

Decision and reasons for decision

In the matter regarding an internal review application made by Select Market Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* as to a decision of a delegate to refuse to grant an application for a packaged liquor licence for the premises known as Select Market, located at Unit 1, 250 Flinders Street, Melbourne

Commission:

Mr John Larkins, Acting Chair
Mr James O'Halloran, Deputy Chair
Ms Susan Timbs, Commissioner

Appearances:

Mr Milad Shahbazi on behalf of the Applicant
Mr Ben Schier, Counsel Assisting the Commission

Date of Hearing:

17 April 2024

Date of Decision:

17 October 2024

Date of Reasons:

17 October 2024

Decisions:

The Commission has determined to affirm the decision of the delegate and refuse to grant the application

Signed:



Background

Original Application

1. On 14 August 2023, Milad Shahbazi, sole director for Select Market Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ for a packaged liquor licence (**Original Application**) for the premises located at Unit 1, 250 Flinders Street, Melbourne (**Premises**).
2. The Premises corners Flinders Street and Degraeves Street and is situated directly opposite Flinders Street Station. The location is exposed to high passing foot traffic.
3. The surrounding areas comprise a mix of commercial and residential premises with several licensed premises in the immediate area.
4. The Applicant trades at the Premises as a tobacconist while also selling limited amounts of snack food.
5. By way of the Original Application, the Applicant sought a packaged liquor licence for the following purpose:

...the purpose for which the liquor license is sought is [sic] offer customers our additional convenience by providing them with a selection of alcoholic beverages.

6. The Applicant proposed the following trading hours:

Monday to Saturday	Between 9am and 11pm
Sunday	Between 10am and 11pm
ANZAC Day	Between 9am and 11pm

7. In accordance with section 33(1), a delegate of the Commission (**Delegate**) served a copy of the Original Application on the Chief Commissioner of Police and the Licensing Inspector² (together, **Victoria Police**) on 24 August 2023. On 5 September 2023, Victoria Police advised that they did not object to the Original Application.
8. In accordance with section 33(2), the Delegate served a copy of the Original Application on the City of Melbourne (**Council**) on 24 August 2023. On 18 August 2023, the Applicant provided the Delegate with a letter from the Council dated 18

¹ All references to legislation are references to the LCR Act unless stated otherwise.

² As to the meaning of 'licensing inspector', see section 3(1).

August 2023, in which the Council informed the Applicant that in accordance with the Melbourne Planning Scheme, no planning permit was required to use the Premises as a 'retail premises', which would include a 'supermarket' for the sale of liquor.³ On 29 September 2023, the Council responded to the Commission with the same information, advising that it therefore did not object to the Original Application.

9. On 24 August 2023, the Delegate requested that the Applicant make further submissions regarding the nature of its business, chiefly regarding its 'predominant activity' carried out on the Premises.
10. Under the LCR Act, the predominant activity carried out on the licensed premises for a packaged liquor licence is the sale by retail of liquor for consumption off the premises.⁴ Additionally, the LCR Act prohibits certain categories of premises from being licensed, relevantly including 'premises that, in the opinion of the Commission, are used primarily as a milk bar, convenience store or mixed business'.⁵ 'Convenience store' is defined in section 3(1) of the LCR Act as:

A milk bar, mixed business or other premises of not more than 240 square metres on which food, drinks and other convenience goods are sold.

11. The Delegate noted that the Original Application included a proposed red line plan evidencing premises of 43.7 square metres which included areas labelled as 'grocery shelves'.
12. On 24 September 2023, the Applicant informed the Delegate that the predominant activity carried out on the Premises was to be the retail supply of liquor for consumption off the Premises. Relevantly, the Applicant stated:

After running this business for more than a year, we noticed a significant number of our customers would prefer to buy their liquore [sic] along with other provided products such as tobacco items. This would benefit our business and our customers mutually.

13. The Applicant also described the five stock lines contributing to its weekly sales income as:

Tobacco products: Electronic Cigarettes, Cigarette and Cigar Accessories, Snacks, Sealed Beverages, Pipe and Cigar Cleaners, Tobacco Blending and Flavoring [sic].

³ Melbourne Planning Scheme; sch 2 cl 37.04; cl 52.27.

⁴ LCR Act section 11(3)(aa).

⁵ Ibid section 22(1)(c).

