

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by On A Boat Pty Ltd for an internal review of a decision by a delegate to refuse to grant an application for a renewable limited licence for the premises located at WTC Wharf, 18/38 Siddeley St, Docklands and Berth 4, Southbank Wharf, Lower Yarra River, Victoria.

Commission:	Mr John Larkins, Deputy Chair Ms Susan Timbs, Commissioner Mr Steven Brnovic, Commissioner
Appearances:	Mr Alistair Sutherland, Director, On A Boat Pty Ltd Mr Michael Majewski, Counsel Assisting the Commission
Date of Hearing:	3 July 2023
Date of Decision:	1 September 2023
Date of Reasons:	1 September 2023
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 A.
Signed:	 John Larkins Deputy Chair

Background

The Applicant

1. On A Boat Pty Ltd (**Applicant**) operates a business of hiring boats and providing cruises along the Yarra River, Melbourne. It is a business owned and operated by its sole director, Mr Alistair Sutherland.
2. When the Applicant lodged its application for a renewable limited licence (**RLL**) on 25 November 2022, it had a fleet of 15 all-electric cruiser vessels. Over the course of the internal review, that fleet expanded to include a further, larger vessel that can accommodate 20 people.
3. Those 15 vessels can accommodate cruises carrying up to nine passengers at a time. Cruises can be booked via the Applicant's website. They can either be with a skipper who is an employee of the Applicant company, or customers can hire a boat to drive themselves (**skipper-yourself cruises**). Cruises may last between one and four hours, depending on the cruise package purchased.
4. The Applicant permits its clients to bring limited quantities of liquor with them on their cruises. The Applicant does not need a permit under the *Liquor Control Reform Act 1998* (**LCR Act**) for this, although the ability to bring-your-own liquor (**BYO**) will be relevant to the issues in this review.
5. BYO is limited by the Applicant's internal BYO policy:

It is required by law that the nominated skipper must remain 0.00% BAC. Alcohol consumption laws are enforced by Victoria Water Police and heavy fines apply.

All other guests must comply with our alcohol limits:

- One bottle of wine (per two persons)
- Three bottles/cans of pre-mixed spirits, beer or cider (per person)
- No straight spirits are permitted.

Any intoxication or antisocial behaviour will lead to the trip being terminated with no refund.

The Applicant expects patrons to comply with restrictions on BYO contained in that policy.

6. The Applicant operates its business on the Yarra River at two different places:
 - a) The 15 cruiser vessels are berthed at or near premises located at World Trade Centre (**WTC**) Wharf, 18/38 Siddley St, Docklands VIC 3000. The Applicant leases a secure storage facility underneath the WTC where supplies are stored,

and there is also an office containing further supplies and equipment. Neither the storage facility nor the office is presently public-facing.

- b) The more recently-acquired vessel is berthed at Berth 4 at Southbank, at the Lower Yarra River. There is a ticketing box near Berth 4 from which the Applicant intends to provide capacity for patrons to book a cruise and to collect supplies, including, subject to the Commission's decision on review, alcoholic beverages for the cruise.
7. The Commission understands that the Applicant intends to store liquor at the WTC Wharf, then transport it to the ticketing box, either for delivery to the passengers who purchased it, or to the vessels being skippered.
8. The Applicant sought a licence to be granted with respect to its WTC Wharf secure storage facility and Berth 4, Southbank Promenade, Yarra River North (including the ticket box) as indicated by the red-line plans supplied to the Commission.
9. Having had regard to the Applicant's proposed business, the Applicant intends to supply liquor by offering it for sale online and at its ticket booth. It will supply liquor by providing it to passengers at the ticket booth near Berth 4. In the case of online orders, under section 3B of the LCR Act, the Applicant will be supplying liquor to passengers at the place where the liquor provided was appropriated to the person's order, and that would be the WTC Wharf storage room.
10. The Commission therefore refers to the WTC Wharf storage room and Berth 4, including the ticket box on Southbank Promenade (as indicated on the provided red-line plans) collectively as the **Premises**.

The Original Application

11. On 25 November 2022, the Applicant applied for an RLL to enable the Applicant to supply liquor for those patrons who wish to consume liquor on board, but who have not brought their own liquor (**Original Application**). It was initially intended to supply liquor in conjunction with food hampers as add-ons to a boat cruise. It sought to offer up to two hampers per booking, where each hamper would have any of the following:
 - a) two bottles of 750ml wine; or
 - b) ten containers of 330ml pre-mixed spirits; or
 - c) eight containers of 375ml beer.
12. In terms of its intended trading hours, the Applicant submitted in its application that, due to the nature of its business as a day-time cruise operator, alcohol supply would be limited to daylight hours.

