

Decision and reasons for decision

In the matter of applications under section 153 of the *Liquor Control Reform Act 1998* by Footbridge Mini Golf Pty Ltd for internal review of a decision by a delegate to:

- 1) grant in part an application for an on-premises licence; and
- 2) refuse to grant an application for a permanent underage authority

for the premises trading as Footbridge Mini Golf, located at 547-549 The Esplanade, Lakes Entrance.

Commission:

Mr John Larkins, Deputy Chair
Ms Susan Timbs, Commissioner
Mr Steven Brnovic, Commissioner

Appearances:

Mr Rob Steane with Ms Karen Street of LiqCon Pty Ltd, for the Licensee
Mr Michael Majewski, Counsel Assisting the Commission

Date of Hearing:

21 August 2023

Date of Decision:

17 January 2024

Date of Reasons:

17 January 2024

Decision:

The Commission has determined to:

- 1) vary the decision of the delegate and grant in part the application for an on-premises licence, subject to the conditions set out in Appendix A; and
- 2) affirm the decision of the delegate to refuse an application for a permanent underage authority.

Signed:



John Larkins
Deputy Chair

Background

The Original Applications

1. On 14 December 2022, Footbridge Mini Golf Pty Ltd (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) for an on-premises licence under the *Liquor Control Reform Act 1998* (**LCR Act**)¹ to supply liquor at the premises located at 547-549 The Esplanade, Lakes Entrance (**Premises**), trading as Footbridge Mini Golf. In conjunction, the Licensee also lodged an application for a permanent approval to permit underage persons on a licensed premises under section 120 (**Permanent Underage Authority**) (collectively the **Original Applications**).
2. As part of the Original Applications, the Licensee sought to supply liquor to its customers for on-premises consumption whilst playing mini golf.
3. The proposed licensed premises on the red line plan included the retail services area (the **RS area**), the indoor mini golf course, and the outdoor mini golf course.
4. The Licensee sought the following trading hours:
 - Sunday – Between 10am and 11pm
 - Good Friday and ANZAC Day – Between 12 noon and 11pm
 - On any other day – Between 9am and 11pm
5. On 14 December 2022, in accordance with section 33, a delegate of the Commission (**Delegate**) provided copies of the Original Applications to the Chief Commissioner of Police (**Victoria Police**) and to East Gippsland Shire Council (**Council**).
6. On 17 January 2023, Ms Karen Street of LiqCon Pty Ltd (**LiqCon**, the Licensee's representative) provided submissions in support of the Licensee's application for a Permanent Underage Authority stating that (in summary):
 - a) Most patrons that attend and use the Premises are of mixed ages, including unaccompanied minors.
 - b) The purpose of the Permanent Underage Authority is "largely for the minors who will wish to attend the [P]remises for the purposes of playing mini golf and purchasing items from the café and retail space, so that they can do so legally without being in the company of an adult/person over 18 years of age".
 - c) The Licensee considers that the grant of the Permanent Underage Authority would not present a specific risk of supply of liquor to a person under the age of 18 years due to its existing procedures and additional ones that it will put in place, including:

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

- i. strict house rules for all customers, including “upon booking all customers acknowledge conditions of entry which stipulate the behaviour expectations [...] of the [P]remises”;
 - ii. required Liquor Licence and Safe Service of Liquor signage will be displayed (including signage stating “*Do Not attempt to buy alcohol for Under 18’s*”);
 - iii. managing minors in line with RSA principles, including ensuring that all employees are RSA-trained, checking the identification of those customers who look under 25 years of age, and refusing supply of alcohol if identification cannot be produced;
 - iv. having a responsible person on duty at all times to observe customers and be “vigilant with the potential of secondary supply to minors”;
 - v. CCTV to be installed throughout the red-lined area “so that service can be monitored at all times”; and
 - vi. additional staff will be onsite to manage customers, especially during peak time periods on Friday and Saturday nights and during the tourist season.
7. On 23 January 2023, the Delegate requested that the Licensee provides additional details as to why it would be appropriate to licence the Premises given the terms of section 22 of the LCR Act (which, for present purposes, relates to premises intended by the occupier to be primarily used by minors) in circumstances where the Premises includes a lolly shop and ice cream parlour which is intended for children. The Delegate advised that “even if the minors are accompanied with a parent, this does not cancel out that the [P]remises is one which is intended to be used by minors”.
8. On 30 January 2023, Ms Street responded to the Delegate on behalf of the Licensee, submitting that the Premises is enjoyed by “mostly families which include accompanied minors, as well as adult groups and some unaccompanied minor groups” and that the Premises is “not primarily [enjoyed] by people under the age of 18”. In addition, Ms Street submitted that the supply of liquor at the Premises is “highly unlikely to lead to the misuse of alcohol, as it is only a supplementary service on offer [...], for example for the adults and parents to partake in a beverage while playing mini golf or watching their family play”. Ms Street also submitted that the Licensee does not intend to have patrons consuming liquor where the lolly shop is located, but that liquor purchases occur adjacent to this area at a central point of sale, where lollies, ice cream and coffee may also be purchased (**Point of Sale**).
9. The Commission will consider the application of section 22 to the Premises in more detail below.
10. On 1 February 2023, Victoria Police submitted an objection to the Original Applications on the grounds that the grant of the on-premises licence endorsed with a Permanent Underage Authority until 1am:

