

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Elos Trading Pty Ltd for an internal review of a decision by a delegate to refuse a joint application by Elos Trading Pty Ltd and Mortgagee Sales Pty Ltd and Silver 82 Pty Ltd to transfer General Licence no.31954202 for the premises known as Eaglemont Cellars from the then licensee, Upmind Pty Ltd, to Elos Trading Pty Ltd

Commission:

Mr John Larkins, Acting Chair
Mr James O'Halloran, Deputy Chair
Mr Steven Brnovic, Commissioner

Appearances:

Mr Dale Curtis and Mr Samuel Stapleton on behalf of Elos Trading Pty Ltd
Ms Caitlin McAlister and Ms Susan Mi, Counsel Assisting the Commission

Date of Hearing:

21 August 2024

Date of Decision:

7 November 2024

Date of Reasons:

7 November 2024

Decision:

The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for transfer of General Licence no.31954202 subject to the conditions as set out in Appendix A.

Signed:



John Larkins
Acting Chair

Background

1. The background to this matter before the Victorian Liquor Commission (**Commission**) has a number of elements relating to various licenced and unlicenced entities that have been presented to the Commission as part of its determination on this internal review application. It is therefore appropriate to set out in chronological order the matters that the Commission considers to be key entities and events.
2. Elos Trading Pty Ltd (**Elos Trading**) is a corporation established on 23 January 2024. The sole director is Mr Samuel Stapleton and his wife, Mrs Vicki Stapleton is the sole shareholder.
3. Between 28 February 2024 and 19 April 2024, Elos Trading, jointly with Mortgagee Sales Pty Ltd (**Mortgagee Sales**) and Silver 82 Pty Ltd (**Silver 82**), being the owners of premises known as Eaglemont Cellars located at 82-84 Silverdale Road, Eaglemont (**the Premises**), lodged various materials with the Commission as part of an application under section 32(1)(b) the *Liquor Control Reform Act 1998* (**the LCR Act**)¹ for the transfer of General Licence no. 31954202 (**Licence**) from the then holder of the Licence, Upmind Pty Ltd (**Upmind**) to Elos Trading (**Original Application**).
4. A number of essential documents were outstanding when the Original Application was first lodged with the Commission together with inaccurate information as will be discussed further below.² Nevertheless, the Original Application was accepted.
5. The Premises is a double storey building with a combined floor area of 308m², including a rear courtyard.³ It is situated on a corner block in the Eaglemont Village shopping strip, close to the Eaglemont train station.
6. In accordance with section 33(1), a delegate of the Commission (**Delegate**) gave a copy of the Original Application to the Chief Commissioner of Police (**Chief Commissioner**) on 19 March 2024.
7. On 13 April 2024, the Chief Commissioner and the licensing inspector⁴ (together,

¹ All references to legislation are references to the LCR Act.

² The transferor's details in the Original Application incorrectly specified Mr Georgios Kyriotis as the transferor.

³ 1st Floor 92.6m², Ground Level and Courtyard 150.45m², and Outside Curb Side 653m²: Approved red-line plan of the Premises.

⁴ Section 3 defines "licensing inspector" as a person appointed as a licensing inspector under section 172.