13. The Applicant submitted that it intended to store liquor at a secure storage facility on site at WTC Wharf (underneath the WTC complex) and packaged into hampers for delivery to customers as their boat is being prepared for voyage.¹ The Applicant also submitted that it intended to supply liquor to ‘walk-ons’ (i.e., customers who did not pre-book a cruise), and that the supply of liquor would be identical to customers who pre-booked their cruise online.²
14. On 13 December 2022, a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) pursuant to section 33(3) and, on 21 December 2022, Victoria Police confirmed that it did not object to the grant of the Original Application.
15. On 13 January 2023, in response to the Delegate’s concerns that the Applicant’s BYO policy conflicted with its intended supply of liquor, the Applicant offered to revisit its current BYO limits “to ensure there is alignment between what [it is] supplying and what customers may bring themselves”.
16. On 16 January 2023, the Delegate sent the Applicant an email with a draft of the conditions that the Commission was considering for an RLL. It included the following proposed conditions relating to supply of liquor:
- The supply of liquor is limited to hampers purchased as part of a boat cruise(s) operated by the licensee.*
- The supply of liquor is limited to skippered cruises only. The skipper of the cruise must be an employee of the licensee and have completed Responsible Service of Alcohol training.*
- The supply of liquor can only be supplied as part of a hamper, in conjunction with food. The supply of liquor is limited to 1 x 750ml bottle of wine OR 6 x 375ml containers of beer, cider or pre-mixed spirits, per person. A maximum of 2 hampers per boat cruise is permitted.*
- The above licence conditions would permit the supply of liquor to "walk-ons" but additionally allow hampers to be purchased online through the traditional online booking system.*
17. On 17 January 2023, the Applicant provided further submissions on scale and scope of its intended supply under an RLL (in summary):
- a) It would offer a small range of alcoholic options, with no more than five drink options at any one time.

¹ The Applicant also noted that it leases both an office space and storage room within WTC Wharf which are used for the management of its operations.

² The Applicant stated that ‘walk-on’ customers use the same online booking system.

- b) Its customers are groups made up of up to nine people, and – by providing a set number of drinks in its hampers – the volume of liquor supplied would be fixed and limited.
- c) As the alcoholic drinks would only be available as part of the Applicant’s food catering packages, the Applicant says that there would be a practical limitation to the volume of alcohol available for consumption.
- d) 400 – 600 drinks per month are anticipated to be supplied.³

18. On 18 January 2023, the Applicant stated that it was “comfortable with all [of the Delegate’s] conditions with the exception of limiting supply of liquor to hampers sold on [the Applicant’s skippered cruises rather than skipper-yourself cruises]”. The Applicant argued that it had protocols in place to manage its customers from a distance, which would also enable it to manage the risk of alcohol consumption on skipper-yourself cruises, including (in summary):

- a) a pre-departure check-in;⁴
- b) a pre-departure personal briefing, including all operating and safety requirements, and assessment of customer fitness and competence;
- c) vessel GPS tracking;⁵
- d) on-water patrolling and support via a support vessel;⁶ and
- e) real-time incident reporting.⁷

19. In addition, the Applicant stated that the supply of liquor as conditioned by the Delegate was modest, and that liquor would always be served in conjunction with food. The Applicant also stated that its cruises are most commonly one to two hours in duration, which provides a relatively small window for customers to consume alcohol. Furthermore, the Applicant submitted that it would ensure that its staff hold current Responsible Service of Alcohol (**RSA**) certificates and that it was open to further reducing the BYO limits.

³ The Applicant states that it provides up to 600 cruises per month (with up to 4000 customers) and the current uptake of its food catering hampers is approximately “30 hampers per month (less than 1%)”. It forecasts that adding alcoholic drinks would increase the number of hampers to “less than 100 hampers per month”, where each hamper contains “4-6 alcoholic drinks”.

⁴ The Applicant states that customers are requested to provide their signature to confirm that they accept the rules and regulations contained in the Applicant’s operating procedures.

⁵ The Applicant states that all of its vessels “are fitted with real-time tracking and notifications, including the identification of possible issues with vessels (i.e., stopping suddenly) or geographical areas”.

⁶ The Applicant states that the support vessel “is on water and on hand within [its] operating area both proactively during high-risk periods (i.e., Saturday afternoons) and on demand as required at all times. Radio communication between staff allows for real-time reporting and feedback on any identified issues.

⁷ The Applicant states that “[its] online issues reporting system allows for immediate raising of any issues from the general public. These issues are received and followed-up in real time.”

20. On 13 February 2023, the Delegate refused the Original Application pursuant to subsection 44(2)(b)(ii) (**Original Decision**). In summary, the Delegate was of the view that “without supervision of those on board, especially those patrons designated as [the sober driver], a multitude of consequences such as property damage or personal injury may occur, and which the Applicant cannot prevent if the patrons are not within reach of an employed responsible service of alcohol delegate”. As a result, the Delegate considered that the supply of liquor to customers on skipper-yourself cruises would be conducive to or encourage alcohol-related harm within the meaning of the LCR Act.

Application for Internal Review

21. On 8 March 2023, the Applicant applied to the Commission for review of the Original Decision (**Review Application**).