- a) would be conducive to or encourage harms due to a lack of sufficient controls to ensure that unsupervised underage persons do not consume liquor on the Premises and are not unduly influenced in adult drinking environments; and
 - b) would be inconsistent with current community standards, the responsible development of the liquor industry and the prevention of harms.
11. However, Victoria Police offered to withdraw its objection if the Licensee agreed to amend its application for a Permanent Underage Authority to operate until 8pm.
12. On 2 February 2023, the Delegate notified Ms Street of this conditional objection. However, the Delegate also advised Ms Street that, since they considered the Premises is primarily used by patrons under the age of 18, they were not satisfied to grant a Permanent Underage Authority. The Delegate advised Ms Street that the Original Applications would need to be amended, removing any areas that were intended to be used by unaccompanied minors, such as the lolly shop, ice cream parlour and the mini golf courses.
13. On 2 February 2023, Ms Street (on behalf of the Licensee) accepted the condition requested by Victoria Police, and agreed to amend its application for a Permanent Underage Authority to operate until 8pm. Ms Street also made the following submissions on behalf of the Licensee in response to the Delegate's concerns:
- a) the percentage of unaccompanied minors "is actually quite low in comparison to that of accompanied minors who are allowed to be on the [Premises] with a responsible adult";
 - b) the Commission has previously granted a Permanent Underage Authority to licensed premises with mini golf facilities;² and
 - c) the Licensee can limit the licensed premises to exclude the lolly shop, but still wishes to licence the rest of the Premises "so that adults can partake in an alcoholic beverage whilst playing mini golf".
14. On 7 February 2023, Ms Street forwarded a copy of the revised red line plan on behalf of the Licensee. The revised plan excluded the front entry ramps and the lolly shop from the licensed premises.
15. On 3 March 2023, the Delegate requested the following information from the Licensee:
- a) how the Licensee's staff will feasibly monitor the Premises, noting that it is approximately 70m x 30m in size;
 - b) whether the Licensee will employ additional staff when liquor is being supplied in the mini golf areas;

² Ms Street forwarded copies of liquor licences for premises trading as Holey Moley (On-Premises Licence No. 32276160); Holey Moley Crown (Late Night (On-Premises) Licence No. 32351897); and Birdies Mini Golf Bar (On-Premises Licence No. 32365545).

- c) what are the Licensee's reasons for seeking to licence the mini golf areas;
 - d) whether the Licensee would consider excluding the mini golf areas from the licensed premises; and
 - e) whether the Licensee considers there are any conditions that should be endorsed on the licence to reduce the risks in licensing the mini golf areas.
16. On 6 March 2023, Ms Street responded to the Delegate's queries on behalf of the Licensee, largely by repeating her previous submissions (see paragraphs 6 and 8 above), and adding that:
- a) there is already an RSA-certified "responsible person" employed by the Licensee, who roves the Premises observing customers to ensure their safety;
 - b) CCTV cameras are already installed and their monitoring "occurs continually throughout daily operations". Ms Street submitted that the Licensee would be happy to have this endorsed as a condition of the licence;
 - c) the Licensee does not intend to have the Premises operate as a stand-alone bar, and liquor will always be a supplementary offer to those that are participating in mini golf activities;
 - d) the Licensee is contributing to facilitating a diverse licensed facility in the community in accordance with the objects of LCR Act,³ noting that there have been numerous customer requests for the possibility of an alcoholic drink while participating in a mini golf activity; and
 - e) the Licensee does not wish to exclude the mini golf areas from the red line plan.
17. On 11 April 2023, the Delegate granted the application for the on-premises licence in part (Licence no. 32372893) (**Licence**) but refused the Licensee's application for a Permanent Underage Authority (**Original Decision**).

Reduction in licensed area

18. The Delegate was satisfied that the café, bar and mini golf viewing areas (i.e., the RS area, except the lolly shop) could be adequately monitored by staff. However, due to the size of the mini golf courses, the Delegate was not satisfied that a staff member roving the premises and monitoring patrons via CCTV were sufficient measures to reduce the risk of minors being exposed to liquor, including engaging in secondary supply of liquor. As a result, the Delegate excluded the mini golf courses from licensed premises.
19. In addition, at the direction of the Licensee, the Delegate included a special condition ensuring that the licensee retains CCTV monitoring on the Premises.

³ Section 4(1)(b).

Refusal of Permanent Underage Authority

20. Concurrently with the partial grant of the Licence, the Delegate refused the Licensee's application for a Permanent Underage Authority to ensure that minors are always accompanied by a responsible adult.
21. While accepting the Licensee's contention that the Premises was not primarily used by minors, the Delegate considered that it was "undeniable that minors make up a large proportion" of the Licensee's customers. In addition, the Delegate considered that "the business is designed to be enjoyed and participated in by minors".
22. The Delegate further considered that the Licensee's strategies to manage minors on the Premises as described in Ms Street's submissions (see paragraphs 6, 8 and 16 above) were "the minimum requirements set out by the [LCR Act]". These included requesting identification for patrons who look under 25 years old, following RSA principles, and having a responsible person observe patrons on site. The Delegate was not satisfied that the proposed strategies were adequate in mitigating the inherent risks associated with allowing unaccompanied minors on a licensed premises.

Applications for Internal Review

23. On 18 April 2023, the Licensee applied to the Commission for review of the Original Decision (**Review Applications**), with Ms Street submitting on behalf of the Licensee that the Delegate "failed to recognise the nature of the business operation to the fullest extent and the ancillary nature of alcohol sales at the business".
24. On 22 May 2023, Victoria Police submitted an objection to the Review Applications. It later clarified that, should the Licensee no longer seek that the Permanent Underage Authority last until 1am, it would not object to the Review Applications.
25. On 7 August 2023, Ms Street submitted on behalf of the Licensee that it sought a Permanent Underage Authority only until 8pm. On that basis, Victoria Police withdrew its objection.
26. On 11 August 2023, Ms Street submitted a Venue Management Plan for the Premises, dated 7 August 2023 (**VMP**). The VMP states the following:

This plan was produced by LiqCon Pty Ltd as a generic plan, to be used as a resource to fully develop a Venue Management Plan for management and staff of a licensed premises.

The Commission's internal review power

27. Division 2 of Part 9 governs internal review applications. Under section 152, the Original Decision is a reviewable decision, and the Licensee is an eligible person to apply for the review of that decision. The Review Applications were made pursuant to section 153.
28. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Applications is to make a fresh decision that:
- affirms or varies the reviewable decision; or
 - sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁴
29. Under the LCR Act, an application for an on-premises licence may be contested or uncontested. Pursuant to section 3(1), a contested application is defined to include:
- An application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are 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).*
30. Pursuant to section 43, an objector may withdraw their objection at any time. As Victoria Police has withdrawn its objection, the Review Applications proceeded uncontested.
31. 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 Applications. In this case, the Commission either has to:
- grant the Original Applications and, if so, whether to do so subject to conditions;⁵ or
 - refuse to grant the Original Applications.⁶

Determination of an uncontested application

32. 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).*
33. Section 44(2) empowers the Commission to refuse to grant the Review Applications on various grounds, including that granting of an application would be conducive to or encourage harm.⁷

⁴ Sections 157(2)-(5) further prescribe the manner in which the Commission is to undertake internal reviews.