- Victoria Police**) advised that Victoria Police did not object to the Original Application.
8. On 26 March 2024, the Compliance Division of Liquor Control Victoria (**LCV**) informed the Delegate that it was undergoing investigations into alleged contraventions of the LCR Act at the Premises arising from an anonymous complaint received by LCV on 14 March 2024 and an unannounced visit at the Premises by authorised liquor inspectors on 20 April 2024.
 9. On 28 May 2024, the Delegate refused to grant the Original Application under section 44(2)(a) on the basis that the proposed transferee, Elos Trading is not a suitable person to hold the Licence (**Original Decision**) given:
 - (a) Mr Stapleton, sole director of Elos Trading, via email dated 17 May 2024, admitted to the Delegate that the Premises had been used on 17 March 2024 and 20 April 2024 for the supply of liquor to patrons when the Premises were not licensed premises.⁵ Such information suggests an indifference towards a regulatory scheme;⁶
 - (b) like (a) above, further to the dates of 17 March 2024 and 20 April 2024, authorised liquor inspectors who attended the Premises on 20 April 2024 were informed that liquor had also been supplied to patrons at the Premises on 19 April 2024, which the Delegate considered to mean Mr Stapleton's admission of up to two days of supply could not be relied upon;⁷
 - (c) the apparent lack of understanding by Elos Trading as to requirements under the LCR Act showed a lack of due diligence and basic research;⁸
 - (d) the explanation given of a purported lack of understanding did not seem convincing (rather there seemed to be a knowing breach of the law);⁹ and
 - (e) while Mr Stapleton answered 'no' to questions as part of the Original Application in relation to any financial interests/relevant powers and significant associated or relative associates to declare, information shows that Mrs Stapleton is the shareholder of Elos Trading and their son, Dimitri (Jimmy) Stapleton, is an investor. Additionally, the director of Mortgagee Sales, Mr Georgios Kypriotis, has a financial interest in Elos Trading by way of reducing the Premises' rent in return for Elos Trading's investment into improving the state of the Premises. This

⁵ Email response from Mr Samuel Stapleton to the Delegate, dated 17 May 2024 at 11:36am.

⁶ Reasons for Original Decision, paragraph 32.

⁷ Reasons for Original Decision, paragraph 33 and 46.

⁸ Reasons for Original Decision, paragraph 34, 37 and 46.

⁹ Reasons for Original Decision, paragraph 34 and 46.

indicates a lack of transparency and honesty by Mr Stapleton.¹⁰

10. On 7 June 2024, Elos Trading applied, via solicitors, Tresola Legal, under section 153(1), for review of the Original Decision. Elos Trading broadly asserted that it was a suitable person to hold the Licence.¹¹
11. Tresola Legal also represented Mortgagee Sales in relation to a separate application to register the company on the Licence. Materials were lodged with the Commission regarding that application between 13 June 2024 and 6 October 2024. In October 2024, a delegate of the Commission ultimately deemed that the Commission did not have jurisdiction to grant such an application.
12. After Elos Trading lodged its Review Application, Sun Chaser Trading Pty Ltd (a related entity of Elos Trading and Mr Stapleton) (**Sun Chaser**), was issued with two infringement notices for trading at the Premises on 17 March 2024 and 20 April 2024 when the Premises was not licensed premises or authorised premises contrary to the LCR Act.¹²
13. Sun Chaser is the holder of Restaurant and Cafe Licence no. 32348145 for premises located at 1041 Heidelberg Road, Ivanhoe, trading as The Post Inn. Mr Stapleton is the owner and operator of The Post Inn. After Sun Chaser commenced trading at The Post Inn in August 2022, it was given infringement notices and warning letters as described below:

Date issued	Offence Date	Type	Description
17/09/2024	20/04/2024	Infringement Notice	Trading at a venue when the venue was not licensed premises (or authorised premises).
16/09/2024	17/03/2024	Infringement Notice	Trading at a venue when the venue was not licensed premises (or authorised premises).
01/05/2024	22/03/2024	Infringement Notice	Supply liquor other than in accordance with a licence or BYO permit. – Not in accordance with predominant activity condition - no meals were being served or consumed.

¹⁰ Reasons for Original Decision, paragraph 38 to 46.

¹¹ Before Tresola Legal was engaged for the Review Application, Elos Trading was self-represented.

¹² Infringement notices issued on 16 and 17 September 2024.

09/05/2023	06/05/2023	Infringement Notice	Supply liquor other than in accordance with a licence or BYO permit as the supply of liquor did occur outside the authorised area.
05/04/2023	25/03/2023	Infringement Notice	Permit consumption of liquor other than in accordance with a licence or BYO permit as the consumption of liquor did occur outside the authorised area.
30/03/2023	10/02/2023	Warning Letter	Permit consumption of liquor other than in accordance with a licence or BYO permit as the consumption of liquor did occur outside the authorised area.
30/03/2023	10/02/2023	Warning Letter	Not in accordance with predominant activity condition - no meals were being served or consumed.

