

## Decision

In the matter of an application by Macedon Ranges Shire Council made on 21 October 2022 under section 153(1) of the *Liquor Control Reform Act 1998* (**the LCR Act**) for an internal review of a decision to refuse to grant a temporary limited licence for the premises known as the Kyneton Town Hall located at 129 Mollison Street, Kyneton (**the Review Application**).

**Commission:** Ms Danielle Huntersmith, Chairperson  
Mr James O'Halloran, Commissioner  
Ms Thu-Trang Tran, Commissioner

**Date of Decision:** 22 November 2022

**Date of Reasons:** 22 November 2022

### Decision:

The Commission has determined to set aside the decision of the delegate and, in substitution, grant the application for a temporary limited licence subject to the conditions set out in Appendix A



**Signed:**

Danielle Huntersmith

**Chairperson**

## Background

### The Original Application

1. On 3 October 2022, the Macedon Ranges Shire Council (**the Applicant**) applied to the Victorian Liquor Commission (**the Commission**) for a temporary limited licence (**TLL**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>1</sup> to supply liquor at an event known as the 2023 Macedon Ranges Shire Council Arts and Culture Event Program Launch (**the Event**) at the Kyneton Town Hall located at 129 Mollison Street, Kyneton (**the Premises**) on 15 December 2022 (**the Original Application**).
2. The Event will include a Smoking Ceremony, speeches, live music and dance performances.
3. The Applicant sought a TLL to supply liquor on the Premises for consumption on the Premises one hour before the scheduled start of a live performance and up to 30 minutes during any interval between 5:30pm to 10pm.
4. Included in the Original Application was information regarding the proposed licensed area, which comprises the foyer and the auditorium. The Applicant proposed a maximum of 400 people to attend the Event, which is to be pre-ticketed.
5. On 6 September 2022, a delegate of the Commission (**the Delegate**) refused the Original Application pursuant to section 44(2)(b)(v) (**the Original Decision**). In summary, she was of the view that the scale and scope of the supply of liquor was not limited in nature to satisfy essential requirements under section 26 given that the Applicant had been granted TLLs for over 15 events in the past 12 months.

### Application for Internal Review

6. On 21 October 2022, the Applicant applied to the Commission for review of the Original Decision and requested to supply liquor on the Premises for consumption on the Premises between 6pm and 9:30pm (inclusive) and the supply of liquor to be limited to a maximum of 200 people who have been pre-issued a ticket (**the Review Application**).<sup>2</sup>

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

<sup>2</sup> By way of the Review Application, the Applicant had amended the Original Application to be considered on review. The Applicant confirmed the amended trading hours for the proposed supply of liquor as well as the reduced maximum number of attendees in an email communication dated 16 November 2022.

7. The Applicant also advised that two crowd controllers would be present at the Premises to ensure that liquor is not removed from the Premises and that liquor would only be served in non-glass open containers or open cans.<sup>3</sup>

## Legislation and the Commission's task

### The Commission's internal review power

8. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Original Decision 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 LCR Act.
9. Pursuant to section 157(1) of the LCR Act, 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.*

10. Under the LCR Act, an application for a 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).*

11. The Original Application is uncontested, as no objections were 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).
12. 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 either:
  - a. grant the application, and if so, determine whether to do so subject to conditions<sup>4</sup>; or

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<sup>3</sup> The Applicant confirmed the employment of crowd controllers in an email communication dated 16 November 2022 and confirmed the non-glass open containers in a preliminary meeting on 10 October 2022 as discussed below.

<sup>4</sup> LCR Act, sections 44, 49 and 157.

- b. refuse to grant the application<sup>5</sup>.

## Exercising the internal review power

13. Section 172U(3)(b) of the LCR 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 in respect of the regulation of liquor issued by the Minister.

14. The objects of the LCR 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*
- (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 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 alcohol.<sup>6</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>7</sup>;
- b. may consider further information or evidence<sup>8</sup>; and

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<sup>5</sup> LCR Act, section 44 and 157.

<sup>6</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 licensing decisions (although not to the exclusion of the other objects).

<sup>7</sup> LCR Act, section 157(2).

<sup>8</sup> LCR Act, section 157(3).

- 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>9</sup>

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

18. The Commission considers that while the grounds of refusal outlined in section 44(2) of the LCR Act are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

19. Section 44(2)(b) of the LCR Act empowers the Commission to refuse to grant the Review Application on various grounds, including that:

(a) *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; or*

(b) *the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.*

20. A limited licence may be a TLL or a renewable limited licence<sup>10</sup>. Pursuant to section 14(1A) of the LCR Act, a TLL authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence, and it may not be renewed in accordance with the LCR Act. A limited licence may further be subject to any conditions determined by the Commission and specified on the licence.

21. Section 26(1) of the LCR Act 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 (**the Scale and Scope Requirement**).

## Conduct of an Inquiry

22. Section 44(4) of the LCR Act provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate. Section 172W(3) of the LCR Act provides that the Commission is not bound by the rules of evidence, but may inform itself in any manner it thinks fit and is bound the rules of natural justice.

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<sup>9</sup> LCR Act, section 44(4).

<sup>10</sup> LCR Act, section 14(1).

## Material before the Commission

23. The Commission on review had before it and considered all the materials before the Delegate.
24. The Commission on review also received and considered the following additional materials:
- a. Decision Record of the Delegate for the Original Application, dated 13 October 2022;
  - b. Review Application, dated 21 October 2022; and
  - c. Email communication from the Applicant, dated 16 November 2022.