⁵ Sections 44, 49 and 157.

⁶ Sections 44 and 157.

⁷ Section 44(2)(b)(ii).

Conduct of an Inquiry

34. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.
35. Section 172W(3) provides that the Commission is not bound by the rules of evidence, but may inform itself in any way it thinks fit, and is bound the rules of natural justice.

Exercising the internal review power

36. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1):

(a) to contribute to minimising harm including by—

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

(b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and

(c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and

(d) to regulate licensed premises that provide sexually explicit entertainment.

37. Section 4(2) further provides that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation.⁸

38. Section 3(1) defines 'harm' as follows:

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

- (a) harm to minors, vulnerable persons or communities, including groups within communities; and*

⁸ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**), 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).

- (b) *family violence; and*
- (c) *anti-social behaviour, including behaviour that causes personal injury or property damage.*

39. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application was ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
40. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.

Other sections of the LCR Act relevant to this matter

Section 120 Permanent Underage Authority

41. Section 120(1) provides that a licensee is guilty of an offence if a person under the age of 18 years is on a licensed premises or any authorised premises and is not in the company of a responsible adult.
42. Section 120(2)(e) provides an exception to the offence, providing that it does not apply to the presence on licensed premises or authorised premises of a person under the age of 18 years in accordance with the approval of the Commission and any conditions to which that approval is subject.
43. Section 120(3) provides that, if the Commission grants or revokes an approval for the purposes of subsection (2)(e), the Commission must cause the licence or permit to be endorsed accordingly.

Section 9 Authorised Premises

44. Pursuant to section 9(1)(b), the Commission may approve an on-premises licensee to supply liquor on any other premises authorised by the Commission and specified in the licence for consumption on those premises.

Section 22 Restrictions on Grants of Licenses and BYO Permits

45. Section 22(1)(ca) provides that the Commission must not grant a licence or BYO permit in respect of premises that, in the opinion of the Commission, are intended by the occupier of the premises to be primarily used by people under the age of 18 years, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years. Factors that the Commission may consider for the purposes of section

22(1)(ca) include, but are not limited to – (a) whether the proposed licence or permit authorises supply of liquor at a time when the premises will not be used primarily by persons under the age of 18 years; and (b) whether the proposed licence or permit provides that any person under the age of 18 years must be accompanied by a responsible adult at all times during which the proposed supply of liquor is to occur (s 22(3A)).

Material before the Commission

46. The Commission on review had before it and considered all the materials before the Delegate.

47. The Commission on review also received and considered the following additional materials:

- a) the Original Decision and reasons for the Original Decision dated 11 April 2023;
- b) the Review Applications dated 18 April 2023;
- c) submissions provided on behalf of the Licensee before the hearing into the Review Applications (**Hearing**);
- d) photographs and video footage of the Premises;
- e) Evidence given and submissions made at the Hearing;
- f) a Statutory Declaration of Mr Benjamin Jerkins dated 7 September 2023; and
- g) submissions provided on behalf of the Licensee after the Hearing.

Public hearing

48. On 21 August 2023, the Commission held the Hearing.

49. Mr Rob Steane of LiqCon appeared on behalf of the Licensee, and Mr Gregory Jerkins gave evidence as one of the directors of the Licensee company.

50. After the Hearing, Ms Street provided further submissions on behalf of the Licensee.

Mr Gregory Jerkins' evidence at the Hearing

51. Mr Jerkins submitted that the Premises was built to function as a mini golf course and that it has been in operation for 10 years. He gave evidence to the effect that the mini golf courses were designed for fun, rather than as a challenge for experienced golfers, saying that it could take approximately 30-45 minutes to get through one of the courses.

52. During the Hearing, Mr Jerkins described the Premises as being “a big area, with most of it being outside”. He advised that there is no location where staff have a line of sight across the entirety of the Premises.

53. Mr Jerkins gave evidence that the Point of Sale consists of two cash registers located on either side of a double-sided counter directly in the middle of the RS area. He added that the placement of the Point of Sale is such that a staff member “can keep an eye on the whole shop”.
54. Mr Jerkins also gave evidence to the effect that liquor would likely be displayed for sale in a fridge behind the counter at the Point of Sale and out of reach to customers. During the Hearing, Mr Jerkins presented footage of one of the cash registers at the Point of Sale, which showed an ice cream display on the right-hand side of register, and lollies and other food for sale on the left-hand side of the register. The fridge intended for displaying liquor for sale is visible just behind.
55. Mr Jerkins said that the Premises is usually staffed by one person on weekdays, and between 2-3 people on weekends. He said that the staff consist of his son (Benjamin Jerkins), occasionally his wife (Deborah Jerkins, who is the other director of the Licensee company), and himself. He added that there is also another RSA-certified staff member who works part-time.
56. Mr Jerkins gave evidence to the effect that staff members are required to observe all customers who are outside, including those playing mini golf. These observations include checking monitors displaying footage from “eight or 10 cameras” around the Premises. He added that the same staff member serving customers would also be required to walk around the Premises to monitor patrons.
57. When giving evidence about the type of clientele that typically attends the Premises, Mr Jerkins said that it was a “mixed bag” with “a lot of families with grandparents” who quite often do not play mini golf, but that enjoy observing their children/grandchildren play while “sitting around having a coffee or a soft drink and complaining that they can’t have a beer”. Mr Jerkins added that not many of the patrons were unaccompanied minors but was unable to provide an exact number.
58. Mr Jerkins gave evidence that there are several seating areas spread out around the mini golf courses, and that they are comprised of a mixture of permanent seats and tables and portable seats. He also gave evidence to the effect that the layout of the Premises was designed to allow people to enjoy beverages, including liquor, while seated and observing mini golf games. This evidence will be considered in greater detail below.
59. Mr Jerkins stated that it would not be practical to have only parts of the mini golf courses licensed as attendees may wish to move across from one mini golf course to another while carrying liquor as a matter of preference or necessity (e.g., due to changes in weather). He gave evidence that the Premises hosts various private functions, including corporate events and birthday parties, and that, in the event of a private function, staff could close off either of the mini golf courses to other attendees. Mr Jerkins stated that if the Review Applications were granted and there was a function booked “a week ahead”, then he would “put on another staff member” who would be required to monitor patrons on the Premises.

