

Decision and reasons for decision

In the matter of an application by Caswell Nominees Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant a renewable limited licence and permanent approval to permit underage persons on a licenced premises for the premises located at 2365 Plenty Road, Whittlesea, trading as Funfields Theme Park.

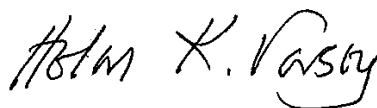
Commission: Ms Helen Versey, Deputy Chair
Ms Danielle Huntersmith, Commissioner
Mr Andrew Scott, Commissioner

Date of Hearing: 20 July 2021
Date of Decision: 5 August 2021
Date of Reasons: 5 August 2021

Appearances: Mr Colin Mann, Colin Mann & Associates for the Applicant
Ms Marilina Dinardo, for the Applicant
Ms Swati Bhim, as Counsel Assisting the Commission

Decision: The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for a renewable limited licence subject to the conditions set out in Appendix One.
The Commission has determined to refuse the application for permanent approval to permit underage persons on a licenced premises, under section 120(2)(e).

Signed:



Helen Versey
Deputy Chair

Background

1. On 24 September 2020, Caswell Nominees Pty Ltd (**the Applicant**) lodged an application with the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for a renewable limited licence (**Licence**) and permanent approval to permit underage persons on a licenced premises (**underage approval**) (together **the Application**) under the *Liquor Control Reform Act 1998* (**LCR Act**) for the premises located at 2365 Plenty Road, Whittlesea, trading as Funfields Theme Park (**the Premises**).
2. The Premises is described as a family entertainment theme park, which includes various water-related and other activities. It includes a barbeque area and two food outlets.
3. The Applicant sought to supply liquor to patrons from one of the food outlets, within what it described as “the upper level”. Within the upper level, the Applicant proposed the following areas for liquor consumption:
 - a. Beach Shack Café (the general food and drink area on the upper level);
 - b. Bali Huts; and
 - c. Day Beds.
4. For the Beach Shack Café area, the Applicant requested underage approval to accommodate unaccompanied patrons under the age of 18 entering the area to purchase soft drinks and food items for consumption. The Applicant proposed that any liquor purchases at the Beach Shack Café would be consumed seated at tables only and patrons would not be permitted to take the liquor outside of the Beach Shack Café.
5. For the Bali Huts and Days Beds, the Applicant proposed that liquor would be supplied to patrons by table service carried out by staff who have completed the required responsible service of alcohol training. The Applicant described the Bali Huts and Day Beds as VIP areas within the upper level, which are gated and hired by patrons for day use. The Applicant proposed that liquor ordered to either the Bali Hut and Day Bed areas would not be permitted to be taken outside of the Bali Hut or Day Bed area. The Applicant sought underage approval for this proposed licenced area, to accommodate patrons under the age of 18 to be within the VIP areas.
6. On 25 September 2020 a copy of the Application was served on both Victoria Police and the City of Whittlesea (**Council**), in accordance with section 33(3) of the LCR Act.
7. On 19 November 2020, the Council informed the Commission that they were not aware of any recent liquor licence planning permit applications for the Premises.
8. On 16 October 2020, Victoria Police lodged an objection to the grant of the Application, providing the following submissions in summary:
 - a. lack of sufficient controls to ensure underage persons do not consume alcohol;
 - b. presence of unaccompanied minors at an all-ages entertainment venue is contrary to community expectations; and
 - c. underage approval is not necessary, due to sufficient exemptions under the LCR Act for underage persons to be on a licenced premises.
9. Victoria Police informed the Commission they would withdraw the objection to the grant of a licence if the Applicant was to withdraw the approval for underage authority.
10. On 28 October 2020, in response to the submissions from Victoria Police, the Applicant informed the Commission it did not accept the proposal from Victoria Police to withdraw the application for underage approval, and made the following submissions in support of the Application:
 - a. underage approval is sought specifically to allow underage persons using the wave pool and beach area to access the Beach Shack Café, which is located within the upper level;