14. The Applicant lodged an amended red line plan, which included additional shelves labelled 'grocery shelves' stationed within the proposed licensed area. A cashier was also positioned in the amended red line plan against a wall on the Degraves Street side of the Premises, including a label next to the cashier machine area labelled 'cashier window'.
15. On 14 November 2023, the Delegate requested that the Applicant provide photographs of the Premises for better clarity of the layout and nature of the Premises' proposed use. The Delegate also sought more information as to where patrons would be entering the Premises and whether the 'cashier window' (as depicted on the amended red line plan) meant that the Applicant proposed patrons be supplied liquor when outside of the Premises.
16. On 14 November 2023, the Applicant informed the Delegate that it intended to supply to patrons via a sliding window that would open for supply to the public on Degraves Street.
17. In further correspondence in support of the Original Application, the Applicant informed the Delegate on 15 November 2023 that it was 'reluctant to use the main door to serve customers', citing 'incidents involving disruptive behaviour, particularly from intoxicated individuals, and an increase in thefts within the store' (and therefore the Applicant wanted to supply to patrons through the cashier window).

Delegate's decision

18. The Original Application was determined as an uncontested application⁶ pursuant to section 44(1) and considered on the grounds provided in section 44(2).
19. On 21 December 2023, a Delegate refused the Original Application (**Original Decision**). The Delegate advised that the proposed area for supply of liquor meant that the Applicant would be unable to satisfy the:

...requirement under section 9 of the Act that a Packaged Liquor Licence authorises the licensee to supply liquor on the licensed premises in sealed containers, bottles, or cans for consumption off the licensed premises. (Emphasis not added).
20. It is noted that section 9 relates to on-premises licences, not packaged liquor licences. Nonetheless, the quote above is found in section 11(1) and so it is reasonably

⁶ Ibid section 3(1), see *uncontested application*.

presumed that the Delegate's intention was to quote section 11(1) in it refusing the Original Application on grounds that it was not made in accordance with the LCR Act.⁷ Further, the Delegate stated that the Applicant's proposal to supply to patrons when patrons would be located outside of the Premises would result in the Applicant failing to meet the predominant activity requirement in section 11(3)(aa), which requires supply to customers to occur on the licensed premises.

21. The Delegate also cited concerns that the Original Application would be conducive to or, encourage harm⁸ and so to grant it would not be in keeping with the LCR Act object contained in section 4(1)(a).⁹ The Delegate noted that the Applicant had stated that it was 'already facing challenges from disruptive and intoxicated individuals' and therefore considered that the proposed layout of the Premises would 'encourage public drinking'. As such, the Delegate was of the view that granting the Original Application presented a risk of secondary supply to minors¹⁰ and intoxicated persons¹¹ so was not in keeping with community expectations, nor in the interests of public safety.

Application for Internal Review

22. On 11 January 2024, the Applicant lodged an application for internal review of the Original Decision (**Review Application**).
23. The Applicant provided the following reasons in support of the Review Application:
- We have accommodated the required conditions according to the reasoning we received from the officer in the structure and layout. The adjusted red-plans [sic] and the response to all the concerns mentioned...*
24. The Applicant lodged a further amended red line plan, in which it proposed that the cashier window would be removed so that supply would occur on the Premises. The Applicant also informed the Commission:

⁷ Ibid, section 44(2)(b)(v).

⁸ Ibid, section 44(2)(b)(ii).

⁹ Section 4(1)(a) provides:

(1) The objects of this Act are—

(a) to contribute to minimising [harm](#) including by—

- providing adequate controls over the supply and consumption of [liquor](#); and
- ensuring as far as practicable that the supply of [liquor](#) contributes to, and does not detract from, the amenity of community life; and
- restricting the supply of certain other alcoholic products; and
- encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.

¹⁰ Ibid, constituting an offence under section 119(1).

¹¹ Ibid, constituting an offence under section 108(4)(a).

- CCTV would be installed at the entrance to the Premises and at the points of sale to particularly assist with detecting minors or intoxicated individuals;
- liquor stock would only be accessible to staff;
- the '*primary stock holdings*' would be for 'targeting [sic] the patron purchasing wine to consume with lunch or dinner bookings in the surrounding areas;
- all products that could be perceived to target minors would be removed from the Premises, with stock instead being limited to 'offerings to [sic] supporting products to be sold with alcohol, i.e. specific mixer (soft drinks) crisps (potato chips) instead of minor target food products'; and
- visibility of stock offered for sale on the Premises would be limited from outside the Premises by the installation of tinted windows.

Legislation and the Commission's task

The Commission's internal review power

25. Division 2 of part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision. The Applicant is considered an eligible person to apply for review of that decision. The Review Application was made pursuant to section 153.
26. 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.¹²
27. 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;¹³ or

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

¹³ Ibid, sections 44, 49 and 157.