60. In response to the Commission's queries about risk management strategies to minimise the risk of secondary supply of liquor to children, Mr Jerkins gave evidence to the effect that staff at the Premises would monitor patrons' behaviour according to the Licensee's current practices.
61. Before the conclusion of the Hearing, Mr Steane queried on behalf of the Licensee as to whether, in lieu of a Permanent Underage Authority, the Commission would consider authorising the supply of liquor on an area falling outside the licensed premises pursuant to section 9(1)(b).⁹
62. After the Hearing, to assist the Licensee with considering whether a section 9(1)(b) approval would be appropriate, the Commission referred the Licensee to the on-premises licence of Strike Australia Pty Ltd for the premises located at Shop MM15, Eastland Shopping Centre, 171-175 Maroondah Highway, Ringwood 3134 (Licence No. 32354934).

Post-Hearing material

63. Ms Street provided a statutory declaration of Mr Benjamin Jerkins dated 7 September 2023 which stated that (in summary):
- a) Benjamin Jerkins is employed as the Operations Manager of the Premises, where he runs the day-to-day operations, including (but not limited to) customer service, staff rostering, stock ordering and control, staff and customer monitoring, wages, office duties, service and communication with customers including walk throughs in both mini golf courses and RS areas.
 - b) Between one to six staff members with current RSA certificates will be on the Premises for each shift. If new staff members join, they will not serve liquor until they achieve their RSA certificate.
 - c) The Licensee currently employs one staff member under the age of 18 years who holds an RSA certificate.
 - d) Monitoring of CCTV is performed by all staff from the service areas which have two multi-split screen monitors. There is another multi-split screen monitor in the office area.
 - e) Direct visual monitoring of the Premises is performed from service areas, viewing decks, and via physical walkthroughs.
 - f) Benjamin Jerkins estimates that only a small proportion of the Licensee's customers are unaccompanied minors (less than 10%).
 - g) The Licensee would mitigate the inherent risk of minors being exposed to liquor and engaging in secondary supply of liquor through direct visual and CCTV monitoring by staff

⁹ The Commission understands this to mean specific areas being endorsed on the red line plan of the Premises where the Commission authorises supply of liquor only when specific conditions are in effect (e.g., area is delineated by barriers, appropriate signage etc.).

members who hold RSA certificates. If in doubt, a limit of one drink per customer purchase would be enforced to ensure minors are not exposed.

- h) Most games of mini golf conclude within a one-hour period, therefore limiting customers' time for liquor consumption (but some larger groups can take up to two hours).

64. Ms Street also provided a submission from LiqCon on behalf of the Licensee dated 8 September 2023 (**Post-Hearing Submission**) which stated that (in summary):

- a) Gregory Jerkins and Deborah Jerkins (the directors of the Licensee) support Benjamin Jerkins, who has day-to-day responsibility of managing the Premises. They come and go as required to assist with the operations "depending on customer numbers and load".
- b) Gregory Jerkins also provides leadership on the maintenance and alterations to the Premises and manages the Premises when required.
- c) Ultimately, LiqCon does not consider that a section 9(1)(b) approval would be a workable option for the Licensee as the "authorised areas would effectively need to be moveable areas". The only way a s9(1)(b) authority would work is for each hole to be turned on/off as players progress. LiqCon considers that this would not be workable and "near impossible to effectively monitor and difficult to police".
- d) LiqCon considers that a Permanent Underage Authority is preferred and proposes to vary its application subject to the following conditions:

Section 120(2)(e) Persons under the age of 18 years are permitted on the licensed premises other than in the company of a responsible adult in relation to the preparation for and participation of minigolf during the below trading hours:

Sundays between 10AM & 8PM

Good Friday & ANZAC Day between 12 noon & 8PM

On any other day between 7AM & 8PM

This authority does not apply to an area or areas that are set aside for pre-booked private functions where alcohol is being consumed.

- e) The Permanent Underage Authority would remain active across the Premises.

65. The Post-Hearing Submission outlined how the conditions would operate in practice:

- a) A group who booked a private function may be inclined to consume more alcohol. Unaccompanied minors would be prohibited from using the private function area in those circumstances.
- b) At the same time, patrons "in their small groups, and not pre-booked functions" would still be allowed "to consume alcohol and play in the same area as unaccompanied minors as they progress throughout the course".

66. The Post-Hearing Submission concluded that the additional conditions suggested for the Permanent Underage Authority “further limit the exposure of minors” to liquor, as these require unaccompanied minors to participate in mini golf if they wish to remain on the Premises. In addition, unaccompanied minors would be prohibited from any areas pre-booked for functions that involve the consumption of liquor. At the same time, the Licensee intends to have the RS area and boardwalk entrances unlicensed as “[t]his would allow those minors who wish to just purchase food to be able to enter and exit without being exposed to the consumption of liquor by any person, further reducing risk”.
67. Besides the Post-Hearing Submission, Ms Street submitted on behalf of the Licensee an amended VMP dated 8 September 2023, which is substantively identical to the version provided on 11 August 2023 (see paragraph 26 above).
68. In response to further queries from the Commission, Ms Street submitted on behalf of the Licensee that it would not be practical to exclude part of the Premises from the red line plan (such as one of the mini golf courses, or part of a mini golf course) as it would limit the possibility of having multiple private functions running simultaneously across the Premises. It would also limit patrons’ ability to choose where they could play mini golf, including in the event of bad weather.
69. Ms Street further advised on behalf of the Licensee that the Premises is not split up for private functions as a matter of course. Instead, patrons may elect which part of the Premises they would like to use for their private function when they make a booking. Ms Street advised that staff can rope off an area and put signage up to demarcate a course that is being used for a private function.