22. On 18 April 2023, Mr Sutherland attended a preliminary meeting with the Commission to discuss the scope of the issues in the Review Application (**Preliminary Meeting**). During this meeting, Mr Sutherland provided a brief history of the business, including that the Applicant (in summary):

- a) has operated for just over five years;
- b) has a berthing licence from Parks Victoria to operate from the WTC Wharf (**Berthing Licence**);
- c) has a tour operator and activity provider licence from Parks Victoria (**Tour Operator Licence**);
- d) has a licence to tenant over part of the Northbank Promenade Reserve pursuant to section 17B of the *Crown Land (Reserves) Act 1978* from the Department of Environment, Water and Planning (**Crown Land Licence**); and
- e) is regulated as a commercial vessel operator by the Australian Maritime Safety Authority (**AMSA**).

23. Mr Sutherland also stated that AMSA reviews the Applicant’s Safety Management System on an annual basis to ensure that the Applicant meets its operational and safety requirements. He added that AMSA could revoke the Applicant’s Certificate of Operation if it failed to meet its safety standards.

24. At the conclusion of the Preliminary Meeting, the Commission requested that Mr Sutherland provide copies of the Berthing Licence, the Operator Licence, the Crown Land Licence, and the Safety Management System. The Commission also requested a personal statement about the company of the Applicant.

25. On 25 April 2023, Mr Sutherland forwarded copies of the above requested documents including a personal statement which said (in summary):
- a) the Applicant currently employs one full-time manager, plus a group of ten casual staff members;
 - b) the Applicant's full-time manager and Mr Sutherland both have RSA certificates. In addition, three of the current casual staff members hold RSA certificates; and
 - c) the Applicant is prepared to require that all of its casual staff members hold an RSA certificate in order to perform their role.
26. A Safety Management System (**SMS**) for the Applicant dated 25 May 2022 notes the following:
- In accordance with operating under the National Standard for Commercial Vessels (NSCV) and the Act, this Safety Management System reports our assessment of risks and the risk management effort associated with our commercial operations.⁸*
27. The SMS contains a risk management system for both skippered and skipper-yourself cruises. It also contains procedures to deal with customer intoxication, noting:
- Our customer registration and safety briefing both reinforce that alcohol consumption laws are enforced by Victorian Water Police and that intoxication will not be tolerated. If we suspect any customers are impaired by drugs/alcohol, our dock crew are instructed and trained to not release the group onto water. This includes any customer group who is unwilling/unable to provide full attention during safety briefing, or in any way present excessive risk.*
- If any intoxicated or anti-social behaviour is noticed or reported during the cruise, the customer group will be contacted by dock crew via phone and/or support vessel and rental terminated if deemed appropriate.*
28. In addition, the SMS contains the substance of the Applicant's BYO policy (see paragraph 5 above).
29. In his email dated 25 April 2023, Mr Sutherland also provided a copy of the Applicant's emergency procedures, noting that these were approved by AMSA (**Emergency Procedures**). These are a list of processes to identify and manage any foreseeable risks during cruises, including 'Personal Injury or Medical Emergency'.
30. On 29 June 2023, the Commissioners visited the WTC Wharf for the purposes of conducting a site visit. During the visit, the Commissioners noted that any storage of liquor would be in the basement of a carpark at WTC and within walking distance of the river. Mr

⁸ The Commission understands that the reference to 'the Act' in the SMS is a reference to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

Sutherland said that his business is being expanded to include the recently purchased larger vessel from Melbourne Water Taxis.⁹

31. On 3 July 2023, Mr Sutherland provided a submission dated 1 July 2023 to the following effect:

- a) In conjunction with acquiring the assets of Melbourne Water Taxis, the Applicant intends to operate all of its skippered cruise activities from Southbank Promenade, while all skipper-yourself cruises will operate from WTC Wharf.¹⁰
- b) The Applicant proposes to limit supply of liquor to skippered cruises.
- c) There will be two vessels available for skippered cruises, one with a capacity of up to nine customers, and the other with a capacity of up to 20 customers.
- d) Customers on skippered cruises will be managed by experienced skippers and dock crew (including a ticket box attendant) at the Southbank Promenade.
- e) The Applicant intends to have food, alcoholic and non-alcoholic drinks available for purchase (either pre-ordered via the online booking process or sold by the ticket box attendant at the Southbank Promenade prior to boarding a cruise).
- f) The Applicant intends to offer five lines of liquor products at any given time, which would include wine, beer, and pre-mixed spirits. Supply would be limited to daylight hours only (due to the nature of the Applicant's business).
- g) The Applicant will ensure that all applicable staff hold current RSA certificates, and that this would include all boat skippers (who will oversee the consumption of alcohol) and dock crew (who will be responsible for the supply of alcohol).
- h) BYO will not be permitted on cruises where liquor is supplied.
- i) While liquor would be stored at the WTC basement storage facility, it would be delivered to Southbank Promenade using the Applicant's support vessel as required.

32. Mr Sutherland also provided a copy of the Applicant's current Certificate of Operation issued by AMSA.¹¹

⁹ Website for Melbourne Water Taxis: <https://www.melbournewater taxis.com.au/>.

¹⁰ Based on a web search for Melbourne Water Taxis, the Commission understands that the reference to Southbank Promenade is a reference to Southgate Berth 4, Southgate Avenue, Melbourne.

