

Decision and reasons for decision

In the matter of an application by Kaylene Mexon and Matthew Webster under section 153(1) of the *Liquor Control Reform Act 1998* for an internal review of a delegate's decision to refuse to vary renewable limited licence no. 36156914 for the premises trading as The BBQ Garden located at 37 and 37A Gladstone Street, Glenrowan.

Commission:

Mr John Larkins, Chair

Mr Steven Brnovic, Commissioner

Ms Thu-Trang Tran, Commissioner

Date of Decision:

7 April 2025

Date of Reasons:

15 May 2025

Decision:

The Commission has determined to set aside the decision of the delegate and grant the variation of licence no. 36156914 subject to the conditions set out in Appendix A.

Signed:



John Larkins

Chair

Background

History of Licence

1. On 7 May 2020, Kaylene Mexon and Matthew Webster (**Applicants**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998* (the **LCR Act**)¹ for a renewable limited licence (**2020 Application**) for the premises known as The BBQ Garden located at 37A Gladstone Street, Glenrowan (**Premises**).
2. The 2020 Application was at first instance refused by a delegate of the Commission before being granted by the Commission during an internal review process.
3. The Applicants subsequently applied for further variations to their licence at various dates:
 - (a) On 4 December 2020, a variation was granted to increase the size of the licensed area.
 - (b) On 16 February 2021, a variation was granted to extend the scope of the licence to authorise the sale of liquor for delivery.
 - (c) On 17 May 2022, authorisation to supply liquor bearing the 'Ned Kelly' label produced by 'Top Shelf International' alongside liquor produced in the Victorian tourism region of High Country which was already permitted to be supplied on the Premises, was granted.
4. The Premises operates as a retail store selling local goods and has a restaurant with takeaway and liquor available for purchase and consumption on-premises.

2024 Application

5. On 12 July 2024, the Applicants lodged an application to vary the licence trading hours and supply of liquor range (**2024 Application**).
6. The Applicants sought to vary the trading hours of the licence to the following:

For consumption on the licensed premises

Good Friday

Between 12pm and 11pm

On any other day

Between 10am and 11pm

For Consumption off the licensed premises

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

- On any day other than Good Friday & Christmas Day Between 10am and 11pm
7. The Applicants initially sought to remove the 'Supply of Liquor' condition limiting the supply of liquor produced within the Victorian High Country tourism region and liquor bearing the 'Ned Kelly' label produced by 'Top Shelf International'.
 8. The Applicants amended this application on 14 August 2024 and instead sought to vary the conditions to authorise the sale of all whiskeys for on-premises consumption and maintain the existing limitation for other liquor types.
 9. In accordance with section 33(3), a copy of the application was served on the Chief Commissioner of Police and the local licensing inspector² (together, **Victoria Police**) on Victoria Police on 1 August 2024. On 26 August 2024, Victoria Police advised they did not object to the grant of the application.
 10. On 2 August 2024, the Rural City of Wangaratta (**Council**) informed the Commission that it did not object to the grant of the application but raised the following issues:
 - (a) Uncertainty as to whether a renewable limited licence (**RLL**) was the appropriate licence type given that the licensed Premise's address was used as a restaurant with packaged liquor sales on an ongoing basis.
 - (b) The liquor licence only referred to 37A Gladstone Street however the restaurant was operating at 37 Gladstone Street which is on a separate title allotment.
 11. On 14 August 2024, the Applicants also responded to the Council's comments and stated they had encountered significant challenges with the Council previously therefore they were continuing with their existing licence rather than a general licence.
 12. On 14 August 2024, the Applicants provided a scale and scope submission that summarised that they provide a unique and cultural experience as the only licensed premises in their town which heavily relies on tourism. The Applicants outlined the focus on the customer experience, modest trading hours, limited product offering, capacity constraints, compliance and community responsibility.
 13. On the same date, the Applicants were advised that the proposed conditions were reviewed and not considered to be limited in scale and scope. The Applicants were invited to make further submissions.
 14. The Applicants amended their proposal that they would continue limiting the supply of liquor to liquor produced in Victorian High Country bearing the 'Ned Kelly' label, except for whiskey as they intended to create a whiskey bar for consumption at the Premises.

² As to the meaning of "licensing inspector", see section 3.