Reasons for decision

Issues for determination on review

70. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the Review Applications, the Commission must determine whether granting the Review Applications would be conducive to or encourage harm for the purposes of section 44(2)(b)(ii) or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.¹⁰
71. It is not the Commission’s task to facilitate every review applicant’s proposed model for the supply of alcohol, or to facilitate what it considers will be the most convenient, or most flexible, way to

¹⁰ 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).

supply alcohol. It is the Commission's task to determine each application in accordance with the LCR Act, and that includes giving due consideration to the objectives of the LCR Act.

72. This application squarely raises a number of those objectives. The central objective – and the Commission's primary regulatory objective – is to minimise harm; in this case, to minimise harm to minors. This application also raises the objectives of encouraging a culture of responsible consumption of alcohol and reducing risky drinking, and facilitating the development of a diversity of licensed facilities reflecting community expectations.
73. The Commission acknowledges that it has taken some time to give this application proper and necessary consideration given its complexity, the circumstances of the Premises, and that it involves an issue of increasing concern, being the ease by which minors are exposed to alcohol in child-friendly settings.

Whether granting the Review Applications would be conducive to or encourage harm, or be contrary to the objects of the LCR Act

The Premises has a strong appeal to minors

74. To properly understand the issues and risks involved in this application, it is necessary to set out in some detail, the nature of the licensed premises and its surrounding circumstances.
75. The Premises is a venue of approximately 70 x 30 metres that operates two mini golf courses, being 19 holes, that are side by side. It advertises itself as 'Footbridge Mini Golf, Lolly Shop and Ice Cream Shack'. It operates on The Esplanade in Lakes Entrance, Victoria. Lakes Entrance is a seaside resort town, often attracting large numbers of tourists, particularly over the warmer months. It is clear on the Licensee's own evidence, that its peak times include during the tourist season. There is significant potential for it to be busy with many patrons on holidays.
76. Critically, the licensed premises is not only a mini golf course. As its advertising and name suggests, the Licensee also offers at the Premises, a lolly shop and ice-cream parlour. There are toys for sale inside the lolly shop and ice-cream parlour, along with those lollies and ice-creams. The Premises itself is painted with bright colours, with large clown-fish attached to wires near the entrance apparently swimming above several blue and white fishes and dolphins, and with pictures of ice-creams adorning the front windows. There is a poster of a cartoon of 'Sitting Bull' inviting functions, birthday parties, work break-ups and so on.
77. An issue before the Delegate was whether under section 22(1)(ca) of the LCR Act, the Premises were intended by the occupier to be primarily used by people under the age of 18 years. On internal review, the Commission heard evidence that the Premises is intended to be a family-friendly venue; that is, where children can attend both unaccompanied and with their parents and

families for a round of mini golf. Further, it heard that coffee was available for the adults at the café. Further still, the Commission heard that the clientele is predominantly families, with unaccompanied minors representing a very small proportion of less than 10% (according to Mr Benjamin Jerkins' statement) as of the overall patronage of the Premises.

78. That being so, and bearing in mind that the Licensee advertises its Premises for functions and work break-ups, the Commission has not reached the opinion that the Licensee intends for the premises to be *primarily* used by people under the age of 18 years. Consequently, the presumption against granting it a licence at section 22(1)(ca) of the LCR Act does not arise.
79. However, the Commission is satisfied that the Premises has a clear and strong appeal to minors through not only its mini golf courses, but its name and promotion, its offerings, and its décor. It is clearly intended to have that appeal.
80. It would be no leap of logic to accept that families may tend to attend the Premises because their children or grandchildren want to go there and enjoy those facilities directed at minors: lollies, ice-cream and mini golf; indeed, Mr Jerkins' description of his clientele fortifies that conclusion.

Liquor is proposed to become part of a premises that appeals to minors

81. The Licensee seeks to have the mini golf courses as part of the licensed premises. By so doing, the Commission is of the view that the supply and consumption of liquor would be incorporated into an environment that is clearly and significantly appealing to minors.
82. The Licensee has described the supply and consumption of liquor as 'ancillary' to the mini golf activity. The Commission does not accept this submission. That is because the Licensee seeks the Licence to allow adults to consume liquor while playing mini golf with children, and because it seeks to supply liquor from the same area as where lollies, toys and ice-creams are sold.
83. As a matter of common knowledge and experience, mini golf is an activity that appeals to children. The nature of a particular course can influence the appeal of that course to minors: some courses may be more difficult requiring greater skill, and thereby be more attractive to adults; other courses may be simpler, and involve themes, obstacles or décor that are more attractive to minors. On Mr Jerkins' oral evidence, the courses on offer at the Premises are 'about fun' and are 'easy'. The Commission accepts that the courses are easy. This fortifies its particular appeal to minors.

Liquor gives rise to risks of Harm to Minors

84. In circumstances where the Licensee seeks to supply liquor at a child-friendly premises, a key consideration for the Commission in the Review Applications is minimising the risk of harm to minors, whether or not they are accompanied.

85. There is a real risk that harm will arise to minors through the supply (including secondary supply) of liquor to minors, and from the exposure to minors to liquor and the consumption of liquor in a child-friendly setting (**Harm to Minors**).
86. It is of note that Victoria Police initially objected to this application on the basis that it was concerned that children would be ‘unduly influenced in adult environments’ (it was subsequently withdrawn). Moreover, the Licensee submitted that the Premises was ‘low risk in relation to the exposure of minors to people over 18 consuming alcohol’. It did so noting that this was an attraction in a tourist town, and attracted a different clientele to mini golf establishments such as ‘Holey Moley’.
87. These harms were squarely in issue in these proceedings.