- b. any food and soft drink purchases must be consumed either within the general food service area, including the Beach Shack Café, or on the beach area;
 - c. all staff serving customers at the Beach Shack Café will have completed responsible service of alcohol training and strictly checking identification where required;
 - d. consumption of alcohol in the presence of underage persons is normalised in society;
 - e. the proposed licenced areas at the Premises are separate from the beach area and the wave pool and will be effectively managed by staff; and
 - f. roving supervisors and management to ensure underage persons do not consume alcohol.
11. On 27 November 2020, Victoria Police provided further written submissions to the Commission in response to the Applicant's submissions, in summary restating their previous views on the Application and raising concerns that underage approval would not comply with the 'National Alcohol Strategy'¹ as well as water safety policy.
12. On 18 December 2020, a delegate of the Commission (**Delegate**) refused to grant the Application on the grounds that it did not meet the requirements of section 26(1) of the LCR Act and that a licence could not be granted because the Premises would be captured by section 22(ca) of the LCR Act (**Original Decision**).

Application for Internal Review

13. On 13 January 2021, the Commission received an application for internal review from the Applicant, requesting the Commission set aside the Original Decision and grant the renewable limited licence and underage approval for the Premises (**Review Application**).
14. On 28 January 2021, Victoria Police informed the Commission that they maintain the objection to the Licence with underage authority approval, based on the risks associated with underage persons in licenced areas and around water.

Legislation and the Commission's task

The Commission's internal review power

15. Division 2 Part 9 of the LCR Act governs internal review applications. The Original Decision is a reviewable decision under section 152, and the Applicant is an eligible person to apply for a review of that decision. The Review Application is made under section 153 of the LCR Act.
16. Pursuant to 157(1) of the LCR Act, the task before 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.
17. Under the LCR Act an application for licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act a contested application includes:
- "an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the period set out in the Division for those objections (or that period as extended under section 174)".*
18. Victoria Police maintains an objection to the Review Application, therefore the Review Application is a contested application.

¹ Commonwealth of Australia, Department of Health, *National Alcohol Strategy 2019 – 2028*.

19. Accordingly, the Commission on internal review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Variation Application. The Commission must either:
- a. grant the application (and may do so subject to conditions);² or
 - b. refuse to grant the application.³
20. In doing so, the Commission must consider all the information, material and evidence that was before the original decision maker.⁴ The Commission may also consider further information, material or evidence in making a decision.⁵

Exercising the internal review power

21. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act (VCGLR Act)* provides:

“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”⁶.

22. Accordingly, in exercising its discretion to either grant or refuse a contested application under section 47(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act.
23. 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.”*

24. Section 4(2) of the LCR Act provides further that:

² Sections 44, 49 and 157 of the LCR Act.

³ Sections 44 and 157 of the LCR Act.

⁴ Section 157(2) of the LCR Act.

⁵ See section 157(3) of the LCR Act.

⁶ There are no objects specified in the VCGLR Act itself.

“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.”

Determination of a contested application

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

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

26. Section 47(2) of the LCR Act provides that the Commission may refuse to grant a contested application on any of grounds set out in section 44(2).

27. Section 44(2)(b)(1) of the LCR Act provides the following grounds for refusal –

“that the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated;”

28. Section 44(4) of the LCR Act provides that before granting or refusing a contested application under subsection (1), the Commission may:

“(a) ...have regard to any matter the Commission considers relevant; and

(b) make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.”

29. 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 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”*⁷. 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.”*⁸

30. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the ultimate determination of a contested application is to be made pursuant to sections 44(1), 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.

Certain premises not to be licenced

32. Section 22(1)(ca) of the LCR Act provides the Commission must not grant a licence in respect of –

“premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years;”

33. Subsection 22(3A) provides factors that the Commission may consider in making its assessment under section 22(1)(ca) these include but are not limited to:

“(a) whether the proposed licence or permit authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and

⁷ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁸ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

(b) whether the proposed licence or permit provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur.”