¹¹ The Certificate of Operation is issued under *Marine Order 504 (Certificates of Operation – national law) 2018*, pursuant to *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. The certification is for two classes of vessels (2E – Charter and 4E – Hire and Drive), and Mr Sutherland provided a list of 16 of the Applicant's vessels that fall under either of those two classes.

Legislation and the Commission's task

The Commission's internal review power

33. Division 2 of Part 9 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.
34. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
- affirms or varies the reviewable decision; or
 - sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.¹²
35. 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).*
36. The Original Application was uncontested as no objections were received under Division 5 of Part 2 within the period set out in that Division (or that period as extended under section 174).
37. 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 either has to:
- grant the Original Application and, if so, whether to do so subject to conditions;¹³ or
 - refuse to grant the Original Application.¹⁴

Determination of an uncontested application

38. Where an application is an uncontested application, pursuant to section 44(1):
- Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174).*

¹² Section 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

¹³ Sections 44, 49 and 157.

¹⁴ Sections 44 and 157.

39. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that granting of the application would be conducive to or encourage harm.¹⁵

Conduct of an Inquiry

40. 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.

41. Section 172W(3) provides that the Commission is not bound by the rules of evidence, but may inform itself in any way it thinks fit, and is bound the rules of natural justice.

Exercising the internal review power

42. Sections 172D(3) and 172U(3)(b) require 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. The objects of the LCR Act are set out at section 4(1):

(a) to contribute to minimising harm 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.

43. Section 4(2) 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.*¹⁶

¹⁵ Section 44(2)(b)(ii).

¹⁶ 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).

44. Section 3(1) defines harm as follows:

harm arising from the misuse and abuse of alcohol, including—

- (a) harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) family violence; and*
- (c) anti-social behaviour, including behaviour that causes personal injury or property damage.*

45. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application was 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.

46. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.

Other sections of the LCR Act relevant to this matter

Limited licences

47. A limited licence may be a temporary limited licence or an RLL. Pursuant to section 14(1B), an RLL authorises the licensee to supply 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.

48. Section 26 provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).

Material before the Commission

49. The Commission on review had before it and considered all the materials before the Delegate. The Commission on review also received and considered the following:

- a) the Original Decision and reasons for the Original Decision dated 13 February 2023;
- b) the Review Application dated 8 March 2023;
- c) information provided after the Preliminary Meeting;
- d) information received during the Commissioners' site visit on 23 June 2023;

- e) email correspondence from Mr Sutherland dated 3 July 2023, including supporting documents (see paragraph 31 above);
- f) evidence and submissions given at the Hearing; and
- g) Mr Sutherland's submissions provided after the Hearing.

Public hearing

50. On 3 July 2023, the Commission held a hearing into the Review Application (**Hearing**).

51. Mr Sutherland appeared and represented himself as the director of the Applicant company.

After the Hearing, Mr Sutherland provided further submissions for the Commission to consider.

Mr Sutherland's evidence at the Hearing

52. At the Hearing, Mr Sutherland gave evidence to the effect that after purchasing Melbourne Water Taxis, the Applicant intends to operate according to the revised nature as reflected in the submission dated 1 July 2023. He also gave evidence to the effect that:

- a) the Applicant intends to supply approximately 1.6 standard drinks per person;
- b) while food will be available with the supply of liquor, the Applicant also intends to supply liquor without food;
- c) the Southbank Promenade location has an adjoining ticket box, and the Applicant intends to have a staff member supply liquor to customers prior to boarding a skippered cruise;
- d) the Applicant intends to operate between 10am and 10pm;¹⁷ and
- e) on New Year's Eve, the Applicant intends to operate until the following morning.¹⁸

53. Mr Sutherland said that the Applicant will have exclusive access to its wharf location at Southbank Promenade.¹⁹ In addition, the Applicant will also have exclusive access to a ticket box.

54. In terms of a rationale for decoupling the supply of liquor from hampers combined with food, Mr Sutherland gave evidence to the effect that it would offer greater flexibility to customers purchasing add-ons when booking cruises. According to his evidence, Mr

¹⁷ Mr Sutherland gave evidence to the effect that the hours of operation for skippered cruises will depend on the number of cruises it will run under the new regime, and he anticipates this would be approximately up to three cruises per day for both of its vessels during daylight hours.

¹⁸ Mr Sutherland gave evidence to the effect that the Applicant would like to operate during late night hours on New Year's Eve as a special occasion for customers to experience a fireworks display during a cruise.

¹⁹ The Commission understands that this is Berth 4 of Southgate Wharf.

Sutherland considered that, in circumstances where liquor would only be supplied on skippered cruises, the risks associated with customers drinking liquor without food would be managed by RSA-trained skippers monitoring customer behaviour and intoxication.

55. Mr Sutherland also gave evidence to the effect that, if the Commission was minded to grant the Review Application with a condition that food is required with the supply of liquor, then the Applicant would ensure that there was food available in conjunction with alcohol.²⁰ Furthermore, Mr Sutherland was agreeable to the Commission imposing a condition that drinking water is to be made available on each cruise supplying liquor.

