Application on grounds that Mr Lagana does not have adequate knowledge of the LCR Act.

63. The Commission has taken into account Mr Lagana's completion of RSA training as discussed in paragraph 60 above. However, the Commission also notes the incidents of non-compliance over the last two years as set out in paragraph 10 above and the Applicant's failure to comply with the Delegate's request under section 28(3) in relation to the Original Application. The Commission is also aware of a recently reported incident at another licensed venue of which Mr Lagana is the director of the licensee.²³
64. The Commission has considered Mr Lagana's level of experience, the level of support as set out in the Applicant's Management Plan For Off-Site Deliveries, the Applicant's business model regarding its proposed delivery service and the risk-profile of the licence type relevant to this Review Application. Taking into account all of the circumstances, the Commission is satisfied, on balance, that Mr Lagana has an adequate knowledge of the LCR Act for the purposes of section 44(2)(b)(iv).

Whether to exercise discretion to grant or refuse the Review Application having regard to the objects of the LCR Act

65. The Commission is satisfied that the Review Application meets the Scale and Scope Requirement, and the Commission is satisfied that there are no grounds sufficient to justify refusal under section 44(2), having regard to the objects of the LCR Act.
66. Importantly, with the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls will exist over the delivery of liquor and that the grant of the proposed licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.

Decision on review

67. Having regard to all the matters set out above, the Commission has determined to set aside the decision of the Delegate and, in substitution, grant a temporary limited licence subject to the conditions set out in Appendix A.

The preceding 67 paragraphs are a true copy of the Reasons for Decision of Ms Fran Thorn (Chair), Ms Deirdre O'Donnell (Deputy Chair), and Mr Andrew Scott (Commissioner).

²³ Published reports of incident at The Deck on Sunday, 27 February 2022.

Appendix A

Type of licence

This licence is a temporary limited licence and subject to the conditions specified in this licence authorises the licensee during the period of Victoria's declared 'state of emergency' in response to COVID-19 to supply sealed packaged liquor for consumption off the licensed premises, where the customer, at residential or accommodation premises, has ordered the alcohol as part of a home delivery service.

Supply of liquor

The quantity of liquor to be delivered as part of a home delivery service must not exceed more than two 750 ml bottles of wine or 12 sealed containers (not more than 375 ml per container) of beer, cider or premixed spirits per delivery address per day, or a combination of one 750 ml bottle of wine and 6 sealed containers (not more than 375 ml per container) of beer, cider or premixed spirits per delivery address per day.

Delivery of liquor

Liquor must not be supplied or delivered to a person under the age of 18 years. The licensee must ensure that delivery arrangements include requiring evidence of age where appropriate.

Liquor must not be delivered and left at unoccupied premises.

Liquor must not be delivered to anyone who appears to be intoxicated.

Liquor may only be delivered during the delivery hours specified below.

Hours for the delivery of liquor

On any day – between 2pm to 4pm and between 8pm to 10pm.

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Management Plan For Off-Site Deliveries

The licensee must adhere to the Management Plan For Off-Site Deliveries, provided to the VGCCC on 22 February 2022 in connection with the application for the grant of the licence, in addition to the conditions stated above.

Transfer of licence

This licence is not transferable.