Allowing minors on licensed or authorised premises

34. Section 120(1) of the LCR Act provides:

“(1) If a person under the age of 18 years—

(a) is on licensed premises or any authorised premises; and

(b) is not—

(i) in the company of a responsible adult; or

(ii) on the premises for the purpose of partaking of a meal; or

(iii) in the case of a licence under which accommodation is provided, a resident of those premises—

the licensee or permittee is guilty of an offence.”

35. Subsection 120(2) provides that section 120(1) does not apply, inter alia:

“...

(e) to the presence on licensed premises or authorised premises of a person under the age of 18 years in accordance with the approval of the Commission and any conditions to which that approval is subject.”

Conduct of an inquiry

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

37. The Commission on review had before it, and considered, all materials received by the Delegate. In addition, the Commission received and considered the following:

- a. Original Decision and reasons of the Delegate, dated 20 March 2020;
- b. Application for Internal Review and submissions in support, submitted by Colin Mann on behalf of the Applicant;
- c. written submissions from the Applicant, dated 16 June 2021 regarding clarification of lines of liquor proposed for supply, trading hours, maximum limits on liquor supply and the proposed Beach Shack Café area; and
- d. further written submissions from the Applicant, after the public hearing, providing clarification and a draft venue management plan, dated 26 July 2021.

38. On 20 July 2021, the Commission conducted a public hearing, by video conference, in relation to the Review Application (**the Hearing**). The Applicant was represented by Mr Colin Mann. Ms Marilina Dinardo, a shareholder in the Applicant and the Premises food and beverage manager, was called as a witness and gave oral evidence at the Hearing.

39. Prior to the Hearing, Deputy Chair Versey and Commissioner Scott visited the Premises for the purpose of conducting a visual inspection.

Reasons for decision on review

Issues for determination on review

40. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the Review Application, the key issues to be determined by the Commission in this matter are:
- the identification of the “premises” for the purpose of the Review Application;
 - whether the Premises are intended to be used primarily by people under the age of 18 years;
 - whether to grant an approval for underage persons on the Premises under section 120(2)(e) of the LCR Act; and
 - whether the supply of liquor proposed pursuant to the Licence is limited in scale and scope.
41. In exercising its ultimate discretion to grant or refuse the Application, the Commission must have regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.

Identification of the “premises”

42. In order to make a determination on whether licensing the Premises would be prohibited under the LCR Act, the Commission must first consider whether the Premises for the purpose of the Review Application, is the redline area or the whole Funfields premises.
43. The Commission refers to the decision of the Victorian Civil and Administrative Tribunal (**VCAT**) in *Gaghan*⁹ and is of the view that reference to “premises” is different to, and distinct from, the term “licensed premises” as used in the LCR Act. In *Gaghan*, VCAT also found that it is possible for a single site to comprise more than one premises, depending on how the land is being used. In that case, VCAT found that the petrol station and the restaurant were operating as sufficiently different uses on the land as to constitute different premises.
44. The decision of *Gaghan* was then referred to and followed in the case of *Danz Management*.¹⁰ In that case, VCAT considered an application for an on-premises licence by the operator of an entertainment centre for the café that was collocated within the entertainment centre. VCAT rejected the operator’s claim that the games area and the licensed area should be treated as different “premises”, and ultimately found that the whole of the entertainment centre comprised the “premises” for the purposes of section 22(1)(ca).
45. In the Application form, the Applicant stated a licence was sought for a specific area of the Premises. At the Hearing, when the Commission put the matter of identifying the premises for the purpose of the Review Application to the Applicant’s representative, Mr Mann stated that for the purpose of the Review Application Funfields Theme Park as a whole was considered the “premises”. Mr Mann went on to state that the Applicant would give evidence that the intended primary use of the Premises was a family-oriented theme park, and not primarily for underage persons.
46. In evidence at the Hearing, Ms Dinardo affirmed that the Premises is a family-oriented theme park, a small portion of which the Applicant was seeking be licenced for liquor to be consumed within. Ms Dinardo also affirmed that the whole Premises is owned by the Applicant, is run as one business and has shared facilities. Certain parts of the Premises are then sectioned to create various themed areas.
47. On the evidence provided, the Commission finds that for the purpose of the Review Application the entire Funfields premises should be treated as the “premises” for the purposes of considering section 22(1)(ca) and determining the intended primary use of the Premises.