56. In terms of the Applicant's BYO policy, Mr Sutherland gave evidence to the effect that his staff are experienced in dealing with various customers attending cruises, and that this included preventing customers from bringing excessive amounts of liquor on board. According to his evidence, assessing customer behaviour is part of the Applicant's pre-cruise briefings which all staff conduct in accordance with the SMS, and customers are not permitted onto a cruise if they are deemed incapable of following instructions or otherwise appear to present as an excessive risk (including any evidence of apparent intoxication).

57. In response to the Commission's queries at the Hearing regarding how the Applicant manages customer behaviour from a distance during cruises, Mr Sutherland gave evidence to the effect that:

- a) The Applicant has a support vessel available at all times to provide assistance to both skippered and skipper-yourself cruises when required.
- b) During periods that the Applicant considers as being higher risk (such as on weekends, when there is more activity along the Yarra River), its default position is to have the support boat patrolling around the boats as opposed to remaining stationary at the dock.
- c) If a customer group runs into any issues during a cruise, the Applicant relies on:
 - i. customers contacting a staff member via a phone line dedicated for water support; and/or
 - ii. other commercial vessel operators or members of the public contacting the Applicant.
- d) If the Applicant considers there is a risk posed by a cruise, then it terminates the booking and leads the customer group back to the dock.

²⁰ Mr Sutherland gave evidence that the Applicant can ensure this by having a food hamper available on standby if a customer group books a cruise with liquor but without food. He said that each food hamper currently offered by the Applicant contains food that is able to feed approximately five people, and includes items such as bread, biscuits, dips, cheese and olives.

- e) The Applicant reports incidents, such as hazardous occurrences (e.g., boat collisions) to AMSA.
58. Mr Sutherland gave evidence that there have not been any hazardous occurrences related to customers drinking BYO on the Applicant's cruises.
59. Under the Applicant's proposed regime to supply liquor only on skippered cruises, Mr Sutherland gave evidence that it would be the skipper's responsibility to monitor and manage customers' intoxication. He said that this could include skippers suggesting that a customer drinks water in between alcoholic beverages or ceases drinking liquor altogether. Mr Sutherland also considered that a skipper could realistically manage customer drinking intake in circumstances where there will not be an opportunity for customers to consume an excessive amount of liquor. He pointed to the twin factors of (1) the duration of an average cruise booking (approximately two hours); and (2) the Applicant's intention to limit the total volume of liquor to be supplied on each cruise.
60. Furthermore, Mr Sutherland said that he would be agreeable to the Commission imposing a condition on an RLL that the Applicant must comply with the SMS, as amended from time to time. Mr Sutherland also gave evidence to the effect that he meets with AMSA on a regular basis about how the SMS should be modified to meet compliance standards.
61. After the Hearing, Mr Sutherland provided a red-line plan for the area acquired from Melbourne Water Taxis at Southbank Promenade. That plan purports to show that liquor will be provided at Berth 4, such that it is intended that the Applicant's employees will provide liquor to the passengers on the vessel berthed at Berth 4 prior to a cruise (please refer to paragraphs 6 – 10 above for a summary of the intended liquor supply across the Premises).

The revised proposed supply of liquor

62. Mr Sutherland also provided a further submission dated 7 July 2023 about the Applicant's revised intended supply of liquor. This mostly restated Mr Sutherland's submission of 1 July 2023 and his evidence at the Hearing, but additionally noted the following (in summary):
- a) The supply of liquor will be limited to either 1.6 standard drinks per person (if the cruise is on a vessel with a maximum capacity of 20 customers), or 1.8 standard drinks per person (if the cruise is on a vessel with a maximum capacity of nine customers). Mr Sutherland said in correspondence after the Hearing that the passenger numbers for each skippered cruise is 'not set in stone' and maximum capacities were currently reduced to 16 and eight passengers, respectively, to

allow for a more comfortable cruise. Further, Mr Sutherland said that these volumes were to enable a practical translation of bottles of wine or bottles of beer while sitting within an acceptable range of alcohol consumption.

- b) It will be the responsibility of the Applicant's managing staff (skipper and ticket box attendant) to ensure that the alcohol volume supplied is in line with the number of attending passengers.
- c) It will also be the responsibility of the Applicant's managing staff (skipper and ticket box attendant) to ensure that the alcohol being supplied for each group is being consumed with an adequate level of food. In the event that the group does not have a sufficient quantity of food booked for a cruise, the Applicant will include a food hamper and charge the customer group accordingly.
- d) The SMS will be updated to include at least one 500ml bottle of water per passenger on each cruise where liquor is supplied.
- e) The hours of operation will be from 10am to 10pm, except on New Year's Eve when it will operate until 1am.
- f) The Applicant's new location at Southbank Promenade (including wharf and adjoining ticket box) is licensed from Parks Victoria.

63. On 12 July 2023, Mr Sutherland emailed to confirm that the SMS will be updated to incorporate the new assets that the Applicant acquired from Melbourne Water Taxis, i.e., the vessel with a maximum capacity of 20 passengers and the location at Southbank Promenade.

64. The Commission has not been provided with that updated SMS as at the date of the decision.

Reasons for decision

Issues for determination on review

65. The Commission's task is to review the decision and arrive at a fresh decision on the application. As is not unusual in internal reviews before the Commission, the scope of the activities sought to be licensed at the initial application stage, and the premises from which they are intended to be provided, may well change over the course of the internal review process.