14. Following a directions hearing on 26 July 2024, Tresola Legal lodged on behalf of Elos Trading a witness statement from Mr Stapleton, dated 19 August 2024, with information (amongst other matters) relating to the manner of the operations at the Premises and the nature and extent of all persons involved in the operation of the Premises.
15. Tresola Legal also lodged written submissions on behalf of Elos Trading, dated 19 August 2024, in relation to the alleged use of the Premises on 17 March 2024 and 20 April 2024 for the supply of liquor to patrons when the Premises were not licensed premises.

Post-Hearing

16. After a public hearing of the Review Application on 21 August 2024 (**Hearing**), in which Mr Stapleton and his liquor consultant, Mr George O’Keefe, gave evidence, Elos Trading made amendments to the Original Application to be considered as part of the Review Application. Specifically, Elos Trading lodged with the Commission, via Tresola Legal, on 30 August 2024, a revised Declaration of Associates form, including details of not only Mr Stapleton as an “associate” of Elos Trading pursuant to section 3AC but also his wife and their three children.
17. Tresola Legal also lodged a revised Declaration of Associates form regarding Sun

- Chaser, including details of not only Mr Stapleton as an “associate” of Sun Chaser pursuant to section 3AC but also his wife and their three children.
18. In support of the Review Application, Tresola Legal submitted an assessment by Mr O’Keefe as to his independent findings of Mr Stapleton’s knowledge of the LCR Act, dated 29 August 2024
 19. Further, Tresola Legal submitted a Noise and Amenity Action Plan for the Premises on 30 August 2024, which indicates in its preamble that it is designed to be read in conjunction with the Alcohol Management Plan for the Premises, lodged by Tresola Legal on 20 August 2024 as part of a bundle of documents in support of the Review Application.
 20. After the Hearing, Deputy Chair O’Halloran and Commissioner Brnovic visited the Premises. Acting Chair Larkins did so on 6 November 2024.
 21. On 31 October 2024, the Commission sent an email to Tresola Legal requesting that it submit on behalf of Sun Chaser any comments as to:
 - (a) how the company has dealt with such conduct as described in the table in paragraph 13 above; and
 - (b) what steps will be put in place to ensure that there will be no repeat of such described conduct?
 22. On 1 November 2024, Mr Stapleton confirmed that both he and his companies are now self-represented, and he lodged submissions in response to the questions as set out in paragraph 21 above.
 23. The Premises are currently closed to the public.

Legislation and the Commission’s task

The Commission’s internal review power

24. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Original Decision is reviewable, and Elos Trading is eligible to apply for a review of the Original Decision. The Review Application was made pursuant to section 153.
25. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
 - (a) affirms or varies the Original Decision; or

- (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.¹³
26. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
- (a) grant the Original Application and, if so, whether to do so subject to conditions;¹⁴
or
- (b) refuse to grant the Original Application.¹⁵

Determination of an uncontested application

27. 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).
28. Pursuant to section 44(2), the Commission may refuse to grant an application on certain grounds, including that the applicant is not a suitable person to hold or carry on business under the licence (section 44(2)(a)).
29. Section 44(3) states:
Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence... a person is not a suitable person to hold, or carry on business under, a licence ... if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—
- (a) *been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or*
- (b) *engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*

¹³ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

¹⁴ Sections 44, 49 and 157.

¹⁵ Sections 44 and 157.

30. The Commission also considers it appropriate to have regard to persons who are associates of the Applicant.¹⁶ Section 3AC provides a definition of associates being:

*(1) For the purposes of this Act, an associate of a person (the **first person**) is—*

(a) a person who—

(i) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and

(ii) by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or

(b) a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or

(c) if the first person is a natural person, a person who is a relative of the first person, other than a relative—

(i) who is not, and has never been, involved in any business of the first person involving the sale of liquor; or

(ii) who will not be involved in the business the first person proposes to conduct as a licensee or permittee.