- (b) refuse to grant the Original Application.¹⁴

Determination of an uncontested application

28. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Original Application was uncontested, as no objections were received.¹⁵
29. 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).*
30. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that:
- (a) the granting of the application would be conducive to or encourage harm;¹⁶ and
 - (b) the application has not been made, displayed or advertised in accordance with the LCR Act.¹⁷

Exercising the internal review power

31. Section 172D(3) requires the Commission, in exercising its internal review power to have regard to the objects of the LCR Act.
32. 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*

¹⁴ Ibid, sections 44 and 157.

¹⁵ Ibid, section 3(1), see 'uncontested application'.

¹⁶ Ibid, section 44(2)(b)(ii).

¹⁷ Ibid, section 44(2)(b)(v).

- (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.*

33. Further, section 4(2) 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.*¹⁸

34. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;¹⁹ and
- (b) may consider further information, material or evidence.²⁰

36. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application is ultimately to be made pursuant to sections 47(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

¹⁸ 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).

¹⁹ LCR Act, section 157(2).

²⁰ *Ibid*, section 157(3).

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

Conduct of an inquiry

38. Section 47(3) provides that the Commission may have regard to any matter it considers relevant, make any enquiries it considers appropriate and give the Applicant a reasonable opportunity to be heard. Accordingly in this matter, the Applicant was given reasonable opportunity to be heard in both being invited to give evidence on oath and make submissions before the Commission.
39. 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.

Packaged liquor licences

40. Pursuant to section 11(1), a packaged liquor licence authorises the licensee to supply liquor on the licensed premises in sealed containers, bottles or cans during ordinary trading hours for consumption off the licensed premises.²¹
41. Section 3(1) defines the “ordinary trading hours” of a packaged liquor licence to mean: between 9am and 11pm on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; between 10am and 11pm on Sunday; and between 12 noon and 11pm on ANZAC Day.

Material before the Commission

42. The Commission on review had before it, and considered, all the materials before the Delegate. The Commission also received and considered the following materials:
 - (a) Delegate’s Reasons dated 21 December 2023;
 - (b) Review Application received on 11 January 2024;
 - (c) a report entitled, ‘Data Report’, prepared by Liquor Control Victoria, dated 26 March 2024;

²¹ A packaged liquor licence may also authorise the licensee to trade at other times if so determined by the Commission and specified in the licence: LCR Act, section 11(1)(b)–(d).

- (d) National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (2020);
- (e) submissions from the Applicant, dated 15 April 2024; and
- (f) further submission from the Applicant, dated 24 April 2024.

Other material

Ministerial guidelines

Assessment of the Cumulative Impact of Licensed Premises guidelines

- 43. The decision-making guideline titled “Assessment of the Cumulative Impact of Licensed Premises” dated 7 June 2012²² relevantly states that it is the policy of the Victorian Government that the Commission may assess the contribution of a new licensed premises to the cumulative impact²³ of a concentration of licensed premises in an area. The Commission has had regard to that guideline and is satisfied that in light of the evidence before it, the guideline has no substantial impact in deciding whether to grant the Applicant a packaged liquor licence.²⁴
- 44. While the Commission has had regard to that guideline, for the reasons discussed at paragraphs 86 and 91 below, the Commission has not decided to grant or refuse the Review Application based on the cumulative impact of a concentration of licensed premises in the area of the Premises.

Packaged liquor decision-making guidelines

- 45. The Commission did not consider the Decision-Making Guidelines relating to the grant of licences for the sale of packaged liquor as applicable to this application given the proposed trading hours are not outside ordinary trading hours.²⁵

²² The guideline was issued by the then Minister under the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic). This Act was renamed the *Victorian Gambling and Casino Control Commission Act 2011* (Vic) by the *Casino and Gambling Legislation Amendment Act 2021* (Vic) with effect from 1 January 2022.

²³ The guideline states that “**Cumulative Impact** refers to the impacts arising from a concentration of licensed premises in a defined area. Evidence has identified that cumulative impact is associated with a range of positive and negative effects, depending on the physical and environmental setting, the mix of premises, and their operating conditions.”

²⁴ Section 172U(3)(b) requires the Commission, when performing functions or exercising powers under the LCR Act, to have regard to any decision-making guidelines issued by the Minister under section 172U(4). A decision-making guideline that was in effect immediately before 1 July 2022 in relation to the regulation of liquor remains in effect on and after that day as if it had been issued under section 172U(4). See LCR Act, Schedule 8, clause 5.