66. In this matter, what was the application before the Delegate has been refined and expanded in different ways before the Commission, including the fact that Mr.Sutherland has now agreed to limit the supply of liquor to skippered cruises (see paragraphs 18 – 20

above in this context). However, the Commission is reviewing the whole of the decision in this case with its focus being on the revised proposed supply of liquor.

67. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the Review Application, the Commission must determine the following central issues:

- a) firstly, whether the Commission is satisfied that the Scale and Scope Requirement is met; and
- b) secondly, whether granting the Review Application would be conducive to or encourage harm for the purposes of section 44(2)(b)(ii) or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.²¹

68. Each of these issues are discussed in turn.

Scale and Scope Requirement

69. There are no specific factors prescribed 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.²²

70. In this case, the supply of liquor is intended to be limited to skippered cruises. The number of skippered cruises on offer will necessarily be limited by the number of skippers and vessels accommodating skippered cruises each day during operating hours.

71. It is intended that liquor will be provided between 10am and 10pm each day, and between 10am and (it is anticipated) slightly later on New Year’s Eve (given consumption of liquor is permitted until 1am the following morning); however, supply of liquor will be with respect to individual cruises, and so they are limited by the hours for each cruise package.

72. Cruises are not open to the public at large; rather, only to those persons who have booked or purchased a cruise and their parties. The primary purpose of attending at the Premises is cruising the Yarra River.

73. The scale of liquor is limited to five lines of liquor products at any given time, and the volume of liquor will be limited based on the number of persons on each cruise. Importantly, it is not intended that BYO occurs in circumstances where liquor is to be supplied by the Applicant.

²¹ LCR Act, sections 4 and 172D(3). The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

²² See decision of *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-Internal Review)* [2016] VCGLR 19, [61].

74. Accordingly, the Commission is satisfied that the Scale and Scope Requirement will be met.

Whether granting the Review Application would be conducive to or encourage harm

75. Having regard to its functions under the LCR Act, the Commission considers that the issue to be determined by the Commission in this matter is whether granting the Review Application would be conducive to or encourage harm.

76. The Commission considers that the supply of liquor during cruises poses certain risks, including:

- a) the loss of judgment and coordination from alcohol consumption that can lead to the inability to react appropriately to a dangerous boating situation; and
- b) the limited ability to monitor and control intoxicated customers on the water from a distance.

77. In addition, the Commission considers that these risks may be exacerbated on cruises pre-booked for special occasions, where customer groups may engage in excessive drinking of alcohol (e.g., bucks/hens parties, or, of particular relevance to this application, New Year's Eve celebrations).

78. The Commission accepts that the Applicant has successfully operated for a period of five years without any hazardous incidents due to customer intoxication in circumstances where it allows BYO on its cruises. The Commission further notes that Victoria Police did not raise any concerns with regard to the Original Application.

79. The Commission also has regard to the nature of the Applicant's safety protocols as contained in the Applicant's SMS and Emergency Procedures. The SMS and Emergency Procedures provide a guide for the Applicant to monitor and respond to hazardous incidents and manage customer behaviour from a distance, including customer intoxication.

80. The Commission accepts that the Applicant already minimises the risk of harm from alcohol consumption for customer groups who BYO by providing instructions during pre-cruise briefings, monitoring boats on the water, and using a support vessel to respond to cruises at risk of hazardous occurrences. The Commission accepts that the Applicant treats seriously the risks involved with respect to liquor consumption on vessels.

81. Accordingly, the Commission considers that the Applicant has frameworks, practices and policies in place that are aimed at mitigating against the risk of intoxication while on a cruise and the harm that may result from it.

82. As efficacious as those frameworks, practices and policies may be, the particular nature of skippered cruises, and risks involved in the supply of liquor while on a cruise, means that such frameworks, policies and practices may not always have the desired effect in a given context. A skipper, for example, will not always have their focus on their passengers' consumption of liquor while skippering a cruise; further, individual passengers may be affected by alcohol in different ways and in different conditions (such as where the cruise is during a hot day, the river is not still, or where the vessel is filled to capacity). That being so, it is appropriate that harm from the risks of alcohol consumption is also addressed through practical measures of limiting the supply of alcohol per person that may physically be carried on the vessel, and the provision of food and water for consumption.

Limiting the liquor to be supplied

83. As already described, the Applicant has proposed to limit the supply of alcohol by reference to the particular vessel and its patron capacity.

84. Supply is proposed to occur on two vessels:

- 1) The first vessel has a maximum capacity of 20 passengers, where the maximum supply of alcoholic beverages would be 1.6 standard drinks per person. That is, the maximum volume of liquor to be supplied would be four bottles of wine, or 24 bottles of beer, cider or pre-mixed drinks. The Applicant estimated the four bottles of wine to be around eight standard drinks per bottle and the 24 bottles of other drinks to be around 1.3 standard drinks per bottle;²³
- 2) The second vessel has a maximum capacity of nine passengers, where the maximum supply of alcoholic beverages would be 1.8 standard drinks per person. For that vessel, the maximum volume of liquor would essentially be half that of the larger, 20-passenger vessel, namely, two bottles of wine or 12 bottles of beer, cider or pre-mixed drinks.

