

## Decision and reasons for decision

In the matter of an application by Mr Michael Buckmaster and Mr Ernesto Mulluso under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision by a delegate to refuse to grant a renewable limited licence for the premises trading as Workshop Café Heidelberg, 147 Northern Road, Heidelberg West.

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**Commission:** Mr John Larkins, Deputy Chairperson  
Ms Susan Timbs, Commissioner  
Mr James O'Halloran, Commissioner

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**Date of Decision:** 30 December 2022

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**Date of Reasons:** 4 January 2023

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**Appearances:** Mr Martin Towey for the Applicants  
Mr Paul Davies, Counsel Assisting the Commission

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**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.

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**Signed:**



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John Larkins

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Deputy Chairperson

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## Background

1. On 31 March 2022, Mr Michael John Buckmaster and Mr Ernesto Mulluso (**the Applicants**) applied to the Victorian Gambling and Casino Control Commission (**the VGCCC**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>1</sup> for a renewable limited licence to supply liquor on the premises located at 147 Northern Road, Heidelberg West (**the Premises**), trading as Workshop Café Heidelberg (**the Original Application**).
2. The Applicants sought to supply liquor in a café environment, with a limited offering of food, during the following proposed trading hours:
  - a. Monday to Friday – between 11am and 8pm;
  - b. Saturday and Sunday – between 11am and 5pm (Functions only); and
  - c. ANZAC Day – between 12 noon and 5pm.
3. In addition, the Applicants proposed the following supply limitations:
  - a. no more than 15 lines of liquor;
  - b. a maximum overall patron capacity of 50, with a maximum of 15 in the internal area and 40 in the external area;
  - c. liquor for consumption on the Premises only; and
  - d. liquor to be supplied in open containers only.
4. The Premises include a small internal café space of 7 metres x 6 metres and an external area of 9 metres x 6 metres with outdoor stools, tables and umbrellas. There is one patron toilet available which is unisex.
5. The Premises are in a predominantly industrial area. There is a three-bedroom dwelling on the first floor of the building, and private residences are some distance away. Overall, factories and manufacturing businesses are in the immediate area, where a considerable number of people work.
6. In accordance with section 33(3), the VGCCC considered it appropriate on 31 March 2022 to give a copy of the Original Application to Victoria Police and the Banyule City Council (**the Council**).

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

7. On 27 April 2022, Victoria Police informed the Commission that it did not object to the grant of the Original Application.
8. The Council did not provide an objection to the Original Application. Rather, the Council advised on 8 April 2022 that it “...*had no amenity-based objection [to] the proposal but does request [that] the [VGCCC] issue any approval in line with a theorised permit or hold off approval until such time*”.<sup>2</sup>
9. In accordance with section 34(7), between 4 April 2022 and 2 May 2022, a public notice, in the size and in the format required by the VGCCC, and containing all relevant details of the Original Application, was displayed on the Premises to which no objections were received.
10. On 1 July 2022, the Victorian Liquor Commission (**the Commission**) was established under the LCR Act as the liquor regulator in Victoria and accompanying legislative changes transferred to the Commission the necessary functions and powers to consider and determine applications previously made to the VGCCC.
11. On 1 September 2022, a delegate of the Commission (**the Delegate**) decided to refuse the Original Application on the basis that he was not convinced that the scale and scope of the supply of liquor was limited in nature to satisfy section 26 (**the Original Decision**).

## Application for Internal Review

12. On 2 September 2022, the Applicants applied for internal review requesting that the Commission set aside the Original Decision and grant the renewable limited licence (**the Review Application**).

## Legislation and the Commission’s task

### The Commission’s internal review power

13. The Review Application is made under section 153. The Original Decision is a reviewable decision under section 152, and the Applicants are eligible persons to apply for a review of that decision. Division 2 Part 9 of the LCR Act governs internal review applications.

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<sup>2</sup> Email communication from the Council to the VGCCC, dated 8 April 2022. At this time the (then) Victorian Commission for Gambling and Liquor Regulation (**the VCGLR**) had formally been renamed as the Victorian Gambling and Casino Control Commission (**the VGCCC**).