(2) In this section—

relative, in relation to a person, means—

(a) the spouse or domestic partner of the person; or

(b) a parent, son, daughter, brother or sister of the person; or

(c) a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;

relevant financial interest, in relation to a business involving the sale of liquor, means—

(a) any share in the capital of the business; or

¹⁶ The Commission has taken into account section 103A and section 104.

- (b) any entitlement to receive any income derived from the business; or
- (c) any entitlement to receive any payment as a result of money advanced;

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial, or executive decision; or
- (b) to elect or appoint any person as a director.

31. Further, section 3(1) defines “director” to include:

- (a) any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.

32. Section 44(4) provides that, before granting or refusing an uncontested application under subsection (1), the Commission may:

- (a) have regard to any matter the Commission considers relevant; and
- (b) make any enquiries the Commission considers appropriate.

Exercising the internal review power

33. 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) as follows:

The objects of this Act are—

- (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.*

34. 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.*¹⁷

35. Section 3(1) defines “harm” as follows:

harm means *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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;¹⁸ and
- (b) may consider further information, material or evidence.¹⁹

37. 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.

¹⁷ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [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).

¹⁸ Section 157(2).

¹⁹ Section 157(3).

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

Conduct of an inquiry

39. As stated above, section 44(4) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate.
40. 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 by the rules of natural justice.

Other sections of the LCR Act relevant to this matter

General licences

41. Pursuant to section 8(1), a general licence authorises the supply of liquor for consumption on or off the licensed premises during ordinary trading hours and at any other time where determined by the Commission and specified in the licence.
42. Section 3(1) defines ordinary trading hours in relation to a general licence as:
- (a) the hours between 7 a.m. and 11 p.m. on each day, other than Sunday, Good Friday or ANZAC Day; and
 - (b) the hours between 10 a.m. and 11 p.m. on Sunday; and
 - (c) the hours between 12 noon and 11 p.m. on Good Friday and ANZAC Day.
43. A general licence is considered a high-risk licence category primarily due to the broad permissions it grants. In particular, the long trading hours of a premises with a general licence can lead to increased alcohol consumption and associated public health and safety concerns. Research has shown a correlation between extended hours of alcohol availability and higher incidences of alcohol-related harm, including violence, public disorder, and health issues.

Assessing suitability

44. The Commission must assess suitability against the objects of the LCR Act,²⁰ noting that harm minimisation is the primary regulatory object and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).²¹

²⁰ See section 4.

²¹ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [2012] VSCA 325.

45. In assessing suitability, the Commission can also be guided by principles applied in previous decisions. This includes ensuring that the public have confidence in the liquor industry.²²
46. The Commission must be satisfied that Elos Trading has the ability to manage a licensed premises in a manner that promotes harm minimisation and complies with a licensee's obligations under the LCR Act.

Material before the Commission

47. The Commission on review had before it, and considered, all the information, material and evidence before the Delegate at first instance. The Commission on review also considered the following materials:
 - (a) the Original Decision and Reasons of Delegate, dated 28 May 2024;
 - (b) the Review Application, received 7 June 2024;
 - (c) transcript of directions hearing, dated 26 July 2024;
 - (d) email from Tresola Legal, dated 20 August 2024, enclosing submissions, dated 19 August 2024, and a statement from Mr Stapleton, dated 19 August 2024;
 - (e) Alcohol Management Plan for the Premises (undercover of email from Tresola Legal, dated 20 August 2024;
 - (f) transcript of the Hearing, dated 21 August 2024;
 - (g) letter from Tresola Legal, dated 30 August 2024, enclosing:
 - i. a revised Declaration of Associates regarding Elos Trading;
 - ii. a revised Declaration of Associates regarding Sun Chaser;
 - iii. assessment by Mr O'Keefe regarding his findings of Mr Stapleton, dated 29 August 2024;
 - iv. curriculum vitae of Mr Keefe, dated August 2024;
 - v. Noise and Amenity Action Plan for the Premises, dated August 2024;
 - vi. Venue Safety and Security Management Plan, dated August 2024;
 - vii. Responsible Service of Alcohol House Policy, dated August 2024, and
 - (h) email from Mr Stapleton, dated 1 November 2024.