Recent amendments invite a conservative approach to harm minimisation

88. The Commission takes a very serious approach to applications involving the risk of harm to minors, in order to give effect to recent changes to the LCR Act that required specific attention to such harm.
89. The definition of ‘harm’ in the LCR Act was introduced by way of amending legislation, which explicitly included ‘harm to minors’ as a specific example of harm arising from the misuse and abuse of alcohol.¹¹ This definition seeks to protect children by allowing the Commission to consider broader factors when making licensing decisions.¹² This new definition of ‘harm’ took effect on 25 August 2022.
90. By reference to Minister’s second reading speech (**Second Reading Speech**), the Commission notes that the definition of ‘harm’ seeks to provide greater clarity and certainty.¹³ The Commission also notes that the amendment to the LCR Act seeks to “strengthen the harm minimisation provisions of [the LCR Act] by clarifying what advertising and promotions are not in the public interest”, and that this includes advertising that appeals to minors (either directly or indirectly).¹⁴
91. The Commission further notes from the Second Reading Speech that the provisions introduced through the amending legislation “are an important harm minimisation measure in addressing the potential for inappropriate supply [...], in particular the risk of supplying to minors”. Whilst the inappropriate supply that the Minister referred to in that instance was supply associated with online

¹¹ Section 4(1) of the *Liquor Control Reform Amendment Act 2021*

¹² Victoria Legislative Assembly, Parliamentary Debates, 14 September 2021 (the Hon Ms Jaala Pulford, Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources), at 3103.

¹³ As above, at 3105 – 3106.

¹⁴ See for example section 115A of the LCR Act, which empowers the Commission to give a notice to a licensee banning the licensee from advertising or promoting the supply of liquor if, in the opinion of the Commission, the advertising or promotion is likely to encourage irresponsible consumption of alcohol or is otherwise not in the public interest. Subsection (1A) states that, for the purposes of subsection (1), advertising or promotion that is not in the public interest includes the following – (a) advertising or promotion that is likely to appeal to minors.

ordering and delivery of liquor, the Commission considers that these views go to the general principles and purpose of the amending legislation as whole, which is to ensure the effectiveness of the Commission's harm minimisation measures under the LCR Act.

92. The LCR Act itself treats the supply, or potential supply of liquor to minors, very seriously. For example:

- a) Absent one of a limited range of exceptions, it is an offence for a licensee or a permittee to supply liquor, or to permit liquor to be supplied, to a person under the age of 18 years.¹⁵
- b) Those premises intended by the occupier to be primarily used by minors are presumed unable to be licensed, unless the Commission is satisfied that the grant of a licence or permit would not present a specific risk of supply of liquor to a person under the age of 18 years.¹⁶
- c) The advertising or promotion of liquor that is likely to appeal to minors is contrary to the public interest and may be banned.¹⁷
- d) The Commission, in making a decision or exercising a function or performing a duty under the LCR Act, must give due regard to harm minimisation. 'Harm', as it is defined in the LCR Act, is harm arising from the use and misuse of alcohol, including harm to minors.

93. The potential for alcohol to cause Harm to Minors is well known. The harm that may arise to minors is not just arising from physical harms associated with intoxication. It is well-accepted that young adults are at high risk of alcohol related injury, including road trauma, violence and sexual coercion. Underage drinking impacts on the development of a maturing brain, and may lead to impaired cognitive abilities such as memory, language, attention and executive function.

94. It is also well-known that there is a link between exposure of minors to alcohol products and marketing and an increased risk of initiating alcohol use earlier in life, consuming greater amounts of alcohol, and engaging in riskier drinking behaviours. Further, in addition to direct or secondary supply of alcohol to minors, it is recognised that there is a risk of harm inherent in exposing minors to environments where liquor is consumed.¹⁸ Of course, there are many environments in which minors may observe adults consuming liquor; indeed, under section 120(1)(b)(i) of the LCR Act, a minor is not prohibited from being on licensed premises or authorised premises if in the company of a responsible adult. However, the circumstances of that exposure may influence the potential for and degree of the risk of harm.

¹⁵ LCR Act, s 119.

¹⁶ LCR Act, s 22(1)(ca), as discussed above.

¹⁷ LCR Act, s 115A(1A)(a).

¹⁸ *SP Burke Pty Ltd at Ararat Hotel premises (Liquor - disciplinary action)* [2019] VCGLR 32 (13 February 2020) [225].

Risk of Harm to Minors if Review Applications Granted

95. This Premises is one that gives rise to risks involved in exposure to alcohol, because it is strongly and particularly attractive to minors, for reasons already given.
96. The Review Applications give rise to the risk of minors not only being exposed to alcohol, but also associating a child-friendly game of mini golf with the consumption of alcohol. That association risks shaping an unhealthy attitude towards and interest in alcohol; moreover, where minors are impressionable (such as those who would reasonably be attracted to lollies, ice-cream, toys and the promotion of the Premises), the risks would seem greater. Permitting minors to enter and remain on a licensed premises increases the risk of minors meeting with alcohol-related harm and establishing a pattern of early drinking, hazardous to their immediate and longer health and wellbeing.¹⁹
97. The concept of harm minimisation is anticipatory and there may be cases in which a conservative approach should be adopted.²⁰ The Commission is of the view that a conservative approach is necessary in determining the Review Applications. That is due to the clearly child-friendly features of the Premises, the identified Harm to Minors, the definition of ‘harm’ and its focus on minors, who by virtue of their being in the process of developing into adults, are an impressionable and thus vulnerable group.

Licensee proposed mitigation measures are insufficient

98. The Licensee has proposed measures to minimise the risk of Harm to Minors. These include:
- a) ensuring that staff members have completed RSA training;
 - b) asking customers who look under the age of 25 for identification;
 - c) refusing supply of alcohol if identification cannot be produced;
 - d) staff members monitoring patrons in the RS area directly from the Point of Sale;
 - e) staff members monitoring patrons across the whole Premises via CCTV cameras;
 - f) a staff member periodically observing patrons across parts of the Premises while performing ad hoc tasks;
 - g) display of required signage, including signage saying “Do Not attempt to buy alcohol for Under 18’s”;

¹⁹ See *Cramer Pty Limited v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 2078 [5] - [8], where Megay SM referred to evidence of the Director of the Community Alcohol Action Network (Australian Drug Foundation). While, in that case, Megay SM was satisfied that there was no risk that underage drinkers will be influenced by the effects of constant exposure to liquor, she held this by reference to the “particular nature of the business and the layout of the premises and its surroundings”, where the licensed premises was a hardware store which also stocks farm supplies and “could hardly be described as family oriented”.