15. The Original Application proceeded uncontested.

2024 Decision

16. On 12 November 2024, an authorised delegate of the Commission (**Delegate**) refused the Original Application on the basis that they did not consider the proposed variation to be limited in scale and scope due to the nature of the business being predominantly a restaurant which is also selling packaged liquor (**2024 Decision**).
17. On 13 November 2024, the Applicants responded to the Delegate's Original Decision and highlighted the following matters:
- (a) The Premises is primarily a retail space, rather than a restaurant that provides takeaway rather than a full-service restaurant.
 - (b) The Applicants were willing to reduce the proposed trading hours for on-premises consumption to 12pm to 11pm daily if needed.
 - (c) The whiskey bar would provide tangible benefits to the local economy by promoting regional brands, attracting tourists and creating employment opportunities. Further, the whiskey bar is limited in scale and scope as it is intended solely for on-site consumption and will be available only in a specified and designated section of the Premises.

Application for Internal Review

18. On 20 November 2024, the Applicants lodged an application for internal review of the refusal to grant the variation (**Review Application**). By way of the Review Application, the Applicants sought to vary the trading hours and authorise the sale of whiskeys for on-premises consumption.
19. The Applicants responded to the refusal to vary the licence on 20 November 2024 with the reason for applying for the review as follows:
- (a) The proposed amendments aim to enhance community engagement and promote local tourism without expanding beyond the boutique.
 - (b) The application to authorise all types of whiskey will have economic benefits for their community as the only licensed Premises in the area.
 - (c) The Applicants consider the scale and scope of the Premises to be reasonably limited.
20. On 7 February 2025, the Applicants made an application for a variation of category of licence to a general licence. No planning permit was lodged with the Council as part of

this application as the Applicants seek to rely on the assumption that the planning permit requirement will be removed by 1 July 2025 and will render the process unnecessary. This application is currently in progress and with the licensing division of Liquor Control Victoria. It is not a matter the Commission takes into account for the purposes of this internal review.

21. Despite making this application to vary the category of their licence to a general licence, the Applicants still sought to continue with the internal review process.

Legislation and the Commission's task

The Commission's internal review power

22. 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.
23. The Applicants are considered an eligible person to apply for review of the Original Decision, by way of its Review Application, made pursuant to section 153.
24. 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.³
25. 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;⁴
 - or
 - (b) refuse to grant the Original Application.

Determination of an uncontested application

26. Under the LCR Act, an application for a licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

³ Ibid, section 157(2) to (5).

⁴ Ibid, section 44, 49 and 157.

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).

27. The Original Application is uncontested, as no objections were received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).
28. Pursuant to section 44(2), the Commission may refuse to grant the Original Application on certain grounds, including that:
 - (a) the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated;⁵
 - (b) the granting of the application would be conducive to or encourage harm;⁶ and
 - (c) the application has not been made, displayed, or advertised in accordance with the LCR Act.⁷
29. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.⁸ Factors that may be taken into account in determining whether granting a licence would detract from or be detrimental to the amenity of the area include:
 - (d) *the possibility of nuisance of vandalism;*
 - (e) *the harmony and coherence of the environment;*
 - (f) *any other prescribed matters.*⁹
30. However, the definition of “amenity” for the purposes of the LCR Act is not limited by these factors.¹⁰
31. Section 44(4) provides that, before granting or refusing an uncontested application under subsection (1), the Commission:
 - (a) may have regard to any matter the Commission considers relevant; and
 - (b) may make any enquiries the Commission considers appropriate.

⁵ LCR Act, section 44(2)(b)(i).

⁶ LCR Act, section 44(2)(b)(ii).

⁷ LCR Act, section 44(2)(b)(v).

⁸ LCR Act, section 3A.

⁹ LCR Act, section 3A(2). Until a legislative amendment in 2018, the following factors were also included as evidencing detriment to the amenity of the area: (a) the presence (or absence) of parking facilities; (b) traffic movement and density; (c) noise levels.

¹⁰ LCR Act, section 3A(3).

Exercising the internal review power

32. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review power, 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.
33. The objects of the LCR Act are set out in 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. Further, section 4(2) provides further that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.¹¹

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

¹¹ See further *Kordister Pty Ltd v Direction of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCRA and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

(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;¹² and
 - (b) may consider further information, material or evidence.¹³
37. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to sections 44(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
38. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

Conduct of an inquiry

39. Section 44(4) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate. The Commission is not required to give any person an opportunity to be heard concerning the Review Application.
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

Limited Licences

41. 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.