14. Pursuant to 157(1), 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.<sup>3</sup>
15. 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
- c. grant the renewable limited licence, and if so, whether to do so subject to conditions;<sup>4</sup> or
  - d. refuse to grant the Original Application.<sup>5</sup>

## Determination of an uncontested application

16. 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 as extended under section 174).

## Exercising the internal review power

17. Section 172U(3)(b) 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.
18. The objects of the LCR Act are set out at section 4(1) and provide –

*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*

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<sup>3</sup> Section 157(2) to (5) of the LCR Act further prescribes the manner in which the Commission is to undertake internal reviews.

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

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

*(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*

19. Section 4(2) further provides –

*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>*

20. 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*

*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>*

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

22. The Commission considers that while the grounds of refusal outlined at section 44(2) 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.

23. Relevantly, section 44(2)(b) empowers the Commission to refuse to grant the Review Application on various grounds and includes:

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

24. A limited licence may be a temporary limited licence or a renewable limited licence.

Pursuant to section 14(1B), a renewable limited licence authorises the licensee to supply

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<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).

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

liquor at the times determined by the Commission and specified on the licence, and it may 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.

25. Section 26(1) 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.

## Conduct of an inquiry

26. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.
27. Section 172W provides that the Commission is not bound by the rules of evidence, however, must comply with the rules of natural justice.

## Pre hearing

### Site visit

28. The Commissioners visited the Premises on 12 October 2022 for the purposes of a site visit and inspection. The Applicants were present. The visit assisted the Commissioners to observe the layout of the Premises.

### The Council

29. Counsel Assisting wrote to the Council on 28 September 2022 for the purposes of asking for further input and clarification about the second part of the sentence in the Council's email communication of 8 April 2022, which read: "...does request [that] the [VGCCC] issue any approval in line with a theorised permit or hold off approval until such time."
30. After some email correspondence and a telephone call between the Council and Counsel Assisting (notwithstanding that the Council did not object to the Original Application and is not a party to the Review Application), the Council wrote to the Commission on 16 November 2022. In summary, the Council advised that it was not concerned with the proposed renewable limited licence provided that the Applicants comply with the relevant requirements of clause 52.27 of the Banyule Planning Scheme.
31. Having regard to the Council's response, the Commission notes that clause 52.27 of the Banyule Planning Scheme has no application to a limited licence, which the Council had acknowledged, in any event, in its email communication to the Commission of 8 April 2022.

## Material before the Commission

32. On review, the Commission considered all material received by the Delegate and the following additional information and evidence:
- a) the Original Decision, dated 1 September 2022;
  - b) the Review Application, dated 2 September 2022;
  - c) the Applicants' proposed amendments to the Original Application, dated 13 November 2022;
  - d) the email communication from the Council, dated 16 November 2022;
  - e) the venue management plan for the Premises, received 2 December 2022; and
  - f) the building surveyors report, dated 14 December 2022.

### Public hearing

33. A public hearing was held in relation to the Review Application on 17 November 2022 (**the Hearing**).
34. Mr Michael Buckmaster gave oral evidence in support of the Review Application.
35. At the Hearing, Mr Buckmaster acknowledged the lack of licensed premises in the immediate area and noted that himself and his business partner, Mr Molluso, had experience in hospitality and catering businesses, but hadn't previously been licensees.
36. Mr Buckmaster stated that, as he and Mr Molluso were the only persons involved in operating the business, he and Mr Molluso will be on-site every day and are cognisant of their responsibilities under the proposed licence and under the LCR Act.
37. Mr Buckmaster also said that CCTV is already fitted to the Premises, covering both internal and external areas of the Premises, including the street entrance. He said that he would comply with a condition regarding retention and availability of CCTV on request, were the Commission to grant a licence.
38. Moreover, Mr Buckmaster said that he would display signage to inform patrons that the entire area is covered by CCTV for the purposes of protecting both patrons and neighbours' amenity and suggested that this could be a licence condition, were the Commission to grant a licence.