²⁵ The decision-making guideline titled “*Grant of Licence for the Sale of Packaged Liquor*” dated 7 June 2012 was issued by the then Minister for Consumer Affairs and Minister responsible for administering the LCR Act.

Preliminary meeting

46. The Commission held a virtual preliminary meeting with the Applicant on 26 March 2024, which involved discussions on administrative matters regarding the conduct of an internal review hearing and additional material as sought by the Commission.
47. Mr Shahbazi appeared on behalf of the Applicant at the preliminary meeting.
48. Procedural directions were then made on 3 April 2024. Relevantly, the Commission required the Applicant to make submissions regarding:
 - i. the products that the Applicant proposed to sell at the Premises;
 - ii. identification of any risks of harm that might arise from the misuse and abuse of alcohol associated with the supply of liquor at the Premises and how the Applicant proposed to minimise those risks;
 - iii. whether the Applicant proposed to include any visual demarcation of the proposed licensed and unlicensed areas at the Premises; and
 - iv. any other material that the Applicant wished to rely on.

Site visit, 10 April 2024

49. The Commissioners attended the Premises in the company of Mr Shahbazi and viewed the immediate surrounds on 10 April 2024.
50. The Commissioners observed that the Premises was directly across the road from Flinders Street Railway Station and within 140 metres of the intersection of Flinders Street and Elizabeth Street. This major 'T' intersection is where the entry and exit points are for train passengers and a major crossing for both commuters and pedestrians.
51. During the site visit, the Commissioners requested that the Applicant lodge submissions to provide an overview of Mr Shahbazi's professional background and industry experience.

Written submission, 15 April 2024

52. The Applicant lodged a written submission on 15 April 2024, in which Mr Shahbazi stated on behalf of the company (in summary):

- i. business signage will be installed on the windows to the Premises;
 - ii. the Premises will include two points-of-sale, both stationed in the single area labelled 'cashier' on the red-line plan. One will be specifically for liquor sales and the other one for non-liquor sales. Each point-of-sale area will be 2.5 metres long, with the intention of providing cashiers 'clear visibility of customers' faces'; and
 - iii. the products to be sold on the Premises will be liquid beverages, cigarettes and select items such as chips and gums that align with the regulations of a liquor licence. Only packaged alcohol will be sold on the Premises in accordance with licensing rules.
53. Annexed to the written submission of 15 April 2024 was a document prepared by Mr Shahbazi describing both his, and his business partner's, professional experience. The document highlighted both individuals as having completed a responsible service of alcohol program and so purportedly had 'a keen understanding of the importance of responsible alcohol service and the potential impact of alcohol consumption on individuals and the community' and would prioritise 'the wellbeing of patrons and take proactive measures to ensure a safe and enjoyable environment'. Neither individual was stated as having previously held a liquor licence, nor previously employed in contexts that involved interaction with liquor regulation.

Hearing

54. A hearing was held in relation to the Review Application on 17 April 2024 (**Hearing**).
55. Mr Shahbazi appeared on behalf of the Applicant.
56. On oath, Mr Shahbazi described an incident that purportedly occurred around the Premises on 25 March 2024 that involved somebody breaking windows and then coming inside to rob stock.²⁶ Mr Shahbazi expanded on this point later in the Hearing about the Premises, stating that every day he has persons bothering his staff.²⁷
57. When asked if he considered such incidents to present a risk of harm, Mr Shahbazi responded that in his 2.5 years' experience trading at the Applicant's nearby Southbank shop, he maintained an expectation that it was 'going to be risky in the city.'²⁸ Elaborating on the risk and prevalence of criminal disturbance he had observed

²⁶ Transcript 17 April 2024, page 6, lines 14 to 17; 22 to 23.

²⁷ Ibid, page 16, lines 15 to 16.

²⁸ Ibid, page 6, line 36.

in the immediate area surrounding the Premises, Mr Shahbazi noted that Victoria Police employ a 'special team' responsible for responding to incidents relating to 'crime in Elizabeth and Flinders'.²⁹ Mr Shahbazi explained that given the nature and prevalence of incidents in the area immediately surrounding the Premises, he has been advised by Victoria Police, when calling police members to respond to an incident, to request referral to this specific internal team for a priority response.³⁰

