

## Decisions and reasons for decision

In the matter of an application by Eclectic Dreams Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for the internal review of a decision by a delegate of the Victorian Commission for Gambling and Liquor Regulation under section 44 to refuse a joint application by Eclectic Dreams Pty Ltd and Mr Philip Newman as liquidator of Zoobibi Pty Ltd (in liquidation) under section 32 to transfer Restaurant and Cafe Licence no 32359722 in respect of the premises known as Zoobibi, located at 646 Burwood Road, Hawthorn East from Mr Newman as liquidator of the then licensee Zoobibi Pty Ltd (in liquidation) to Eclectic Dreams Pty Ltd

**Commission:** Mr Ross Kennedy, Chair  
Ms Danielle Huntersmith, Commissioner  
Mr Andrew Scott, Commissioner

**Date of Hearing** 5 October 2021

**Date of Decision:** 5 October 2021

**Date of Reasons:** 18 November 2021

**Decision:** The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application to transfer the licence.



**Signed:** **Ross Kennedy**  
Chair

## Background

1. On 31 March 2021, the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) received a joint application by Eclectic Dreams Pty Ltd and Mr Philip Newman as liquidator of Zoobibi Pty Ltd (in liquidation) under section 32 of the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>1</sup> to transfer Restaurant and Cafe Licence no 32359722 (**the Licence**) for the premises known as Zoobibi, located at 646 Burwood Road, Hawthorn East (**the Premises**) from Mr Newman as liquidator of the then licensee, Zoobibi Pty Ltd (in liquidation), to Eclectic Dreams Pty Ltd (**the Original Application**).
2. The reason for the Original Application was because Eclectic Dreams Pty Ltd purchased the cafe and home décor business located at the Premises from Mr Newman as the liquidator of Zoobibi Pty Ltd in December 2020, and proposes to continue sell liquor on the Premises as is authorised under the Licence. If the Commission were to grant the Original Application, Eclectic Dreams Pty Ltd would be the new holder of the Licence.<sup>2</sup>
3. The sole director of Eclectic Dreams Pty Ltd, Mr Tony Zoobi, is the former director of the then licensee, Zoobibi Pty Ltd (in liquidation). Eclectic Dreams Pty Ltd leases the Premises and has been trading there as a café and home décor business since 24 December 2020. Liquor has been sold on the Premises as is authorised under the Licence.<sup>3</sup>
4. The Original Application included:
  - (a) an application form lodged on 26 March 2021;
  - (b) a further application form lodged on 31 March 2021;
  - (c) current and historical Australian Securities and Investment Commission company extracts of Eclectic Dreams Pty Ltd;
  - (d) a certificate of completion of an approved responsible service of alcohol (**RSA**) program by Mr Zoobi, dated 7 October 2020; and
  - (e) a copy of the winding up order against Zoobibi Pty Ltd (in liquidation) in the Supreme Court of Victoria, dated 20 November 2020.

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<sup>1</sup> All references to legislation are references to the LCR Act unless stated otherwise.

<sup>2</sup> Licence 32359722 was issued on 24 November 2020 to the then licensee, Zoobibi Pty Ltd (in liquidation). Mr Philip Newman became the endorsed person on the licence on 9 December 2020 in the capacity as liquidator.

<sup>3</sup> This is discussed further in paragraph 28 below.

5. In accordance with section 33(1) of the LCR Act, a copy of the Original Application was served on a Victoria Police licensing inspector (**Victoria Police**) on 20 April 2021. On 14 May 2021, Victoria Police informed the Commission that it did not wish to object to the Original Application
6. On 3 September 2021, a delegate of the Commission (**the Delegate**) determined to refuse the Original Application pursuant to section 44(2)(b)(v) (**the Original Decision**) on the ground that the Original Application had not been made in accordance with the LCR Act. Specifically, the Delegate noted that the required outstanding information had not been submitted by the relevant due dates namely:
  - (a) a New Entrant Training Certificate, or otherwise known as 'Licensees' First Steps', for Mr Zoobi;
  - (b) a Declaration of Right to Occupy Notice declaring the right of Eclectic Dreams Pty Ltd to legally occupy the Premises; and
  - (c) a copy of the executed lease for the Premises specifying Eclectic Dreams Pty Ltd as the tenant.<sup>4</sup>

## Application for Internal Review

7. On 15 September 2021, Eclectic Dreams Pty Ltd (**the Applicant**) applied for internal review of the Original Decision (**the Review Application**). As part of the Review Application, the Applicant provided the outstanding information referred to in paragraph 6 above on 20 September 2021.

## Legislation and the Commission's task

### The Commission's internal review power

8. Division 2 of Part 9 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 a review of that decision. The Review Application was made pursuant to section 153.
9. 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.<sup>5</sup>

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<sup>4</sup> A reminder email to lodge the outstanding information was sent to the Applicant on 12 August 2021.

<sup>5</sup> Section 157(2) to (5) of the LCR Act and section 25(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (VCGLR Act) further prescribe the manner in which the Commission is to undertake internal reviews.