⁹ *Gaghan v LLC* [2000] VCAT 1871 (30 September 2000)

¹⁰ *Danz Management Pty Ltd v Director of Liquor Licensing* [2010] VCAT 536 (4 May 2010)

48. The Commission has turned its mind to the fact that the Applicant has proposed two separate red line areas within the upper level at the Premises. For completeness, the Commission considers that it is not unlawful for staff members to carry the liquor from the Beach Shack Café to the VIP area for those patrons using the Bali Huts and Day Beds to consume liquor within that red line area. However, patrons are not permitted to consume liquor outside of the red line area or to take the liquor outside the redline area in which the liquor has been ordered. Accordingly, there is an obligation on a licensee to ensure that patrons remain in the designated red line area when liquor is being consumed.

Whether the Premises are intended to be used primarily by people under the age of 18 years

49. Under section 22(1)(ca) of the LCR Act, the Commission is prohibited from granting a licence for premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years.

50. In determining this issue, section 22(3A) of the LCR Act provides that the Commission may consider:

- a. whether the proposed licence authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and
- b. whether the proposed licence provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur.

51. In relation to the first factor, at paragraph 50(a), the Commission refers to the Applicant's proposed trading hours and notes the Applicant intends to supply liquor in the ordinary course of business, at times when the proposed licenced area will not be used primarily by patrons under the age of 18.

52. In relation to the second factor, at paragraph 50(b) the Applicant has provided the following relevant evidence:

- a. that the Bali Huts and Day Beds can only have underage patrons if they are in the company of a responsible adult; and
- b. there is no age limit for entry into the Premises, tickets are sold based on height categories with some rides requiring an adult (or person over a certain height) to accompany younger people.

53. The Applicant has stated, in both written submissions and at the Hearing, that the Premises is family-oriented and accordingly most patrons of the Premises are families, some of which will have children under the age of 18. These are the patrons who are likely to be on the Premises during ordinary business hours.

54. At the Hearing, further questions were put to Ms Dinardo to try and establish the intended users of the Premises. Ms Dinardo gave evidence that the business was intended to be "family-oriented" as opposed to primarily for use by people under 18 years. In summary, Ms Dinardo gave the following relevant evidence to the Commission:

- a. there are specific "kids" areas at the park which consists of rides of mostly for children, who are under 130cm tall;
- b. most ticket sales for entry into the park are for families;
- c. Children rarely attend the Premises without accompanying adults;
- d. the Bali Huts and Day Beds are in a VIP area of the Premises, which patrons must pre-book and pay a fee to use for the day. Usually Bali Huts are booked out by families and the Day Beds are for use by two adults and can be shared with children if the adults have children with them;