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

25. On 10 November 2022, a preliminary meeting took place between the Applicant's representative, Mr Simon Clarke, Coordinator Arts and Culture, Ms Danielle Huntersmith, Chairperson of the Commission and Counsel Assisting, Ms Caitlin McAlister (**the Preliminary Meeting**).
26. At the Preliminary Meeting, the Commission informed Mr Clarke that it was possible to determine the Review Application 'on the papers', without a hearing or an appearance by the Applicant. Mr Clarke confirmed on behalf of the Applicant that he was comfortable with the Commission hearing the matter 'on the papers' (i.e. without a hearing in person).

## Reasons for decision on review

### Issues for determination on review

27. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the TLL 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;<sup>11</sup> and
  - 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.<sup>12</sup>
2. Each of these issues is discussed in turn.

### *Limited in scale and scope*

28. Section 14 provides that a TLL “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 in that the Commission may only grant a limited licence if satisfied “that the scale and scope of the supply of liquor the subject of the licence is limited in nature”.

29. 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<sup>13</sup>.

30. In this Review Application, the proposed supply of liquor for which the proposed licence is sought differs in some respects from that which was before the Delegate. In particular:

- a. the maximum number of people who could be supplied liquor would be restricted to 200 (in the Original Application the Applicant had requested to supply to a maximum of 400 people);
- b. the supply of liquor would be limited to 6pm and 9:30pm (inclusive) (in the Original Application, the Applicant had requested the supply of liquor one hour before the

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<sup>11</sup> LCR Act, section 26(1).

<sup>12</sup> The Commission notes that in determining this matter, it has also considered each of the grounds set out in section 44(2).

<sup>13</sup> See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].

scheduled start of a live performance and up to 30 minutes during any interval between 5:30pm to 10pm); and

- c. crowd controllers would be present and alcohol would only be served in non-glass open containers or open cans.

31. In the Preliminary Meeting, Mr Clarke confirmed that the Applicant does not intend to supply alcohol for just any person walking in off the street. He advised that the Event will be pre-ticketed. He also clarified the hours for the supply of alcohol and the capacity as set out above, as well as confirming crowd controllers would be present at all times and that alcohol would only be served in non-glass open containers or open cans.

32. In this instance, the Commission accepts that the supply of liquor would be sufficiently restricted given the limitations proposed in the Review Application, including the Event being a ticketed event with a limited number of attendees during hours which are significantly limited by the Event.

33. Subject to the limitations as referred to in paragraph 30 being imposed as conditions on the proposed licence, the Commission is satisfied that the Scale and Scope Requirement is met.

#### *Discretion to grant or refuse the Review Application*

34. The Commission has a discretion under section 44(1) 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.

35. 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 be conducive to or encourage the misuse and abuse of alcohol.<sup>14</sup>

#### *Misuse and abuse of alcohol*

36. The Commission considers that in all circumstances, given the limited trading hours, capacity, and the nature of the Event, that the risk of misuse and abuse of alcohol would be minimal. The Commission further notes that the Applicant submitted that two crowd controllers would be present at the Premises to ensure that liquor is not removed from the

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<sup>14</sup> LCR Act, section 44(2)(b)(ii).



Premises and that liquor would only be served in non-glass open containers or open cans which also assists in minimising of the risk of harm.

37. The Commission considers that Mr Clarke presented detailed information at the Preliminary Meeting and demonstrated that the Applicant is well prepared and cognisant of its obligations as a licensee in relation to the Event. The Commission expects that the conditions of the Licence will be adhered to.

38. The Commission is satisfied that there are no relevant grounds for refusal under section 44(2) of the LCR Act.

39. Having regard to the objects of the LCR Act, particularly the harm minimisation object, the Commission is satisfied that there is little risk of harm given the nature of the event.

40. For a combination of the above reasons, the Commission does not consider the potential for the misuse and abuse of alcohol as a ground to refuse to grant the Review Application.

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

41. The Commission is satisfied that the Review Application meets the Scale and Scope Requirement, and the Commission is satisfied that there are no grounds for refusal under section 44(2), having regard to the objects of the LCR Act.

42. Importantly, with the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls will exist over the supply and consumption of liquor at the Premises and that any risk of harm will be minimised.

## Decision on review

43. 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 the application for a TLL subject to conditions set out in Appendix A.

***The preceding 43 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chairperson), Mr James O'Halloran (Commissioner) and Ms Thu-Trang Tran (Commissioner).***

## Appendix A

### Type of licence

This licence is a limited licence and authorises the licensee to supply liquor for consumption on the licensed premises during the trading hours specified below for the purposes of the ticketed event known as the 2023 Macedon Ranges Shire Council Arts and Culture Event Program Launch located at Kyneton Town Hall, 129 Mollison Street, Kyneton ("Event").

### Noise and Amenity

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

### Supply of liquor

The licensed area is the foyer and the auditorium of the Kyneton Town Hall.

Liquor may only be served in non-glass open containers or open cans.

All persons engaged in the supply and service of alcohol will have undertaken an approved Responsible Service of Alcohol course in the preceding three years.

Copies of certificates of completion for such courses for each person must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a Liquor Control Victoria Inspector.

A copy of the limited licence, as well as "Intoxicated? Drunk? Disorderly?" and "Under 18? No Supply" liquor signage must be prominently displayed.

### Patron capacity

200 patrons.

### Crowd control

A minimum of two (2) crowd controllers, licensed under the "Private Security Act 2004", are to be employed for the Event.

### Period of licence

The licence is valid during the day and time listed below.

### Trading hours

15/12/2022

Between 6pm and 9:30pm