



Decision and reasons for decision

In the matter of an application by CLFD Nominees Pty Ltd made on 28 January 2025 under section 153(1) of the *Liquor Control Reform Act 1998* for an internal review of a delegate's decision to refuse an application for a renewable limited licence, for the premises trading as Neighbourhood, located at 82 Sutton Street, Warragul.

Commission: Mr John Larkins, Chair

Mr James O'Halloran, Deputy Chair

Ms Thu-Trang Tran, Commissioner

Date of Decision: 31 March 2025

Date of Reasons: 6 May 2025

Decision: The Commission has determined to set aside the

decision of the delegate and in substitution, grant another licence instead namely, a temporary limited licence subject to the conditions as set out

in Appendix A.

John Larkins

Chair

Signed:

Liquor Control Victoria



Background

Original Application

- On 27 February 2024, CLFD Nominees Pty Ltd (Applicant) applied to the Victorian Liquor Commission (Commission) under the Liquor Control Reform Act 1998 (the LCR Act)¹ for a renewable limited licence (RLL) in respect to premises located at 82 Sutton Street, Warragul, trading as Neighbourhood (Original Application).
- 2. There are four directors of the Applicant, the main contact for the application is noted as director, Declan Flannery. The four directors of the Applicant are also owners and operators of other licensed venues.
- 3. The Applicant was initially represented by Martin Towey of LGS Legal at the time the Original Application was made.
- 4. Neighbourhood (**Premises**) primarily operates as a cafe serving breakfast and lunch items. The Applicant does not currently hold any liquor licence.
- 5. The Applicant applied to the Commission for a RLL to permit the sale of liquor in open containers for on-premises consumption.
- 6. In the Original Application, the trading hours sought included Monday to Thursday, but this was amended via email correspondence from the Applicant on 25 March 2024 to reflect the following:

Friday, Saturday, Public holidays:

Anzac Day and Good Friday:

Between 10am and 11pm

Between 12pm and 11pm

Between 10am and 6pm

- 7. The maximum patron capacity specified in the application is 75 (50 inside, 25 outside).
- 8. The supply of liquor is proposed to be limited to no more than 15 lines of liquor constituting 3 beers, 9 wines, and 3 premixed drinks or cocktails.
- 9. In accordance with section 33, a copy of the Original Application was served on the Chief Commissioner of Police and the local licensing inspector² (together, Victoria Police) and the Baw Baw Shire Council (Council) on 20 August 2024. On 13 September 2024, Victoria Police informed the Commission that it did not object to the grant of the application.

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.





- 10. The Baw Baw Shire Council objected to the grant of a RLL on 20 September 2024.

 The Council objected on the basis that the RLL would be exempt from a planning permit. The Council objected to the issuance of the RLL as they did not consider it the appropriate licence for a premises operating primarily as a food and drink premises.
- 11. On 24 October 2024, the Council advised they did **not** object to the issuance of the RLL however continued to question the appropriateness of the RLL over a restaurant and cafe licence which would require a planning permit.
- 12. The Applicant provided scale and scope submissions on 30 September 2024, which included the following:³
 - (a) In summary, a RLL was applied for over a restaurant and cafe licence due to the time factor being significant in the local shire dealing with planning applications and the planning permit application being costly when the offering of liquor is so minimal that that it may not be worth the effort.
 - (b) The Applicant referred to two other limited licences, No. 36169771 trading as Clocks at Flinders Street Station and No. 36021232 trading as Caulfield Racecourse. The Applicant submitted that the proposed trading hours were less than these two licences.
 - (c) There would be a limited range of alcohol with food available for purchase at all times that liquor is being supplied, noting that patrons may be supplied liquor without food.
- 13. On 17 January 2025, an authorised delegate of the Commission (**Delegate**) assessed the Original Application and refused it (**Original Decision**).
- 14. The Delegate considered section 26(1) of the LCR Act which requires the limited licence to be limited in scale and scope. The Delegate did not consider a cafe for 75 people, operating 44 hours a week (more on public holidays), selling 15 lines of liquor to people who may not be having meals, to be limited in scope. The Delegate also flagged that the other licences the Applicant referred to were not appropriately relevant.
- 15. The Delegate was of the view that the Original Application was not sufficiently limited and should not be granted for the Applicant to circumvent the planning process. The Delegate suggested a more appropriate licence is a restaurant and cafe licence to authorise the Applicant to supply liquor for consumption on the Premises.