Issues for consideration

48. In order for the Commission to make its decision on review, the following issues require

²² See *Danz Management v Director of Liquor Licensing (Occupational and Business Regulation)* [2010] VCAT 536.

consideration:

- (a) whether Elos Trading is not a suitable person to hold the Licence for the purposes of section 44(2)(a);
 - (b) like (a) above, whether Elos Trading has adequate knowledge for the purposes of section 44(2)(b)(iv); and
 - (c) having considered the previous issues, whether the Original Application should be granted or refused, having regard to the objects of the LCR Act, particularly the primary object of harm minimisation.
49. Each of these issues is discussed in turn.

A. Suitability

50. As noted above, one of the issues that the Commission has considered is whether Elos Trading is not a suitable to hold the Licence. The Commission has considered this issue in light of Elos Trading's association with Mr Stapleton who;
- (a) as the director of the related entity, Sun Chaser, was given two infringement notices for trading at the Premises on 17 March 2024 and 20 April 2024 when the Premises was not licensed premises or authorised premises contrary to the LCR Act,
 - (b) was the director of a company that was the subject of the cumulative conduct during the period February 2023 – April 2024²³; and
 - (c) declared inaccurate information in the Original Application regarding associates of Elos Trading pursuant to section 3AC.
51. The above factors are discussed below.

Association with Mr Stapleton

Contraventions of the LCR Act

52. The Commission notes that the Delegate considered that the trade at the Premises when the Premises was not licensed premises demonstrated an indifference towards a regulatory scheme and this was part of the basis for the Delegate finding that Elos Trading was not a suitable person to hold the Licence and refusing to grant the Original

²³ See paragraph 13 above.

Application.

53. Having considered all materials lodged on behalf of Elos Trading, the Commission finds that inconsistent and contradictory evidence has been given when seeking to explain why there was trade at the Premises when the Premises were not licensed premises.
54. In summary, the Commission notes:
 - (a) on 8 May 2024, Mr Dimitri (Jimmy) Stapleton (Mr Stapleton's son) informed LCV that it was Elos Trading's understanding that the Premises were licensed given that LCV accepted payment from Mr Georgios Kypriotis (on behalf of the landlord) to renew the Licence;²⁴
 - (b) while Mr Stapleton said in an email to LCV on 17 May 2024 that he thought Elos Trading could trade under the Licence because Mr Kypriotis had paid the renewal fee, he said in his statement dated 19 May 2024 that there was trade at the Premises on the identified days as "test" days; and
 - (c) in his evidence at the Hearing on 21 August 2024, Mr Stapleton said the trade at the Premises on St Patrick's Day (17 March 2024) was partly to see how the business operations at the Premises would fare and partly because of a connection between the Premises and the Irish community on St Patrick's Day.²⁵
55. While the Commission is very concerned with the above, particularly given that the community needs to be able to have confidence that they can rely on those to be transferred a licence are aware of and comply with liquor licensing laws, it is not sufficient to only consider the past deeds of a person or entity when considering suitability. The question is also whether the Commission can have confidence that such conduct is unlikely to occur in the future. In this regard, Mr Stapleton presented as a forthright and candid witness, who expressed genuine remorse regarding the trade at the Premises when the Premises was not licensed premises and has accepted full responsibility for it. At the Hearing, Mr Stapleton gave evidence about what he would do differently in the future, in light of his conduct on St Patrick's Day and the 'test' days, showing insight into his conduct. The Commission accepts that he has genuinely learned from that conduct and has been deterred from similar conduct in the future by not only the investigative and compliance actions taken with respect to those contraventions, but also by the denunciation of such conduct by this Commission.
56. Further, in relation to Mr Stapleton being the director of a company that was the subject of the cumulative conduct during the period February 2023 – April 2024, the Commission

²⁴ Email from Mr Dimitri (Jimmy) Stapleton to LCV, dated 8 May 2024.