39. Mr Buckmaster also said that no more than ten lines of liquor would be offered at any time, “...most likely two options of beer, a heavy and a light, two options of red and two options of white depending on the season, and four basic spirits.”<sup>10</sup>
40. Further, Mr Buckmaster suggested a licence condition to the effect that, during the period of supply on the Premises, food for consumption would be available on the licensed premises, were the Commission to grant a licence.<sup>11</sup>
41. At the end of the Hearing, the Applicants were given an opportunity to provide a draft venue management plan and a building surveyors report.

## Reasons for decision on review

### Issues for determination on review

#### Limited scale and Scope

42. In making its decision on review, an issue for determination is whether the nature of the supply of liquor as proposed by the Applicants is limited in scale and scope as required by section 26(1).
43. Section 14 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, “that the scale and scope of the supply of liquor the subject of the licence is limited in nature” (**the Scale and Scope Requirement**).
44. 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>12</sup>

#### Amenity

45. An additional issue to be determined by the Commission is whether granting the renewable limited licence would cause or detract from or cause detriment to the amenity

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<sup>10</sup> Page 26, lines 15-30, transcript of the Hearing. Workshop Café, 17.11.2022.

<sup>11</sup> Page 14, lines 20-30, transcript of the Hearing. Workshop Café, 17.11.2022.

<sup>12</sup> See decision of Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-internal review) [2016] VCGLR 19 (25 July 2016) At [61].



of the area in which the Premises are situated, which may give grounds of refusal under section 44(2).

46. In this application the Commission has considered:
- a. the possibility of a relatively significant number of people being attracted to the Premises;
  - b. whether the Applicants will be capable of managing and controlling patron numbers, including avoiding any overcrowding or safety risks;
  - c. how the Applicants will inform people that there is a restriction on patron numbers;
  - d. the playing of background music in the Premises in a manner that respects neighbours' amenity; and
  - e. the Premises having one patron toilet, and the relevance of this fact in a general sense to the amenity of patrons and the area in which the Premises are situated.

## Harm minimisation

47. The Commission is also required to consider whether to exercise its discretion to grant the renewable limited licence having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation. The Commission has considered whether granting the licence would be conducive to, or encourage, the misuse or abuse of alcohol.

## Submissions made after the Hearing

48. Following the Hearing, the Applicants submitted:
- a. the venue management plan for the Premises, received 2 December 2022 (**the Venue Management Plan**); and
  - b. the building surveyors report for the Premises, dated 14 December 2022 (**the Building Surveyors Report**).

49. The Venue Management Plan addresses the following issues:

- i. **Trading hours:** The Applicants reduced the proposed trading hours to the following:

Monday to Thursday	12 Noon to 8pm
Friday	12 Noon to 5pm

Saturday and Sunday 12 Noon to 5pm and supply is limited to prebooked functions only  
No Trade on Public Holidays.

- ii. **Managing the supply of liquor:** Any patron showing signs of intoxication will be cut off from alcohol service and all bar staff will be notified of the patron.
- iii. **Responsible service of alcohol training, staff induction and management:** The supply of liquor is confined to persons with a valid RSA certificate. All staff are regularly trained, and refresher training will take place as required.
- iv. **Aggressive or unruly patrons:** Aggressive or unruly patrons are dealt with in a calm manner and to be escorted from the venue. If they refuse to leave, Police are to be notified.
- v. **Incident Control and Complaint Management:** Any complaints are handled by the applicant on duty. The complaint is dealt with on the day and then recorded in a shift report. Any follow ups are also dealt with.
- vi. **CCTV:** Security cameras cover all entry and exit points, as well as external areas, and operate at any time that liquor is supplied. All footage is held for a minimum of 30 days.
- vii. **The toilet facility:** The Premises has one unisex toilet and staff must be aware of and alive to that limitation, particularly at busy times.

50. The Commission also considered the maximum patron capacity for the Premises. The Building Surveyors Report states that the Premises has an internal area of 56 square metres and based on the specific requirements of D1.13 of the National Construction Code 2019, the maximum number of occupants allowed would be 35 persons. It is further stated in the Building Surveyors Report that the maximum number of occupants that would be allowed under an occupancy permit issued in compliance with the *Building Act 1993* is 35 persons.