³ As to the scale and scope requirement for a RLL, see [52] below. Victorian Liquor Commission Liquor Control Victoria

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Application for Internal Review

- 16. On 28 January 2025, the Applicant filed an application with the Commission for an internal review of the Original Decision (Review Application) to refuse to grant the RLL in accordance with section 153 of the LCR Act.
- 17. In the Review Application, the Applicant sought to have the Delegate's decision set aside and the Commission grant the application for a RLL for the Premises.
- 18. On 21 February 2025, the Commission invited the Applicant to make any further submissions in respect to the trading hours and proposed licence conditions.
- 19. On 26 February 2025, the Applicant advised that the Premises is currently open for trade at least 69 hours a week and they seek to only be licensed to supply liquor for approximately 37 hours of these, therefore the Applicant argued that the conditions were sufficiently limited. The Applicant advised they are seeking to open for night trade and events such as 'dinner & wine nights' and occasional private functions.
- 20. The Applicant sought to change the proposed trading hours for service of liquor to the following:

Thursday Between 11am and 4pm
Friday and Saturday Between 11am and 11pm
Sunday Between 10am and 6pm
Public Holidays Between 10am and 6pm

- 21. On 3 March 2025, the Commission advised the Applicant that it will hold a hearing on 20 March 2025 and invited the Applicant to put forth any further submissions or relevant material. The Commission raised that the trading hours sought did not differ significantly from those trading under a restaurant and cafe licence.
- 22. The Commission noted that, as of 4 March 2025, Mr Towey advised he was no longer acting on the Applicant's behalf.
- 23. The Commission also requested that the Applicant provide a video tour of the Premises showing the entire premises and entry points, explaining how the area would be used with reference to the red line plan and an overview of the external premises and neighbouring buildings and streets.

Hearing

24. A hearing was held at the Commission on 20 March 2025 in relation to the Review Application (**Hearing**).

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- 25. Mr Declan Flannery, a director of the Applicant, gave oral evidence in support of the Review Application.
- 26. In the Hearing, Mr Flannery gave evidence to the Commission to the effect that:
 - (a) The Applicant's directors operate and own multiple licensed venues in Warragul that are very busy on the weekends. To encourage staff to stay in Warragul to work at these other venues, the Applicant opened the Premises to provide work throughout the weekdays when the other venues were quiet. The Applicant employs over 80 employees throughout the venues.
 - (b) The Premises was not receiving enough revenue through the sale of food alone so the Applicant decided to apply for the liquor licence in order to bring in another revenue stream. The Applicant would also like to expand to night-time trade and open for private functions which they have received requests for.
 - (c) Currently, the coffee-only takeaway service makes up 40% of their business.
 - (d) There is a wide demographic of customers at the venue including mothers following school drop off or pick up on the weekdays, and youth and senior customers on the weekends.
 - (e) The Premises would like to broaden their theme of an Italian eatery and provide both Australian and Italian wines.
 - (f) The Premises was newly renovated in January 2024 and officially opened in March 2024 with new flooring and acoustic cushions on the ceiling.
 - (g) The Premises currently plays background music when trading.
 - (h) Mr Flannery stated that he is aware of all the neighbours in the area surrounding the Premises and he does not intend to operate in any way that disturbs their amenity.
- 27. The Commission considered there may be a need for the Council and residents to have a further opportunity to provide their feedback about the proposed later night trading hours and music at the Premises.
- 28. The Commission raised with Mr Flannery the possible suitability of a temporary limited licence rather than a RLL.⁴ The temporary licence is normally considered lower risk than a RLL as it is for a fixed period and cannot be renewed. The Commission invited the Applicant to rearticulate his minimum position for the next 12 months for a potential





- temporary limited licence. The temporary licence may assist the Applicant to determine what permanent licence may be most appropriate in the long term.
- 29. The Commission set out non-negotiable licence conditions including that food must be available for purchase with liquor, any music (including during functions) remains at background level, and that the number of functions do not exceed more than 15 per year.

Applicant's Submissions dated 24 March 2025

- 30. In accordance with the Commission's request, the Applicant made the following submissions in relation to a potential temporary limited licence:
 - (a) Trading hours

Friday

Saturday

Between 4pm and 10pm

Between 12pm and 10pm

Between 12pm and 3pm

Between 12pm and 3pm

Between 12pm and 3pm

Between 12pm and 3pm

Between 6pm and 10pm

- (b) A limit of 10 pre-booked private functions per year to be held between 6pm and 10pm and between October and March.
- (c) Only background music will be played with nothing above background noise level.
- (d) Range of liquor limited to 5 lines of wine, 3 lines of beer/cider, 2 lines of cocktails/prebatched mixed drinks. An extra unit for sparkling wine at pre-booked functions only was also requested.
- 31. The Applicant also provided further information about the directors of the Applicant which indicated their extensive hospitality background. Mr Flannery's experience constituted 30 years of experience and currently overseeing other licensed venues such as being a director of other licensed premises trading as Bank Hotel Warragul, Commercial Hotel, Neighbourhood Cafe and Newborough Hotel.