- e. the Applicant caters to group bookings at the Premises, which include birthday parties and school holiday programs but also includes general group bookings and corporate events;
 - f. there is a barbeque and picnic area at the Premises, for families who wish to attend the Premises for the purposes of having a picnic or a barbeque.
55. At the site visit, Deputy Chair Versey and Commissioner Scott noted a variety of rides and facilities that did not appear to be primarily intended for use by people under the age of 18, but rather for the use and enjoyment of adults. This includes the picnic areas, barbeque areas, the wave pool and the volcano beach area.
56. On inspecting the website, the Commission took into consideration the following additional relevant points to make the assessment on the intended primary use of the Premises:
- a. there are concession tickets for seniors to enter the park;
 - b. people under the age of 16 need to provide identification before entry into the Premises is permitted; and
 - c. the images and reviews on the website, show a range of age groups, and as given in evidence by Ms Dinardo, mostly families, enjoying the various facilities at the Premises.
57. The Commission, having considered all the evidence, is satisfied that there are many areas and attractions at the Premises which adults enjoy, and that adults do not attend the park merely to supervise children.
58. The Commission is of the view that the Premises is relevantly different from the venue that was considered in *Danz Management*. On balance, the evidence given in this matter is more indicative that the Premises is a mixed-market, family venue rather than that which was presented in *Danz Management*. Specifically, the Commission consider the following points differentiate the Premises from the venue in *Danz Management*:
- a. the Premises is a large outdoor area with various facilities and rides, not just indoor games;
 - b. certain rides at the Premises are targeted towards adults, or older children;
 - c. the Premises sells tickets as family bookings, corporate events and to seniors, which indicate a broad customer base that uses the Premises and the usage is reflective of the intended use of the Premises;
 - d. adults attend the Premises for the use and enjoyment of the facilities and rides, not merely as supervisors;
 - e. overall, the evidence given by the Applicant indicates the facilities at the Premises are designed to cater to all age groups, compared to *Danz Management* which the owner had conceded was targeted to people under the age of 18.
59. After considering all evidence before it, the Commission is satisfied that the intended primary use of the Premises is not primarily for people under 18 years old and that the Premises is a family-oriented venue which caters to people of all ages.

Approval for underage persons on the licenced premises

60. The Application subject of the Review Application included an application pursuant to section 120(2)(e) of the LCR Act, for the Commission to approve persons under the age of 18, not in the company of a responsible adult, to be present on the proposed licenced area.
61. The Applicant sought this approval specifically to allow persons under the age of 18 to enter the Beach Shack Café area of the upper level to purchase soft drinks and food, without a responsible adult accompanying them. There would be liquor supplied for consumption within this area. Under the Review Application the Applicant did not seek the underage approval for the Bali Huts or Day Bed areas on the Premises.
62. Under the LCR Act, unaccompanied minors are only permitted on licenced premises for partaking in a meal or in the company of a responsible adult. Generally, the Commission will only grant an

approval under subsection 120(2)(e) to allow unaccompanied minors on licensed premises in specific circumstances, and for particular events with clear plans and strict controls to ensure that minors cannot obtain or consume alcohol at the licensed premises.

63. The Review Application seeks a generic approval for the proposed licenced areas at the Premises, rather than an approval for specific occasions. The Commission is of the view that this is not consistent with the objects of the LCR Act.
64. The Commission finds that the Review Application does not contain sufficient detail for the management of the risks associated with allowing unaccompanied minors on a licensed premises and, accordingly, is not satisfied that the risks of harm to minors on the Premises, including the risk of supply and secondary supply of liquor to minors, have been appropriately mitigated.
65. On the evidence before it, the Commission is of the view that the Applicant has not made a satisfactory case for the Commission to approve the application under section 120(2)(e) of the LCR Act.
66. In particular, the Commission is not satisfied that the Applicant would sufficiently manage the risk of secondary supply of liquor that arises where approval under section 120(2)(e) of the LCR Act is granted. Nor is it satisfied that additional works to establish a separate point of sale of soft drinks and food to unaccompanied minors within the upper level would be impractical.
67. The Commission considers granting the application under section 120(2)(e) of the LCR Act would be conducive to or encourage the misuse or abuse of alcohol and would be contrary to the harm minimisation object of section 4(1) of the LCR Act.
68. The Commission agrees with Victoria Police submissions that the Applicant can operate the Licence, with underage persons only permitted within liquor consumption areas in the company of a responsible adult.
69. Section 3 of the LCR Act defines a responsible adult as:

responsible adult, in relation to a person who is under the age of 18 years, means a person who is of or over the age of 18 years and who is—

(a) the younger person's parent, stepparent, guardian or grandparent; or

(b) the younger person's spouse; or

(c) a person who is acting in place of a parent and who could reasonably be expected to exercise responsible supervision of the younger person;

70. Section 120(1)(b)(i) of the LCR Act allows for minors to be on a licenced premises in the company of a responsible adult.
71. Accordingly, the Commission refuses to grant the application for underage approval.