85. The Commission considers these proposed limits are appropriate in all the circumstances in terms of managing the risks of alcohol-related harm; particularly given that cruises may vary in duration, not all cruises will be filled to capacity, not every person on a cruise will necessarily consume liquor, and there are existing practices in place to minimise risks.

²³ Mr Sutherland gave evidence that the Applicant's maximum intended supply would be a total of 32 standard drinks on a 20-passenger cruise. He said that, in practice, this could involve offering customers up to four bottles of wine, or up to 24 bottles of beer, cider, or pre-mixed drinks. While he did not specify the volume of each bottle, the Commission understands that Mr Sutherland was referring to the container sizes according to the Delegate's email of 16 January 2023, where each bottle of wine was 750ml, and each bottle of beer, cider or pre-mixed drinks was 375ml.

That is so even if the capacity of each vessel is reduced to 16 or nine passengers, respectively, given volumes are based on the number of passengers.

86. However, BYO on skippered vessels (where liquor is to be supplied by the Applicant) increases the volume of liquor and so exacerbates the risks of harm of concern to the Commission. This explains the discussion with the Applicant of this aspect of its operation and the condition imposed by the Commission with respect to the (non)allowance of BYO when liquor is supplied on skippered vessels pursuant to this licence (see paragraphs 80 above and 87 below for further comments by the Commission regarding this aspect of the Applicant's operation).
87. As a comment, in terms of the Applicant's BYO policy on skipper-yourself cruises, this is a matter for the Applicant and is not the subject of a requirement to hold a permit under the LCR Act. It is not the subject of the Review Application. Mr Sutherland has indicated to the Commission that the Applicant is open to considering reducing his BYO limits to total boat limits in line with a licensed volume. In these circumstances, the Commission encourages the adoption of BYO limits based upon a rigorous analysis of an applicant's business model as against the objectives of the LCR Act.

Providing food and water

88. At the Hearing, Mr Sutherland gave evidence that it orders hampers from a third party and does not prepare food itself. Mr Sutherland said that, in his experience, the Applicant's passengers were almost always bringing their own snacks or food onto the skippered cruise boats. Mr Sutherland queried whether the Applicant should be responsible for passengers' food.
89. Mr Sutherland's evidence was:
- "One of the things that we need to do is come up with better catering packages. So that certainly will happen and we'll need to scale our catering offering to accommodate larger groups of people that we're now catering to in the larger boat. So that's certainly happening".*
90. Mr Sutherland was "a little hesitant for a range of reasons to connect [catering] to the licence because [he is not] even sure where that catering - the food catering - will evolve to."
91. Consuming food while drinking alcohol slows the absorption of alcohol into a person's bloodstream. Drinking water while consuming alcohol also aids in hydration. The utility of

food and water in minimising harm is contemplated in the LCR Act.²⁴ They are important elements in minimising the risk of harm arising from alcohol.

92. Moreover, while the Commission considers each case on its own merits (as it has in this case), it is of course desirable that the decisions are consistent to the extent that like cases are treated alike. The Commission has previously granted an RLL to a licensee providing skippered cruise services along the Yarra River where liquor is to be supplied only as part of a food and beverage package (see Licence No. 36166074).
93. Given the nature of the cruises to be operated by the Applicant and the risks of harm involved (described above), the Commission considers it is appropriate that passengers on skippered cruises where liquor is to be supplied by the Applicant also have food and water as part of their cruise.
94. In this matter, the Commission accepts Mr Sutherland's evidence that catering was a matter currently under review and evolution; accordingly, it would not appear to be a significant additional burden on the Applicant to provide food and water, at least on the scale of the hampers or 'grazing boxes' said to be on offer and viewed by the Commissioners during their site visit on 23 June 2023 as sufficient.
95. The Commission further accepts that the Applicant proposed, by way of its 7 July 2023 submission, to ensure the provision of bottled water on each skippered cruise.
96. The Applicant has also proposed that alcohol being supplied for each cruise is to be consumed with an adequate level of food, and in the event that the group on the cruise does not have a sufficient quantity of food, the Applicant will require the group to purchase a grazing hamper for the cruise, at the group's cost. Having regard to the nature of the activity, the risks involved, and the purpose of requiring food, what is sufficient must be at least on the scale and contents of the grazing hampers contemplated and commensurate to the alcohol that is to be supplied.
97. Finally, where the Applicant's staff may each be supplying liquor on behalf of the Applicant to passengers, it is appropriate that each staff member holds a current RSA certificate and that the Applicant is in a position to demonstrate that is so.
98. Having regard to all the matters listed above, subject to the imposition of the conditions as set out in Appendix A, the Commission does not consider the potential for harm as a ground to refuse to grant the Review Application.

²⁴ For example, sections 99 and 99A of the LCR Act provide (respectively), that where a licence under the LCR Act authorises the licensee to supply liquor for consumption on the licensed premises or authorised premises, refreshments for purchase, and free drinking water must be available and provided on request.