²⁰ See further *Kordister* [34], citing *Nardi v Director of Liquor Licensing* [2005] VCAT 323 [51].

- h) on the basis of Mr Benjamin Jerkin's statement only, that if in doubt, a limit of one drink per customer purchase would be enforced to ensure minors are not exposed (the Commission notes this was not further developed or pursued by the Licensee); and
 - i) the Licensee has offered to exclude the lolly, toy and ice cream section of the RS area from the licensed premises, and to display liquor out of reach in a fridge behind the counter. Liquor purchases would occur adjacent to this area at a central point of sale where lollies, ice cream and coffee may also be purchased.
99. The Commission considers that displaying lollies, toys and ice cream in the close vicinity of liquor increases the risk of exposing minors to the supply of liquor.
100. The Licensee proposes that adults would play mini golf alongside children and while consuming alcohol. Obviously, that would involve periods where alcohol will be left unattended and unmonitored while the adult is taking his or her putt. This gives rise to a real potential for secondary supply.
101. Due to the size of the mini golf courses, the Commission does not consider it would be practicable for the Licensee to sufficiently and effectively monitor patrons to manage the risks of secondary supply across the whole Premises. This is compounded by Mr Jerkins' evidence that there is no location for a staff member to have a line of sight across the entirety of the Premises.
102. In addition, the Commission notes that there is some ambiguity as to the number of staff that the Licensee employs or will employ. In his statutory declaration, Mr Benjamin Jerkins provided that between one to six staff members with current RSA certificates will be on the Premises for each shift. However, Mr Gregory Jerkins gave evidence at the Hearing to the effect that the Licensee rosters one staff member during a typical day, and up to three staff members on busier days. While the Commission accepts that the Licensee could seek to hire another staff member to monitor patrons, the Commission considers that such an ad-hoc staffing regime would contribute to the difficulty of effectively managing the risks of secondary supply across the whole Premises. Given this ambiguity, the Commission is not satisfied that staffing arrangements will appropriately mitigate the risk of secondary supply.
103. Moreover, the Licensee in its submissions referred to a 'roving' person to monitor alcohol consumption and the reliance on CCTV to observe for supply and secondary supply. There is inconsistency as to this 'roving' monitor in submissions and in evidence.
104. In terms of appointing a 'roving' monitor, Mr Jerkins' evidence was that there would be no such specific employee. He said that it would be "the same staff member who can walk into area A or B at any time during the day. Not particularly roaming... it's just the one person that doesn't have to be behind the counter for every minute of the hour".

105. The Commission considered the submission as to a 'roving' employee was intended to have a particular function of monitoring consumption so as to mitigate the risk of secondary supply, but this was not the evidence given.
106. Mr Jerkins gave evidence as to the consequences of the potential grant of the licence on his staffing and management. He said, "[j]ust because the alcohol comes along, their job won't change".
107. For risks of supply and secondary supply to be appropriately mitigated, it is important that staff's jobs do change when commencing the supply of liquor, so as to give proper attention to minimising the risks of harm arising from the supply of liquor in child-friendly environments. It is critically important that licensees reflect a commitment to the responsible supply of alcohol, and that includes ensuring their employees are properly trained and proactive in identifying risks and harm minimisation strategies appropriate for their venue.
108. Further, the Commission has only been provided a generic VMP that explicitly stated was 'not intended to be an independent program in itself, and relies on regular and thorough briefings, alterations and training of staff to cover specific issues, tasks and areas of responsibility'.
109. When the Commission asked Mr Jerkins about the generic nature of the VMP and what the Licensee would do to reduce the risk of adults who've purchased alcohol then providing it to their children or children taking it from adults, he said this:
- Very similar to what we do now. For a start we don't employ anybody young, because we've been down that line, and they don't have the authority that people like us have. So we've never had any trouble with older people working there, but I don't think we'd have to change anything because if somebody looks like they've had too much to drink or looks like they're doing the wrong thing, we're mature people, we can actually sort that out very easily by saying, "Right, no more". I can't see it being an issue because we're not 16-year-olds, we're not really young people who can't control a couple of - wait until they've had a couple of too many beers. It's pretty easy...*
110. In the Commission's view, Mr Jerkins' evidence did not adequately deal with the risk of Harm to Minors and thus demonstrated insufficient commitment and appreciation as to the need to minimise the risks. When asked specifically about prevention of underage persons gaining access to alcohol, Mr Jerkins said "[y]eah, video. Just keep an eye on them".
111. Mr Benjamin Jerkins' statutory declaration also said that staff mitigate the inherent risk of minors being exposed to alcohol and engaging in secondary supply of liquor by direct visual and CCTV monitoring by each staff member (holding current RSA certificates).
112. The Commission accepts the Licensee's contention that less than 10% of patrons attending the Premises are unaccompanied minors. That suggests a currently small proportion of occurrences

that unaccompanied minors are exposed to such a risk. That may well change, given the impact of tourism on the local area. Also, it does not mean that the Licensee should not further minimise risk of Harm to Minors: even when accompanied, underage patrons may be subject to predatory or inappropriate behaviour from patrons aged 18 and over who facilitate secondary supply. This is more likely to occur away from the RS area to avoid detection from staff (for example, on the mini golf courses).

113. For all of those reasons, the Commission does not consider the Licensee has demonstrated a substantive commitment to its responsibilities to minimise the risk of Harm to Minors. The Commission does not consider the generic VMP provided (in and of itself) would lead to the Licensee implementing all reasonable measures to mitigate risk given its generic nature and lack of specific application to the Premises, and in light of the evidence given by the Licensee as to the minimal (if any) changes in its practices to minimise risk.