²⁵ Transcript of the Hearing, 21 August 2024, page 23, line 20.

notes that Mr Stapleton explained on 1 November 2024:

- (a) Sun Chaser took immediate steps to ensure compliance with Restaurant and Cafe Licence no. 32348145 for The Post Inn together with other steps to minimise the risk of non-compliance, including increasing the size of the licensed area at The Postal Inn and applying to vary the category of licence from a restaurant and cafe to an on-premises licence;²⁶ and
- (b) he now has an enhanced understanding of requirements under the LCR Act, particularly given his previous engagement of liquor consultant, Mr O’Keefe, and that he intends to ensure that both Sun Chaser and Elos Trading are always compliant.²⁷

57. There have been no adverse incidents alleged against Sun Chaser regarding its operations at The Post Inn since 22 March 2024.²⁸

Inaccurate information in the Original Application

58. The Commission notes that the Delegate considered that the inaccurate information contained in Original Application regarding associates of Elos Trading pursuant to section 3AC indicated a lack of transparency and honesty and this was part of the basis for the Delegate finding that Elos Trading was not a suitable person to hold the Licence and refusing to grant the Original Application.
59. The Commission notes that it is important that the public have confidence in the liquor industry and have confidence in the administration of the liquor industry and that the community can rely on those approved as a licensee as being honest and diligent in their compliance with their obligations as a licensee.
60. Having considered Mr Stapleton’s evidence in the Hearing and the post Hearing submissions, including the revised Declarations of Associates for Elos Trading and Sun Chaser, it appears to the Commission that there has been a misunderstanding by Mr Stapleton regarding associates pursuant to section 3AC without any deliberate intent to mislead. While this is a matter relating to Mr Stapleton’s knowledge of the LCR Act, it, of itself, does not lead to a finding that Mr Stapleton or Elos Trading are not suitable persons.
61. There is no material before the Commission on review, on which it could consider that

²⁶ The variation of category licence application regarding The Postal Inn is yet to be decided by a delegate of the Commission.

²⁷ Mr Stapleton’s submissions, received 1 November 2024.

²⁸ See table in paragraph 13 above.

the associates subsequently declared, are not suitable persons for the purposes of this application.

Finding as to suitability

62. In the Hearing, the Commission considered that Mr Stapleton came across as a genuine and remorseful witness.
63. Given Mr O’Keefe’s assessment report, dated 29 August 2024, as to his findings of Mr Stapleton knowledge of the LCR Act and Mr Stapleton’s own evidence in the Hearing, the Commission considers Mr Stapleton is a ‘hands on’ owner and problem solver.
64. In all of the circumstances and having regard to the objects of the LCR Act, the Commission is not satisfied that it is appropriate to exercise its discretion to refuse to transfer the Licence on the basis that Elos Trading is not a suitable person to hold the Licence. The exercise of the Commission’s discretion is discussed further below.

B. Adequate knowledge of the LCR Act

65. The Commission may refuse to transfer a licence under section 44(2)(b)(iv), on the basis that the applicant does not have an adequate knowledge of the LCR Act. The Commission raised concerns about the adequacy of Mr Stapleton’s knowledge of the LCR Act, given the incomplete application with respect to who were associates, and the apparent pattern of non-compliances with licensing requirements by Sun Chaser Trading Pty Ltd, including at the Premises.
66. As part of the Original Application, Mr Stapleton submitted his New Entrant Training certificate, dated 2 August 2022, and his RSA²⁹ certificate, dated 14 July 2022. Mrs Stapleton also holds an RSA certificate, dated 24 May 2023.
67. Over the course of this matter, Mr Stapleton has received advice and support from a liquor consultant, Mr George O’Keefe. Mr O’Keefe observed the compliance procedures of the Post Inn (of which Mr Stapleton is the licensee). Importantly, Mr O’Keefe attests to Mr Stapleton’s adequate knowledge of the basics of the LCR Act.
68. The Commission has further considered the proposed business operations of Elos Trading, the risk-profile of the licence category relevant to the Original Application, and Mr Stapleton own experience in managing licensed premises. Taking into account all of the circumstances, the Commission is satisfied that Elos Trading has an adequate