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Legislation and the Commission's task

The Commission's internal review power

- 32. 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.
- 33. The Applicant is considered an eligible person to apply for review of the Original Decision, by way of its Review Application, made pursuant to section 153.
- 34. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
 - (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.⁵
- 35. 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;⁶ or
 - (b) refuse to grant the Original Application.

Determination of an uncontested application

- 36. 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:

 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).
- 37. 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).
- 38. Pursuant to section 44(2), the Commission may refuse to grant the Original Application on certain grounds, including that:

⁵ LCR Act, section 157(2) to (5)

⁶ Ibid, sections 44, 49 and 157. **Victorian Liquor Commission**

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- (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;⁷
- (b) the granting of the application would be conducive to or encourage harm;8 and
- (c) the application has not been made, displayed, or advertised in accordance with the LCR Act.⁹
- 39. 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. 10 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. 11
- 40. However, the definition of "amenity" for the purposes of the LCR Act is not limited by these factors. 12
- 41. 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.

Exercising the internal review power

- 42. 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.
- 43. 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

⁷ LCR Act, section 44(2)(b)(i).

⁸ LCR Act, section 44(2)(b)(ii).

⁹ LCR Act, section 44(2)(b)(v).

¹⁰ LCR Act, section 3A.

¹¹ 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.

¹² LCR Act, section 3A(3).

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- (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.
- 44. 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 and the risks associated with the misuse and abuse of alcohol. ¹³

45. 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.
- 46. In exercising the internal review power, the Commission:
 - (a) must consider all the information, material and evidence before the original decision maker;¹⁴ and

¹³ 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).

¹⁴ LCR Act, section 157(2)

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- (b) may consider further information, material or evidence. 15
- 47. 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.
- 48. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

Conduct of an inquiry

- 49. 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.
- 50. 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

- 51. A limited licence may be a temporary limited licence or a RLL. Pursuant to section 14(1B), a 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.
- 52. 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

53. 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 Original Decision and Reasons of the Delegate dated 17 January 2025; and

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- (b) the Review Application dated 28 January 2025; and
- (c) email from Declan Flannery dated 26 February 2025; and
- (d) video tour of the Premises dated 11 March 2025.

Reasons for decision on review

Issues for determination on review

- 54. In making its decision on review, the Commission must determine the following central issues:
 - (a) firstly, whether there is a more appropriate alternative licence category over the RLL and whether the Scale and Scope Requirement is met;
 - (b) whether the grant of a licence would detract from or be detrimental to the amenity of the area in which the Premises are situated; 16 and
 - (c) lastly, whether the grant of a licence would be conducive to or encourage harm or be contrary to the objects of the LCR Act, particularly the object of harm minimisation.¹⁷
- 55. 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 the LCR Act, and the objects of the LCR Act, in particular harm minimisation, which is the primary object.¹⁸
- 56. 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 the appropriate licence to be granted.

¹⁶ LCR Act, sections 44(2)(b)(i).

¹⁷ 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).

¹⁸ LCR Act, sections 4 and 172D(3).

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Alternative licence and Scale and Scope Requirement

- The Commission has power under section 158(2) to grant a different licence than that originally applied for where the Original Decision was a refusal to grant a liquor licence which is the case in this proceeding.
- 58. Section 14 provides that a limited licence "authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence". However, unlike other categories of licences, limited licences are subject to the additional restriction found at section 26 in that the Commission may only grant a limited licence if satisfied the Scale and Scope Requirement is met.
- 59. 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.¹⁹
- The Applicant indicated that they originally applied for the RLL on the basis that they 60. wanted to gauge whether the supply of liquor would be worth the time and cost of a more permanent licence at a later date. Subsequently, the Delegate refused the application in the Original Decision.
- At the Hearing, the Commission engaged in a discussion with the Applicant regarding the potential suitability of an alternative licence category. In summary, the Applicant gave evidence to the effect that:
 - (a) The premises would only sit a maximum of 75 patrons, 50 inside and 25 outside.
 - (b) The liquor supplied at the premises would consist of wine, beer and premixed drinks/cocktails. Other spirits outside of cocktails would not be served.
 - (c) There would be no liquor for sale for off-premises consumption, nor would it be taking any orders for liquor takeaway.
 - (d) There would always be food available for order.
- 62. The Commission considers that the supply described above sought by the Applicant is limited in scale and scope. In particular, the Commission notes that the hours of supply are more limited than any ordinary trading hours as defined at section 3(1) or as sought