Limited scale and scope

72. Section 14 of the LCR Act provides that a renewable limited licence “*authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence.*” However, unlike other categories of licence, limited licences are subject to the additional restriction found at section 26 of the LCR Act, “*that the scale and scope of the supply of liquor the subject of the licence is limited in nature*” (**the Scale and Scope Requirement**).
73. 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.¹¹
74. Section 26(1) of the LCR Act gives the Commission a wide discretion to determine, as a question of fact, whether the Scale and Scope Requirement is met. In the decision of *Club 8, VCAT*

¹¹ See decision of *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises* (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

considered that there was no warrant for an interpretation that the limitation in question need to “contemplate a *substantial* or *significant* restriction”,¹² however this does not mean that the Commission cannot consider whether a limitation is *substantial* or *significant* in the exercise of its discretion to determine whether the Scale and Scope Requirement is met.

75. The Applicant has offered the following limitations on the Licence:

- a. patrons will be limited to a total of 6 drinks per person per day;
- b. proposed liquor for supply:
 - i. one light strength beer, one mid-strength beer both produced by Carlton & United;
 - ii. one cider;
 - iii. one each of prosecco, white wine, red wine;
 - iv. frozen margarita and daiquiri; and
 - v. one spritz;
- c. liquor supplied at the Beach Shack Café must be consumed whilst patrons are seated at a numbered table;
- d. liquor supplied to the Bali Hut and Day beds, must be consumed within the allocated “VIP” area;
- e. liquor will be delivered by staff to the patron for consumption; and
- f. proposed licensed trading hours.

76. After the Hearing, the Commission requested further written submissions from the Applicant to provide clarification on the trading hours sought as well as the maximum number of drinks per person per day.

77. On 26 July 2021, the Applicant in written submissions requested the following amended licenced trading hours:

September to November and February to April between 12 noon and 4.30pm

December and January between 12 noon and 5.30pm

78. The Applicant informed the Commission that regular business hours for the Premises are:

September (school holiday period usually last 2 weeks in September): 10am – 5pm

October (Saturday and Sunday only): 10am – 5pm

November (Thursday – Sunday inclusive): 10am – 5pm

December (every day up to December 24): 10am – 5pm

From 26 December (every day): 10am – 6pm

January (every day up until January 26): 10am – 6pm

January (every day from 26 January): 10am– 5pm

February (from Friday – Monday inclusive): 10am – 5pm

March (Saturday and Sunday only): 10am – 5pm

April (From 1 April to end of the Easter holiday break): 10am – 5pm

79. The Applicant has informed the Commission that the licenced area will be closed 30 minutes prior to close of business, on each day it is operating.

¹² *Club 8 Pty Limited v Director of Liquor Licensing (Occupational and Business Regulation [2009] VCAT 716 at para [24].*

80. As stated in paragraph 75(a), the Applicant confirmed that patrons would be limited to purchase a total number of six drinks per day, and that this would be monitored with the use of wristbands on patrons purchasing liquor.
81. The Commission has considered the limitations set out above, as well as the size of the proposed licenced area within the Premises. In this instance the Commission is satisfied that the Scale and Scope Requirement is met.