²⁹ Responsible Service of Alcohol training.

knowledge of the LCR Act for the purposes of section 44(2)(b)(iv).

69. Despite this, the Commission encourages Elos Trading to take all necessary and reasonable steps to ensure that Mr Stapleton and all other associates pursuant to section 3AC, to develop an enhanced understanding of the LCR Act in order to ensure that they maintain strict compliance with their obligations under the LCR Act, the regulations and the Licence on an ongoing basis. Specifically, given the multiple transgressions as described in the table in paragraph 13 above, the overall size of the Premises, and the high-risk licence category of a general licence as discussed in paragraph 43 above, the Commission considers it to be appropriate that there be a special condition to this effect. To that end, the Commission requires Mr Stapleton to re-complete the New Entrant Training course, and for all other associates of Elos Trading pursuant to section 3AC to also complete the New Entrant Training course. The timeframe for compliance with such a special condition is by no later than 30 May 2025.³⁰

C. Whether the Original Application should be granted having regard to the objects of the LCR Act, particularly the primary object of harm minimisation

70. Although the Commission is satisfied that no grounds for refusal exist under section 44(2), the Commission must still exercise its discretion whether or not to grant the Original Application. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, as well as with regard to the objects of the LCR Act, particularly harm minimisation, which is the primary consideration.³¹
71. Having regard to all information, material, and evidence, including the absence of any specific suggestion that Elos Trading's activities have been conducive to or encouraged harm, the Commission is satisfied that adequate controls will exist over the supply of liquor and that the risk of any harm should be minimised. Also, from its view of the area and its inspection of the Premises, which it is anticipated will be renovated to a high standard, the Commission is of the opinion that the operation of the licence has the potential to be an additional positive option for the community of the area so that a grant of the Original Application would be in furtherance of the objects outlined in section 4(1)(b) and section 4(1)(c). Accordingly, the Commission considers that the transfer of the Licence in this instance would not be contrary to the objects of the LCR Act including

³⁰ All emails to the Commission enclosing certificates of completion of the New Entrant Training course must be sent via secretariat@liquor.vic.gov.au.

³¹ See section 4(2).

harm minimisation.

Decision on review

72. The Commission has determined to set aside the Original Decision and, in substitution, grant the Original Application subject to the conditions set out in Appendix A.

The preceding 72 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Acting Chair), Mr James O'Halloran (Deputy Chair), and Mr Steven Brnovic (Commissioner).

Appendix A - Conditions for General Licence no. 31954202

Type of licence

This licence is a general licence and authorises the licensee to supply liquor on the licensed premises for consumption on and off 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 Capacities

Internal (57 patrons) External (55 patrons)

Trading Hours

Sunday	Between 10am and 11pm
Good Friday & ANZAC Day	Between 12noon and 11pm
On any other day	Between 9am and 11pm

Special Condition

By no later than 30 May 2025, any associate of the licensee pursuant to section 3AC of Liquor Control Reform Act 1998 must complete a New Entrant Training course, including the director of the licensee, who must re-complete the New Entrant Training course.

All certificates of completion of the New Entrant Training course must be submitted by the licensee to the Commission by no later than 30 May 2025.

Management Plan

The licensee must adhere to the Alcohol Management Plan, Noise and Amenity Action Plan, and Venue Safety and Security Management Plan provided to the Commission in addition to the conditions stated above.