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





- in the Original Application, and that food will be available at all times when liquor is available for supply.
- 63. Further, what is now sought and will be permitted is a relatively modest and restricted licence operation. The Applicant and Premises will be, in effect, on a form of probation for the period of the temporary licence assuming that it is intended to apply for a permanent and potentially expanded licence in the future. The Applicant indicated in their submissions that they were not certain whether liquor will be popular amongst patrons. A temporary licence provides the Applicant with a 12-month period to determine if and what supply of liquor is appropriate for the business needs. This also provides an additional safeguard against any irresponsible conduct of the temporary licence and an opportunity for those involved to demonstrate their competence in the operation of the licence at the Premises over that period.
- 64. Consequently, the Commission is satisfied that the Scale and Scope Requirement is met.

Amenity

- 65. The Commission must also determine whether the grant of a temporary limited liquor 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).
- 66. The Commission Chair visited the premises and the area on 28 March 2025. This confirmed not only the quality of the cafe as built but also the potential amenity impacts on what is otherwise a relatively pristine residential area, should the cafe be operated in any way irresponsibly. The latter factor also assists to justify a cautious 'crawl before you walk' approach to the introduction of a liquor licence to the area, with the grant of a limited licence that is temporary and subject to conditions in Appendix A.
- 67. However, the Commission notes the Applicant's evidence that the Premises would not have loud music and at no times in ordinary trading hours or during private functions would the music exceed a background level. There would be no live music at the Premises.
- 68. Furthermore, the external maximum patron capacity is strictly 25 patrons to minimise noise travelling to the nearby residences and the Applicant has no intention to extend the external space or expand the Premises.

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- 69. The Commission notes that Victoria Police did not object to the Original Application and the Council's original objection, which was later withdrawn, did not relate to amenity. The Commission did not receive any objections from the general public.
- 70. 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 grant of a temporary limited licence subject to the amenity conditions detailed in Appendix A would not detract from or be detrimental to the amenity of the area.

Harm

- 71. 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.
- 72. 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.
- 73. The Commission further notes that the Applicant has completed the RSA program and has substantial experience in operating and managing other licensed venues.
- 74. Due to the above reasons, the Commission does not consider that granting a temporary limited licence would be conducive to or encourage harm.

Objects of the LCR Act

- 75. 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 temporary limited licence by the Commission with regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
- 76. 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 temporary limited licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.
- 77. Further, the Commission considers that granting the temporary limited licence would facilitate the development of a diversity of licensed facilities reflecting community expectations in furtherance of the object outlined in section 4(1)(b).





Decision on review

78. Having regard to all the matters set out above, the Commission has determined to set aside the decision of the Delegate and to exercise its discretion under section 158(2) to grant a temporary limited licence subject to the conditions set out in Appendix A.

The preceding 78 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Chair), Mr James O'Halloran (Deputy Chair) and Ms Thu-Trang Tran (Commissioner).

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Appendix A

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 temporary limited licence and authorises the licensee to supply liquor on the licenced premises for consumption on the licenced premises during the trading hours specified below.

Noise and 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 by this licence.

The licensee must not permit at any time the playing of any live or recorded music on the premises at higher than background music level as defined in section 9A(5) of the LCR Act.

Supply of liquor

The supply of liquor shall be limited to no more than 5 lines of wines, 3 lines of beer, and 2 lines of prebatched cocktails.

Sparkling wine may be provided for private pre-booked functions only.

Liquor may not be removed from the licenced premises.

Provision of food

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

Events and Functions

Up to 10 private pre-booked functions may be held at the premises per calendar year.

Private functions will be held between 6pm and 10pm, from October to March.

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The supply of liquor for private functions is limited to beer, wine, soft drinks, and sparkling wine as specified above.

The licensee will keep a register of scheduled events that will be made available for viewing by a member of Victoria Police or the Liquor Regulator upon request.

Maximum Patron Capacity

Internal 50 patrons
External 25 patrons
Overall maximum 75 patrons

Period of licence

This licence has effect and continues in force from 31 March 2025 until 31 March 2026, during the trading hours specified below.

Trading hours

Friday Between 4pm and 10pm

Saturday Between 12pm and 10pm

Sunday Between 12pm and 3pm

Public Holiday Between 12pm and 3pm

Eve of a Public Holiday Between 6pm and 10pm