¹² LCR Act, section 157(2)

¹³ Ibid, section 157(3).

42. 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

43. 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) The Delegate's decision record dated 12 November 2024.
 - (b) The Internal Review Application and accompanying submissions dated 20 November 2024.
 - (c) The Applicants' response to the Delegate's decision dated 13 November 2024.
 - (d) The Applicants' submissions dated 30 January 2025.
 - (e) The Applicants' application for a variation of category of licence dated 7 February 2025.
 - (f) The Applicants' submissions dated 5 March 2025.

Reasons for decision on review

Issues determined on review

44. In making its decision on review, the Commission must determine the following central issues:
- (a) whether the Scale and Scope Requirement is met, and the supply of liquor is limited enough in nature; and
 - (b) whether the grant of a RLL would detract from or be detrimental to the amenity of the area in which the Premises are situated;¹⁴ and
 - (c) lastly, whether the grant of a RLL would be conducive to or encourage harm,⁵¹ or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.¹⁵
45. 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 that is the subject of the Review Application, the Commission must consider the grounds for refusal set out in

¹⁴ LCR Act, sections 44(2)(b)(i).

¹⁵ 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).

the LCR Act, and the objects of the LCR Act, in particular harm minimisation, which is the primary object.¹⁶

46. The key question to be determined by the Commission is whether the Scale and Scope Requirement is met, and the supply of liquor is limited enough in nature and the RLL is therefore the appropriate licence to be granted.

Scale and Scope Requirement

47. As stated at paragraph 44, the Commission may grant an RLL only if satisfied that the Scale and Scope Requirement is met — that is, that the scale and scope of the supply of liquor the subject of the licence is limited in nature.¹⁷
48. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions, the Commission has considered “the nature, location, duration or frequency of hours of operation of the licence in question” as relevant to the Scale and Scope Requirement.¹⁸
49. The Commission considers that the nature of the variation sought by the Applicants is limited to liquor produced within the Victorian tourism region of High Country and bearing the ‘Ned Kelly’ label, produced by ‘Top Shelf International’. The liquor supplied is specific to that area and the range is sufficiently limited.
50. The Commission also considers that the frequency of hours of operation for the supply of liquor is limited. On 13 November 2024, the Applicants also offered to amend their trading hours from 12pm to 11pm daily.
51. Lastly, the Commission considers the duration and range of private functions at the ‘Whiskey Bar’ and the requirement that such functions are pre-booked is limited. In particular, the Applicants must keep a register of any past and/or scheduled pre-booked function. These functions will not be open to the public and will be limited to 25 people.
52. Consequently, the Commission is satisfied that the Scale and Scope Requirement is met.

¹⁶ LCR Act, sections 4 and 172D(3).

¹⁷ LCR Act, section 26(1).

¹⁸ See decision of *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-Internal Review)* [2016] VCGLR 19, [61].

Amenity

53. The Commission must also determine whether the variation of the licence would detract from or be detrimental to the amenity of the area in which the Premises are located, which may give rise to a ground of refusal under section 44(2).
54. The Commission notes that the Applicants' current licence has a condition regarding amenity and there have been no issues with amenity in the Applicants' previous trading history.
55. The Commission also notes that Victoria Police and the Council did not object to the Original Application. The Commission did not receive any objections from the general public.
56. Based on the nature of the Premises and the limited scope of the permit granted by the Council, the Commission is satisfied that, on balance, the variation of the RLL subject to the amenity conditions detailed in Appendix A would not detract from or be detrimental to the amenity of the area.

Harm

57. Although the Commission is satisfied that no grounds for refusal exist under section 44(2), the Commission must exercise its discretion whether or not to grant the proposed RLL with regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
58. An application may be refused if granting the application would be conducive to or encourage the misuse or abuse of alcohol. Victoria Police did not raise any concerns in this regard, nor did the Council.
59. The Commission considers that in all circumstances, given the limitations on the supply of liquor specifically proposed in Appendix A, that the risk of harm would be minimal. The Commission also notes that the requirement for service of food with the supply of alcohol also assists in the responsible service of alcohol and the minimising of the risk of harm.
60. Private functions to be hosted at the 'Whiskey Bar' (a dedicated section of the Premises as set out in Appendix A) will also be limited and not conducive to harm due to their pre-booked nature and limited patron numbers. These functions are to showcase selected whiskeys in a curated nature rather than as a bar. Further, these functions will not be

open to the public and whiskey will otherwise not be available for purchase to the general public.