10. 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 Original Application. In this case, the Commission must decide whether to:
- a. grant the application for the transfer of the restaurant and cafe licence, and if so, whether to do so subject to conditions;<sup>6</sup> or
  - b. refuse to grant the application.<sup>7</sup>

## Determination of an uncontested application

11. Under the LCR Act, an application for the transfer of a restaurant and cafe 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).<sup>8</sup>*

12. The Review Application is uncontested as no 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

13. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.<sup>9</sup>

14. 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*

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<sup>6</sup> LCR Act, sections 44, 49 and 157.

<sup>7</sup> LCR Act sections 44 and 157.

<sup>8</sup> 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).*”

<sup>9</sup> Section 9(3) and 9(4) of the VCGLR 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.”*

15. 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.”<sup>10</sup>*

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

- a. must consider all the information, material and evidence before the original decision maker;<sup>11</sup>
- b. may consider further information or evidence;<sup>12</sup> 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.<sup>13</sup>

17. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

18. Section 44(2) provides a list of the grounds on which the Commission may refuse to grant an uncontested application.

19. 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.

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<sup>10</sup> 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).

<sup>11</sup> LCR Act, section 157(2).

<sup>12</sup> LCR Act, section 157(3).

<sup>13</sup> LCR Act, section 44(4).

## Conduct of an inquiry

20. 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.
21. 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

22. 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) the Original Decision, dated 3 September 2021;
  - (b) the Review Application received by the Commission on 15 September 2021;
  - (c) a certificate of completion certifying that Mr Zoobi completed 'New Entrant Training', dated 18 November 2020;
  - (d) a declaration of the Applicant's right to occupy the Premises, dated 20 September 2021;
  - (e) a copy of the executed lease for the Premises that specifies the Applicant as the tenant, dated 5 March 2021; and
  - (f) correspondence between the Applicant and the Delegate following the Original Decision.

## On-the-Papers determination of the Review Application

23. On 5 October 2021, the Commission informed the Applicant that it was inclined to determine the Review Application 'on the papers', without a hearing or an appearance by the Applicant and the Applicant did not object to this. On the same day, the Commission convened to determine the Review Application 'on the papers'.

## Reasons for decision on review

### Issues for determination on review

24. As mentioned in paragraph 18 above, the Commission may refuse to grant an uncontested application on any of the grounds in section 44(2) when making its decision in relation to the Review Application.

### Suitability

25. Section 44(2)(a) provides that the Commission may refuse to grant an uncontested application on the ground that the proposed transferee is not a suitable person to hold or carry on business under

the licence. When the Original Application was served on Victoria Police, no objection was made on the ground that the Applicant was not a suitable person to hold or carry on business under the Licence. Further to this, the information before the Commission discloses no matters relevant to the suitability of the Applicant or its sole director, Mr Zoobi.

26. Noting the lack of objection by Victoria Police and the absence of material suggesting that the Applicant is not a suitable person to hold the Licence, the Commission does not consider that there is any basis to refuse the Review Application pursuant to section 44(2)(a) of the LCR Act.

### **Amenity**

27. 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.

28. The Commission notes that there has been no compliance or enforcement action taken by the Commission in respect of these licensed premises for non-compliance with licence conditions and that there is no suggestion that the overall operation of the Premises will markedly change if the transfer of the Licence was granted.<sup>14</sup> Furthermore, there is no information before the Commission to indicate that the sole director of the Applicant, Mr Zoobi, has any history of conducting licensed premises in a manner which detracts from the amenity of areas in which those premises are situated.<sup>15</sup>

29. Accordingly, the Commission does not consider this to be a ground to refuse the Review Application.

### **Other factors**

30. The Commission has also considered whether granting the Review Application would be conducive to, or encourage, the misuse or abuse of alcohol. Noting the compliance history as discussed in paragraph 28 above, and the type of licence sought to be transferred, in which the predominant activity must be the preparation and serving of meals, as well the existing hours of trade being to 9 pm on all days other than Saturday which is to 10 pm, the Commission has nothing before it to raise concerns that granting the Review Application would lead to the potential misuse and abuse of alcohol.

31. The Commission may also consider whether to refuse the Review Application on grounds that the sole director of the Applicant does not have adequate knowledge of the LCR Act. Noting that the

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<sup>14</sup> The VCGLR takes compliance and enforcement action in respect of licensed premises that are found to be non-compliant with their licence conditions. The Commission notes that no prosecution, penalty infringement notice or formal warning has been issued against these licensed premises since the Licence was granted on 24 November 2020.

<sup>15</sup> The Commission acknowledges that before the Licence was issued to the then licensee, Zoobibi Pty Ltd, on 24 November 2020, Mr Zoobi, as the sole director of that company, had never been the holder of a licence or a director of a company that held a licence.

RSA Certificate and New Entrant Training Certificate for Mr Zoobi were provided, the Commission does not consider this to be a ground upon which to refuse the Review Application.

## **Decision on review**

32. The Commission is satisfied that the Review Application meets all legislative requirements set out above concerning the transfer of the Licence. Accordingly, based on the reasons set out above, the Commission is satisfied that granting the Review Application is appropriate in the circumstances.
33. The Commission has therefore determined to set aside the Original Decision and grant the Review Application.

**The preceding 33 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy (Chair), Ms Danielle Huntersmith (Commissioner), and Mr Andrew Scott (Commissioner).**