58. In relation to the latest amended red line plan, Mr Shahbazi stated that the entrance to the Premises would remain on Flinders Street, that the Premises would include separate points of sale for non-liquor items at the entrance, and that there would be a liquor-only point of sale at the rear of the Premises.³¹
59. Additionally, Mr Shahbazi proposed that in the licensed area of the Premises, shutters would be installed on the display offering liquor, which would automatically be activated 'so at 10:30pm it will be shut from the ceiling to the floor'.³²
60. Mr Shahbazi confirmed that liquor on display would only be accessible to staff and be provided to patrons once they were positively identified.³³ Mr Shahbazi also stated that the same approach would be taken for managing interactions with intoxicated patrons on the Premises, stating 'we pass the RSA, we go through the courses, we know how to manage the things. We know the rules... We cannot sell it to the customer... We say to them, we cannot do sale [sic]'.³⁴ Further, Mr Shahbazi said that he had only observed one instance of public drinking nearby the Premises, opining that he considered a majority of current public disorder was the result of drug-use, rather than alcohol.³⁵
61. Mr Shahbazi was asked to provide further detail in relation to the Applicant's proposition about realigning its business proposal to provide a more limited selection of liquor to patrons seeking to buy limited liquor for BYO usage at nearby restaurants. He responded:

So, in Degraeves Street, as you know it's a very old street. It's full of restaurants. And when we opened the shop, so that's where the idea has come from... when we opened the shop, as a

²⁹ Ibid, page 29, lines 23 to 31.

³⁰ Ibid.

³¹ Ibid, page 7, lines 12 to 16.

³² Ibid, page 9, lines 1 to 5; page 10, lines 43 to 44. Note section 3(1)(c) of the LCR Act which provides that ordinary trading hours in relation to a packaged liquor licence are until no later than 11pm.

³³ Ibid, page 11, lines 20 to 24.

³⁴ Ibid, page 16, lines 40 to 41; page 17, lines 18 to 20.

³⁵ Ibid, page 18, line 42, to page 19, line 27.

*tobacconist, which is two and a half years ago, too many respectful people, they come as to use the alcohol... So, you know, when you open one business, you have to see the markets, what they want from you. So they're asking us, do you sell alcohol?*³⁶

He clarified that he had merely assumed that the requests from patrons he consulted with were for BYO-use at nearby restaurants.³⁷

62. Mr Shahbazi was asked to provide clarification with respect to the classification of the Premises in light of the requirements of the LCR Act relating to the predominant activity condition on packaged liquor licences in section 11(3) and the prohibition in section 22(1)(c) on licensing convenience stores. He stated that, 'we're going to sell lighter, cigarettes, gummies, chips.'³⁸ While Mr Shahbazi could not provide detail as to what lines of liquor were proposed to be stocked at the Premises, nor in what quantities precisely, he stated that it was proposed the value of the stock stored on the Premises would be worth in the vicinity of '20,000 to 25,000' dollars.³⁹
63. When asked whether he was aware of any particular obligations the Applicant would have as a packaged liquor licensee, Mr Shahbazi could not name any. When prompted to recall the RSA training he had completed on 12 May 2023 to aid himself in answering the question, Mr Shahbazi responded, 'if you do something wrong, risk for your business, big fines, you've got a point for your licence. If you lose the point, never get licensed again [sic]...'.⁴⁰
64. Finally, Mr Shahbazi gave evidence that, (in summary):
- i. the Applicant did not propose to sell online;⁴¹
 - ii. while he was unsure of a precise limit for supply, the Applicant did not propose to sell more than two cases of beer per customer, however, he would 'have to see the market';⁴² and
 - iii. the Applicant was willing to accept trading hours more limited than those provided for as 'ordinary trading hours' under the LCR Act or proposed in the Original Application.⁴³

³⁶ Ibid, page 18, lines 3 to 9.

³⁷ Ibid, page 18, lines 36 to 40.

³⁸ Ibid, page 22, lines 21 to 22.

³⁹ Ibid, page 36, line 21 to page 37, line 1.

⁴⁰ Ibid, page 26, lines 9 to 11.

⁴¹ Ibid, page 27, line 6.

⁴² Ibid, page 31, lines 28 to 29.

⁴³ Ibid, page 32, line 42 to page 33, line 31.

65. The Commission wishes to acknowledge the frank and cooperative manner in which Mr Shabazi had approached the Hearing.

Written submission, 24 April 2024

66. In response to a request by the Commission on 17 April 2024 for an itemised list of the non-liquor products proposed to be sold on the Premises, the Licensee provided on 24 April 2024, the following list, which contained (in summary):
- i. mixers, juices and soft drinks ‘to accompany alcoholic beverages’;
 - ii. snack foods ‘which pair well with alcoholic drinks’;
 - iii. non-alcoholic drinks such as iced tea, bottled water, sports drinks etc.;
 - iv. tobacco products ‘such as cigarettes and cigars, tobacco pouches and cases, lighters/gas lights, grinders, filters and tips, rolling papers, tobacco pipes, nicotine pouches, ashtrays’;
 - v. barware ‘such as glassware, bottle openers, cocktail shakers and ice buckets’;
 - vi. gift items ‘such as gift baskets, wine accessories, novelty items and gift certificates’;
 - vii. ice; and
 - viii. phone charging accessories.