99. The Commission is satisfied that adequate controls will exist over the proposed supply of liquor and that any risk of harm would be satisfactorily minimised with the imposition of the conditions as set out in Appendix A.

Decision on review

100. Having regard to all the matters set out above, the Commission determined to set aside the decision of the Delegate and, in substitution, grant the application for an RLL subject to the conditions set out in Appendix A.

The preceding 100 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chairperson), Ms Susan Timbs (Commissioner), and Mr Steven Brnovic (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 off the licensed premises during the trading hours specified below.

Special conditions

Prior to commencing the supply of liquor pursuant to this licence, the licensee must submit a Safety Management System to the satisfaction of Liquor Control Victoria amending the Safety Management System dated 25 May 2022 in such a way as to set out its risk management strategy with respect to the consumption of liquor on its skippered vessels, which must include:

- (1) A requirement that the licensee ensures passengers who have booked a skippered cruise have with them a sufficient amount of food, where food is provided (either by passengers or by the licensee) that is substantially similar to the amount and type of food that is available on offer on the licensee's website as at the date of this licence;
- (2) A requirement for at least one 500ml bottle of water per passenger on each cruise must be provided where liquor is supplied; and
- (3) A description of the roles and responsibilities of each employee with respect to managing risk prior to and during a skippered cruise.

The licensee must:

- (1) provide a copy of that amended Safety Management System to Liquor Control Victoria;
- (2) make the Safety Management System (as amended from time to time) available for inspection at the licensee's premises on request by a liquor licensing inspector or member of Victoria Police; and
- (3) where the licensee amends its Safety Management System in such a way as to vary its provisions relating to the supply or consumption of liquor, food and water pursuant to this licence, the licensee must submit to Liquor Control Victoria a copy of that amended Safety Management System within five business days of the amendment, where such amendments must be to Liquor Control Victoria's satisfaction.

To the extent that the matter is not already dealt with in this licence, the licensee must comply with its Safety Management System dated 25 May 2022 and as amended from time to time.

Supply of liquor

This licence is restricted to the supply of liquor to passengers immediately before a commercial cruise.

Liquor will only be supplied on commercial cruises that are skippered cruises, being a cruise that is skippered by an employee of the licensee.

The skipper of the cruise must have completed Responsible Service of Alcohol training.

The supply of liquor is limited to:

- (1) where there is a skippered cruise booked on a vessel with a maximum capacity of 20 passengers, a volume that is equivalent to 1.6 standard drinks per person on the cruise for the duration of that cruise, consisting of either wine or beer, cider or pre-mixed spirit to a maximum volume that is equivalent to 4 x 750ml bottles of wine, or 24 x 375ml bottles of beer, cider or pre-mixed spirit; or
- (2) where there is a skippered cruise booked on a vessel with a maximum capacity of 9 passengers, a volume that is equivalent to 1.8 standard drinks per person on the cruise for the duration of that cruise, consisting of either wine or beer, cider or pre-mixed spirit to a maximum volume that is equivalent to 2 x 750ml bottles of wine, or 12 x 375ml bottles of beer, cider or pre-mixed spirit; and
- (3) in either case, where food is provided (either by passengers or by the licensee) it must be substantially similar to the amount and type of food that is available on offer on the licensee's website as at the date of this licence.

The licensee must not permit BYO on skippered vessels where liquor is supplied pursuant to this licence.

Responsible Service of Alcohol

All staff involved in the supply or service of liquor must have completed an approved Responsible Service of Alcohol course within the preceding three years.

All copies of the Responsible Service of Alcohol certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a liquor licensing inspector.

Prior to the supply of liquor to passengers on a skippered cruise, the licensee must require each passenger to verify that they are of or over the age of 18 years.

Restrictions on sales

The licensee must not use WTC Wharf to provide for:

- personal shopping for liquor that is not for a cruise
- browsing liquor stocks or stores
- the display of liquor for sale
- the collection of liquor by customers

The licensee may sell liquor to customers of a skippered cruise at Berth 4 of Southgate Wharf if the liquor was appropriated at WTC Wharf. The licensee must not use Berth 4 of Southgate Wharf to provide for:

- personal shopping for liquor that is not for a cruise
- browsing liquor stocks or stores
- the display of liquor for sale

Orders for liquor

Orders for the supply of liquor may be taken at any time on any day. Internet orders may only be taken through the following website(s):

www.onaboat.com.au

www.melbournewatertaxis.com.au

Information required to be displayed

The following notice must be prominently displayed on the licensee's website/s and the ticket box used by the licensee at Berth 4 of Southgate Wharf for the purposes of the Licensee's business.

"WARNING

Under the *Liquor Control Reform Act 1998* it is an offence

- To supply alcohol to a person under the age of 18 years (Penalty exceeds \$23,000)
- For a person under the age of 18 years to purchase or receive liquor (Penalty exceeds \$900)"

Trading hours

31 December	Between 10am and 1am the following day
ANZAC Day	Between 12pm and 10pm
On any other day	Between 10am and 10pm