Objects of the Act

82. In determining this Review Application, the Commission has had regard to the objects of the LCR Act, in particular harm minimisation.
83. The Commission has taken into account the evidence and submissions made by Victoria Police regarding the harm of secondary supply of alcohol as well as a need for the Applicant to have sufficient practices to monitor and manage alcohol related harm at the Premises, specifically that the Applicant as a first-time licensee will need to submit a venue management plan for approval by the Commission.
84. The Commission notes the proposed licenced areas at the Premises are small (relative to the size of the whole Funfields premises) defined areas which sit above a wave pool. At the Hearing, Ms Dinardo gave evidence that the Beach Shack Café has an artificial barrier which delineates it from the general upper level area and that any liquor purchase will be required to be consumed at a seated table. Ms Dinardo further gave evidence that the Bali Huts and Day Beds, being a VIP area are fenced off and cannot be accessed by patrons who have not pre-booked to be in the area and that liquor will be delivered to patrons by staff at the Premises and cannot be removed from the VIP area. Ms Dinardo also gave evidence that wrist bands would be used to identify patrons who were identified as 18 years or older and therefore permitted to purchase liquor, and that the wrist band would be used to tally the total number of drinks that had been purchased throughout the day.
85. The Commission is of the view that proof of age, daily limits on the number of drinks purchased by patrons and keeping liquor within the designated red line areas could be satisfactorily monitored, if there was a clear plan in place to manage the obligations associated with holding a liquor licence.
86. As the Applicant has not held a liquor licence previously, the Applicant would need to provide a satisfactory venue management plan, as to be approved by a delegate of the Commission. On approval of a satisfactory venue management plan, the Commission would then be satisfied that the grant of the Licence would not be conducive to or encourage the misuse or abuse of alcohol and would not be contrary to the harm minimisation object of section 4(1) of the LCR Act.
87. Accordingly, on considering all the evidence before it, the Commission is satisfied that, together with the conditions imposed at Appendix A and an approved venue management plan, the risk of the misuse and abuse of alcohol in this instance will be minimised.

Decision on review

88. Based on the reasons detailed above and having regard to the objects of the LCR Act, the Commission has determined to set aside the Original Decision and grant a renewable limited licence for the Premises, subject to the conditions as detailed in Appendix A.
89. The Commission has determined to refuse the application under section 120(2)(e) of the LCR Act, for permanent approval to allow underage persons on the licenced premises, without a responsible adult.

The preceding eighty-nine (89) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey (Deputy Chair) Ms Danielle Huntersmith (Commissioner) and Mr Andrew Scott (Commissioner).

Appendix A

Type of licence

This licence is a renewable limited licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

Conditions of approval

This licence is not effective until a Venue Management Plan has been submitted to and approved by the Commission.

Responsible service of alcohol

At all times staff selling, offering or serving liquor are to have completed an approved Responsible Service of Alcohol training course.

Period of licence – section 50(2)

The licence is only in force during September to April inclusive.

Special conditions

- (a) The licensee must have clear signs stating that liquor must not be removed from the licenced areas.
- (b) The licensee must place signs at the Bali huts, Day Beds and the Beach Shack Café reminding patrons that people under the age of 18 must be accompanied by a responsible adult.
- (c) Liquor must be supplied by RSA trained staff member and delivered to the patron at the VIP area (the area consisting of the Bali Huts and Day Beds).
- (d) Liquor supplied in the Beach Shack Area must be delivered to the relevant numbered table by RSA trained staff and must only be consumed by patrons seated at the table.
- (e) Liquor supplied to the VIP area must only be consumed within the VIP area.
- (f) Liquor supplied may only be served in plastic containers or cans.
- (g) Liquor supplied must be limited to a maximum of six (6) drinks per person per day, each person purchasing, or consuming liquor must wear a wristband which records the number of drinks as they are being purchased

Trading hours

September (Monday to Sunday inclusive, during the Victorian school holiday period only): 12pm – 4.30pm

October (Saturday and Sunday only): 12pm – 4.30pm

November (Thursday – Sunday inclusive only): 12pm – 4.30pm

December (Monday – Sunday inclusive): from 1 December to December 24 – 12pm – 4.30pm; from 26 December to 31 December – 12pm to 5.30pm

January (Monday to Sunday inclusive): from 1 January to 26 January – 12pm – 5.30pm; from 26 January to 31 January: 12pm – 4.30pm

February (Friday – Monday inclusive only): 12pm – 4.30pm

March (Saturday and Sunday only): 12pm – 4.30pm

April (Monday to Sunday inclusive, during the Victorian school holiday period only): 12pm – 4.30pm

Supply of liquor

The type of liquor supplied is limited to one line each of the following: light beer, medium strength beer, prosecco, red wine, white wine and frozen margarita, frozen daiquiri and spritz.

The supply of liquor is limited to no more than 6 drinks per person per day.