51. After provision of the Building Surveyors Report, Mr Towey advised on behalf of the Applicants, on 19 December 2022, that the Applicants would agree to a maximum patron capacity of:

- a. Internal Area - 12 patrons;
- b. External Area - 35 patrons;
- c. Overall maximum - 35 patrons.

52. Mr Towey also submitted that the number of prebooked functions would be limited. Having particular regard to the amenity factors discussed in paragraph 46 above, the Commission considers that the number of prebooked functions should be limited to 12 prebooked functions per calendar year, with no more than 3 prebooked functions in any one month.
53. Overall, the Commission is satisfied that, subject to the conditions set out in Appendix One, granting a renewable limited licence:
- a. satisfies the Scale and Scope Requirement;
  - b. would not detract from or cause detriment to the amenity of the area in which the Premises are situated; and
  - c. would not be conducive to, or encourage, the misuse or abuse of alcohol.
54. Relevantly, the Commission acknowledges that, during the Hearing and afterwards, the Applicants provided detailed information, including much additional information that was not available to the Delegate, such as the Venue Management Plan and the Building Surveyors Report. Additionally, the Original Application changed as follows:
- a. the maximum patron capacity was reduced from 50 to 35;
  - b. the number of prebooked functions were limited to 12 per calendar year, with no more than 3 prebooked functions in any one month;
  - c. the trading hours were reduced by one hour from Monday to Thursday and by three hours on Friday;
  - d. the supply of liquor on the Premises was reduced to 10 lines of liquor (from 15); and
  - e. no supply of liquor will occur on public holidays.

## Decision on review

55. 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 the application for a renewable limited licence subject to the conditions set out in Appendix One.

***The preceding fifty-five (55) paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Ms Susan Timbs (Commissioner) and Mr James O'Halloran (Commissioner).***

## Appendix One

### 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.

### 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.

### Maximum capacity

Internal area	12 patrons
External area	35 patrons
Overall maximum	35 patrons

### Security Cameras

The licensee shall maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of the licensed premises. The surveillance recording system must operate from 30 minutes before the commencement of the supply of liquor at the premises until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by Victoria Police, or a person authorised in writing by the Victorian Liquor Commission, or otherwise retained for at least 1 month.

### Venue Management Plan

The licensee must take all reasonable steps to conduct and supervise all aspects of the management of the premises. The licensee must ensure compliance with the Venue Management Plan provided to the Victorian Liquor Commission. The Venue Management Plan provided to the Victorian Liquor Commission must be retained on the premises in the possession of the licensee, nominee, manager or other person in charge. The licensee must produce the Venue Management Plan provided to the Commission for inspection if asked to do so by a member of Victoria Police or a Victorian Liquor Commission Inspector.

### Special conditions

The supply of liquor on the licensed premises is restricted to ten (10) lines of liquor made up of beer, red and white wine, and basic spirits.

At all times during the period of liquor supply on the premises, the licensee shall ensure food is available for consumption on the licensed premises.

The licensee may supply liquor at no more than twelve (12) prebooked functions per calendar year on a Saturday or a Sunday with no more than three (3) prebooked functions in any one month. The licensee will keep a register of the prebooked functions which will be made available for inspection if requested by a Victorian Liquor Commission Inspector and/or a member of Victoria Police.

Music may be provided at no greater than background level music at any time.

The licensee shall prominently display signs on the premises notifying patrons that the entire area is covered by CCTV for patron protection and to respect neighbours' amenity.

#### Victorian Liquor Commission

Liquor is to be supplied for consumption on the licensed premises only and liquor is to be supplied in open containers only.

## Trading hours

### FOR CONSUMPTION ON THE LICENSED PREMISES

Monday to Thursday	Between 12 pm – 8 pm
Friday	Between 12 pm – 5pm
Saturday and Sunday	Between 12 pm – 5pm and supply is limited to prebooked functions only
No trade on public holidays	