61. Due to the above reasons, the Commission does not consider that granting an RLL would be conducive to or encourage harm.
62. With the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls will exist over the supply of liquor and that any harm should be minimised. Accordingly, the Commission considers that the grant of a RLL in this instance would not be contrary to the LCR Act's object concerning harm minimisation.

Updating the addresses on the licence for the Premises

63. On the issue of the liquor licence only referring to 37A Gladstone Street, the Commission has determined to update the licence to note both 37 and 37A Gladstone Street addresses.

Decision on review

64. Based on the reasons set out above, the Commission is satisfied that, subject to the conditions set out in Appendix A herein, the variation of the licence is appropriate in the circumstances.

The preceding 64 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Chair), Mr Steven Brnovic (Commissioner) and Ms Thu-Trang Tran (Commissioner).

Appendix A – Licence No. 36156914 – 37 and 37A

Gladstone Street, Glenrowan

General information

Any reference to the Liquor Regulator below is a reference to the Victorian Liquor Commission, or any successor statutory office, body or officer however named, under the *Liquor Control Reform Act 1998 (LCR Act)* or successor legislation, that has powers and carries out regulatory functions equivalent to the Victorian Liquor Commission.

Type of licence

This licence is a renewable limited licence and subject to the conditions specified in this licence 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 will 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 by this licence.

Delivery of Liquor

Liquor must be delivered to a person aged 18 or over. The licensee must ensure that delivery arrangements include requiring evidence of age where appropriate.

Liquor must not be delivered and left at unoccupied premises on same day the order is received.

Liquor may only be delivered during the following hours:

- between 10 a.m. and 11 p.m. on any day other than Good Friday, ANZAC Day or Christmas Day
- between 12 noon and 11 p.m. on ANZAC Day
- No deliveries are permitted on Christmas Day or Good Friday

Information required to be displayed on website/s

The following notice must be prominently displayed on the licensee's website/s:

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 \$17,000)
- For a person under the age of 18 years to purchase or receive liquor (Penalty exceeds \$700)

The licensee is required to prominently display the number of this licence on the website

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.thebbqgarden.com.au
- shop.thebbqgarden.com.au

Supply of Liquor

The supply of liquor is limited to liquor produced within the Victorian tourism region of High Country and liquor bearing the 'Ned Kelly' label, produced by 'Top Shelf International'.

The quantity supplied for off-premises consumption must not exceed more than 2x750ml bottles of wine, 1x750ml bottle of spirits or 12 containers (not more than 375ml per container) of beer, cider or pre-mixed spirits, or a combination of 1x750ml bottle of wine and 6 containers (not more than 375ml per container) of beer, cider or pre-mixed spirits, per transaction. Whiskey will be available for on-premises consumption at Pre-booked Functions only as detailed below.

Patron capacity for the licensed area

100

Trading hours

Off-premises consumption

Good Friday and Christmas Day	No trade
Monday to Sunday	Between 10am and 11pm

On-premises consumption

Good Friday	Between 12pm and 11pm
Any Victorian or NSW Public Holiday and during Victorian and NSW School Holidays	Between 11:30am and 11pm
Any other Friday, Saturday or Sunday	Between 11:30am and 10pm

For consumption on and off the licensed premises

Where ANZAC Day falls within the trading periods above, trade in the supply of liquor must not commence before 12 noon and must cease no later than the finishing times specified above.

Pre-booked Functions

The licensee may host pre-booked functions showcasing whiskey selections during private whiskey paired dinners and industry events at the licensed premises.

The range of liquor at these pre-booked functions will be limited to whiskey.

Any function/event must be pre-booked and limited to 25 people and confined to a dedicated section of the licensed premises (the 'Whiskey Bar') for the exclusive use of persons who booked the function.

The licensee must keep a register of any pre-booked function (past and/or scheduled) which will be available to a member of Victoria Police or the Liquor Regulator upon request. The register is to include:

- the date that any booking was made
- the date that any function took place
- details as to who made the booking
- total number of attendees for the function.

For the avoidance of any doubt, a pre-booked function under this licence is not a public event, open to and attended by the general public.

Availability of Food

Food must be available for purchase at all times that liquor is being supplied.