Issues for determination on review

67. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse the Original Application, the key issues are:
- i. first, whether the Commission considers it should grant or refuse the Original Application given the grounds for refusal set out in the LCR Act, and the objects of the LCR Act, in particular harm minimisation, which is the primary object; and
 - ii. secondly whether the Commission is satisfied that the predominant activity requirement in section 11 is met.

68. Each of these issues will be addressed in turn.

Reasons for decision on review

Whether the Commission considers it should grant or refuse the Original Application given the grounds for refusal set out in the LCR Act and the objects of the LCR Act, in particular harm minimisation

69. An application may be refused if granting it would be conducive to or encourage harm.⁴⁴ In addition, the Commission must exercise its discretion whether or not to grant a licence with regard to the objects of the LCR Act, particularly the primary object of harm minimisation.⁴⁵
70. The definition of “harm” in section 3(1) is set out above. The Commission notes that it means harm arising from the misuse or abuse of alcohol, and expressly includes (but is not confined to) various forms of such harm as set out in paragraphs (a) to (c) of the definition of “harm”.
71. In one sense, as a matter of logic, it could be said that any grant of a new packaged liquor licence involves a level of inherent risk given the increased opportunity for off-premises consumption. But that would defeat the purpose of the Commission’s power to grant such a licence.⁴⁶
72. Instead, the Commission considers it must inquire as to whether the object of harm minimisation would be poorly served because of the particular local, social, demographic and geographic circumstances.⁴⁷ This requires forming a baseline understanding of the particular local circumstances affecting the application (including density of packaged liquor outlets and the existing degree of alcohol-related harm). ‘Locality evidence’ on the social, demographic or geographical circumstances of the application, is considerably relevant to this task.⁴⁸

⁴⁴ LCR Act, section 44(2)(b)(ii).

⁴⁵ LCR Act, sections 4 and 172D(3).

⁴⁶ See *Black Lula Evangeline & Cooke Brian v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459. See also *Kordister Pty Ltd* [2012] VSCA 325, 39 VR 92 at [17].

⁴⁷ *Ibid.*

⁴⁸ *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, (2012) 39 VR 92, 104-105 [51]-[53].

73. The Commission must consider whether any baseline harm will be increased if the application is granted and whether any proposed remediation measures will substantially reduce the harm.

Information available

Information on the demographic and socio-economic profile of the surrounding area

74. The Commission engaged Liquor Control Victoria (**LCV**) to provide information on SEIFA index measures of advantages and disadvantages (**Demographic and Economic Profile Report**) regarding the local government area that the Premises is situated in. In seeking the Demographic and Economic Profile Report, the Commission sought a high level, objective summary of potentially relevant statistics that it could consider as locality evidence⁴⁹ in assessing the relevant harms that might arise from the misuse and abuse of alcohol in the context of the licence sought by the Review Application.
75. The Demographic and Economic Profile Report was prepared on 26 March 2024.
76. SEIFA is an easily accessed and broadly adopted measure of social and economic disadvantage in Australia. SEIFA ranks areas in Australia according to relative socio-economic advantage and disadvantage. The data is based on census data such as income, education, employment, occupation, housing and family structure for summarising the socio-economic characteristics of an area.
77. SEIFA orders areas in a given report from a lowest, to highest score. The lowest 1% area in a given report is assigned a percentile number of 1 and so on, with the highest 1% area in a report given a percentile of 100. A percentile of 1, therefore represents the most disadvantage relative to the other percentile areas.
78. The Commission notes that the immediate area in which the Premises is situated ranks 9 on the state percentile ranking on the SEIFA index relative socio-economic disadvantage, which indicates significant disadvantage.⁵⁰

⁴⁹ *Kordister v Director of Liquor Licensing* [2012] VSCA 325, (2012) 39 VR 92 at [191], citing *Re Black and Liquor Licensing Victoria* [2000] VCAT 459; (2000) 17 VAR 17 at [14]; *Nardi v Director of Liquor Licensing* [2005] VCAT 323 at [19]; 'particular local, social, demographic and geographic circumstances...'

⁵⁰ Australian Bureau of Statistics, 2021, Index relative socio-economic disadvantage, www.abs.gov.au.

79. The information in the Demographic and Economic Profile Report with respect to the socio-economic character of the study area in the report showed:
- i. there is a higher proportion of unemployed people in the study area compared to the Melbourne Greater Capital City Statistical Area (**Melbourne GCCSA**);⁵¹
 - ii. a higher proportion of households in the study area earn less than the Melbourne GCCSA;⁵² and
 - iii. there is a greater proportion of one parent families in the study area than the Melbourne GCCSA.⁵³
80. Overall, based on the information in the Demographic and Economic Profile Report, the Commission notes that the population in the study area for the site where the Premises exists experience significantly high levels of socio-economic disadvantage.
81. Information was also contained in the Demographic and Economic Profile Report in relation to alcohol related harms. The report noted that the rate of alcohol-related (intoxication) ambulance attendances per 100,000 of the population for the Melbourne local government area (**LGA**) was significantly higher than the rates seen elsewhere for the same attendances in metropolitan Melbourne and Victoria, generally. As of 2021 (the most recent data available), the data evidenced 1110.8 attendances per 100,000 people, as compared to 289.5 per 100,000 in metropolitan Melbourne and 312.4 per 100,000 in Victoria, generally.⁵⁴ It should be noted that attendances in Melbourne's LGA increased from 2020 to 2021, whilst attendances in metropolitan Melbourne and Victoria showed a decrease in the same period. The data available was similar with respect to the rate of ambulance attendance for alcohol intoxication in combination with other substances in the same period. As of 2021, the data evidenced 1371.7 per 100,000, as compared to 359.7 per 100,000 in metropolitan Melbourne and 387.8 per 100,000 in Victoria, generally.⁵⁵ Again, attendances in the Melbourne LGA increased from 2020 to 2021, whilst attendances in metropolitan Melbourne and Victoria, generally, showed a decrease in the same period.⁵⁶

⁵¹ Report entitled, 'Data Report', prepared by Liquor Control Victoria, dated 26 March 2024, page 6.

⁵² Ibid, page 6.

⁵³ Ibid, page 9.

⁵⁴ Ibid, page 13 – See also Turning Point, 2012 to 2021, AODstats: Victorian alcohol and drugs statistics, www.aodstats.org.au date accessed: 20/3/2024.

⁵⁵ Ibid.

⁵⁶ Ibid.

82. Additionally, the Demographic and Economic Profile Report contained data in relation to the rate of criminal incidents per 100,000 of the population in the Melbourne LGA, compared against the average in Victoria, generally. The Commission notes that the Melbourne LGA in the year ending September 2023 had a rate of 14908.7 incidents per 100,000, almost triple the average Victorian rate of 5536 per 100,000.⁵⁷ Theft, assault, breaches of orders, property damage and burglary accounted for 75% of the Melbourne LGA figure, with theft accounting for 39% of recorded incidents.
83. The Demographic and Economic Profile Report was provided to the Applicant on 3 April 2024. The Applicant was advised that it was open to the Commission to consider material in the report and so invited submissions from the Applicant in response to the report.⁵⁸

Applicant's evidence

84. The Commission notes Mr Shahbazi's general evidence given at the Hearing. The following evidence of Mr Shahbazi was consistent with information contained in the Demographic and Economic Profile Report:
- (a) he was reluctant to use the main door of the Premises to serve customers and wanted to supply to patrons through the cashier window;⁵⁹
 - (b) there have been a number of incidents at the Premises involving disruptive behaviour, particularly from intoxicated individuals;⁶⁰
 - (c) there has been an increase in thefts within the Premises;⁶¹ and
 - (d) every day, he has persons bothering his staff.⁶²
85. More specifically, Mr Shahbazi indicated:
- (a) he has formed a view that he needed to establish physical barriers to protect his staff to prevent assaults and ensure their safety;⁶³

⁵⁷ Crime Statistics Agency, 2014 to 2023, Criminal Incidents, www.crimestaistics.vic.gov.au.

⁵⁸ LCR Act section 172D(2); the Commission is entitled to inform itself, in the manner it sees fit, as to its functions and the operation of the LCR Act.

⁵⁹ Above n 25, page 4, line 19 to page 5, line 2.

⁶⁰ Applicant's information to the Delegate, 15 November 2023, Transcript 17 April 2024, page 16, lines 15 to 16; page 7, lines 43 to 44.

⁶¹ Above n 59, page 5, line 34 to page 6, line 8; page 16, line 15.

⁶² Above n 60.

⁶³ Above n 59, page 7, line 44 to page 8, line 3.

- (b) he has formed this view from his observations that the area is of high risk and there is a lot of drugs in the area and risks of violence;⁶⁴ and
- (c) he has formed the view that he needed to isolate potential customers from having direct access to alcohol, should the licence be granted.⁶⁵

Findings

86. The Commission is satisfied that the information available, including the evidence of the Applicant, that there is an appreciable risk that anti-social behaviour and harm to vulnerable persons or groups would increase if the application was approved. This warrants a conservative, precautionary approach in this particular set of circumstances.
87. Specifically, the Commission has concluded that overall, granting the application would be conducive to or encourage the misuse of alcohol. This is driven by a combination of various factors, including:
- i. the high volumes of pedestrian traffic in the immediate area of the Premises and relevantly a frequency of anti-social behaviour from individuals (including crime and alcohol-related injury), as confirmed by the Applicant;
 - ii. the risk of harm being increased for a packaged liquor licence when compared to other types of licences because the predominant purpose of a packaged liquor licence is for liquor to be consumed off the premises;
 - iii. information contained in comprehensive evaluations of scientific evidence such as the National Health and Medical Research Council's (**NHMRC**) 2020 publication, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*,

⁶⁴ Ibid, page 18, lines 42 to 45; page 27, line 8 to page 29, line 42.

⁶⁵ Ibid, page 6, lines 32 to 41; see paragraphs 54 to 65 above.

identifying a clear correlation between socio-economic disadvantage and the misuse and abuse of alcohol;⁶⁶ and

- iv. like (iii) above, the information contained in the Demographic and Economic Profile Report showing that the area that the Premises is situated in a significantly low socio-economic area.⁶⁷
88. The Applicant has only proposed substantial harm mitigation measures inside the Premises. The Commission is not satisfied that these mitigation measures will substantially mitigate the risk of harm externally. Indeed, given the nature of the area it is difficult to identify measures which could be undertaken by the licensee so as to mitigate the palpable risk of an increase in harm should the licence be granted.
89. The Commission considers that to grant the Review Application would be inconsistent with the fundamental object of minimising harm as outlined in sections 4(1)(a) and 4(2).
90. In addition, the Commission considers that granting the Review Application would not facilitate the responsible development of a diversity of licensed facilities to reflect community expectations in furtherance of the object outlined in section 4(1)(b). The Premises appear similar to those of other premises in the Melbourne Central Business District. There are ten packaged liquor licensed premises within 500 metres of the Premises, of which five are trading within 260 metres of the Premises.
91. On the same grounds, the Commission considers that granting the Review Application in light of the combination of factors outlines above would not necessarily contribute to the responsible development of the liquor, licensing and live music industries in satisfaction of the object outlined in section 4(1)(c).

Other matters

92. As noted above, under the LCR Act, the predominant activity carried out on the licensed premises for a packaged liquor licence is the sale by retail of liquor for consumption off the premises.⁶⁸ Additionally, the LCR Act prohibits certain categories of premises from being licensed, relevantly including 'premises that, in the opinion of

⁶⁶ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (2020), page 61: "In Australia, the disease and injury burden from alcohol use is skewed towards people in the lowest socioeconomic groups. In 2011, the greatest amount of burden was experienced by those in the lowest socioeconomic group...while the lowest burden was experienced by those in the highest socioeconomic group."

⁶⁷ Report entitled, 'Data Report', prepared by Liquor Control Victoria, dated 26 March 2024, page 8.

⁶⁸ LCR Act section 11(3)(aa). See paragraph 10 above.

the Commission, are used primarily as a convenience store within the meaning of section 3.⁶⁹

93. As the Commission has concluded that the grant would, on balance, facilitate a greater risk of alcohol-related harm to the community, it has not been necessary for the Commission to make findings about whether the predominant activity requirement in section 11 is met or if the Premises is a convenience store within the meaning of section 3.

Decision on review

94. Based on the reasons set out above, the Commission is not satisfied that granting the Original Application the subject of the Review Application is appropriate in the current circumstances.
95. The Commission has therefore determined to refuse to grant the Review Application and affirm the Original Decision.
96. Finally, while there has undoubtedly been delay in the delivery of this decision and reasons, the Commission has wanted to ensure a consistent approach is adopted insofar as is reasonably possible with a number of packaged liquor licence applications before the Commission at, or about, the same time as this application.

The preceding 96 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins, Acting Chair, Mr James O'Halloran, Deputy Chair, and Ms Susan Timbs, Commissioner.

⁶⁹ Ibid section 22(1)(c).