Mitigation measures

114. The Commission is of the view that in addition to excluding the mini golf courses from the licensed premises, the following measures must be adopted on the licensed premises to minimise the risk of Harm to Minors who are accompanied by a responsible adult:

- a) The mitigation measures proposed in submissions by the Licensee as amended below.
- b) At all times when the Premises are open for trade, at least two staff members who have completed an approved Responsible Service of Alcohol course within the preceding three years:
 - i. must be present at the Premises; and
 - ii. at least one of those staff members must be present at all times in the RS area where lollies, toys, ice cream and liquor are sold.
- c) Staff members must monitor patrons:
 - i. in the RS area from the points of sale; and
 - ii. on the Premises via the CCTV cameras; and
 - iii. regularly physically monitor patrons on the mini golf courses and viewing areas near the mini golf courses.
- d) Concealing the point of sale and supply of liquor that is displayed for sale from any persons under the age of 18.
- e) Concealing and keeping secure any excess liquor stock.
- f) Serving liquor to patrons in vessels that do not have any labels which would promote the alcoholic product.

- g) Physical separation of the licensed premises from the lolly, toy and ice cream section of the RS Area. The separation can be by ropes or planters or other means to demarcate the area.
- h) The Premises is to display signage that educates patrons on the dangers of consuming liquor in front of underage persons.
- i) Implementation of a venue management plan approved by the Commission.

115. The Commission considers that the above measures better facilitate the objectives of encouraging a culture of responsible consumption of alcohol and reducing risky drinking, and facilitating the development of a diversity of licensed facilities reflecting community expectations (with those expectations being that children should not be unduly exposed to the consumption of liquor).

Liquor may be supplied and consumed away from children playing on the courses

116. In his evidence, Mr Jerkins said the Licensee sought a liquor licence to service those adults who were not playing mini golf. He said, variously, the following:

[...] They'd be there to play mini golf or to watch their grandkids. A lot of times the women will go, 'no, I don't want to play'. So they just sit back and study everything. And I'm sure that if there was a gin and tonic there, they'd like it. [...]

[...] They would come along as a group of people with kids, adults, and quite often the three generations are there. But half of them will be not playing golf. They'll just sit there and have a coffee and move the chairs around into the sun and say 'this is beautiful here'. And the kids are over there playing, and the kids are now down there playing, and they're sitting there having a drink - a soft drink or a coffee at the moment. [...]

[...] But there's - it would be hard, it would only be an estimate, but I think there would be, out of every group of six or eight people, probably quite often, more than probably 50 per cent of the time, there'd be two of them not playing. Because they've just come along to be sociable with their family, but they don't particularly want to play golf. They might be on a walking stick or just not that way inclined. And they're the ones that we'll probably be targeting. [...]

[...] And when we have our liquor license, I'll use this section, and this section'. And the coffee will be similar. The whole place is designed around people sitting around watching what's going on. We're dog friendly, so they've got their dog with them. They've got their grandkids. They've got their brothers, sisters. It's all seating everywhere.

117. The Commission has determined to licence areas as set out in Appendix B, which includes areas where persons may sit and consume liquor while watching mini golf being played.

118. The Licensee has recently confirmed that it is not currently supplying liquor pursuant to the licence granted on 11 April 2023. The Commission considers that this is entirely a commercial decision

for the Licensee. It is unconvinced that granting a licence allowing for the supply and consumption of liquor at designated areas from which mini golf may be observed, is not a practicable outcome for the Licensee; rather, it is an outcome that appropriately balances the objectives of the LCR Act giving due attention to harm minimisation.

119. It remains a matter for the Licensee to ensure that unaccompanied minors may access and leave the mini golf courses in a manner that is consistent with its obligations under section 120 of the LCR Act.

Liquor may be supplied at functions for adults

120. Moreover, having taken the approach it has with respect to the objectives of the LCR Act, the Commission has determined to permit a greater ability to supply liquor than did the Delegate at first instance. That is, the Commission considers that, while the mini golf courses should remain excluded from the licensed premises, it would be appropriate to authorise the supply of liquor for consumption on the mini golf courses for pre-booked events and functions for persons aged 18 years or older,²¹ subject to the Licensee complying with the following condition at the time of the scheduled event and/or function:

At the entrances to the premises a notice of no less than A4 size is displayed which states: "No person under the age of 18 years is permitted" in letters no less than 10mm in height followed by the words: "This area is an authorised area permitting the supply and consumption of liquor pursuant to an on-premises licence under the Liquor Control Reform Act 1998" in letters no less than 5mm in height.

121. In practice, this would authorise the Licensee to do the following –
- a) During pre-booked events and functions: supply liquor for consumption anywhere on the Premises. In those circumstances, no persons under the age of 18 are permitted anywhere on the Premises (including no accompanied minors).
 - b) All other times: the Licensee is authorised to supply liquor for consumption on the licensed premises (i.e., viewing decks and the RS area, excluding the lolly, toy and ice cream shop).
122. In lieu of granting an expansion of the licensed areas of the Premises and a Permanent Underage Authority, the Commission is of the view that granting the licence in part, combined with an authorisation to supply liquor on the mini golf courses when minors are not permitted on the Premises, would be consistent with the object of facilitating a diversity of licensed facilities reflecting community expectations. The Commission also considers that imposing the licence

²¹ Please refer to Appendix B for a revised version of the endorsed red line plan, which shows the licensed premises labelled as 'LP' and the authorised areas labelled as 'AA'.

conditions as set out in Appendix A, and in the premises and areas set out in Appendix B, preserves the primary object of harm minimisation.

123. Accordingly, the Commission considers that the partial grant of a licence on the conditions in Appendix A, and applicable to the area in Appendix B, would permit the Licensee to supply liquor in a responsible manner, not be conducive to or encourage harm and would not be contrary to the LCR Act's object concerning harm minimisation.

Permanent underage authority refusal

124. For all of those reasons, the Commission does not consider that it is appropriate in these circumstances to grant an underage approval under Section 120 as this would be conducive to and encourage harm and be contrary to the objects of the LCR Act.

Decision on review

125. Having regard to all the matters set out above, the Commission has determined to:
- a) vary the Delegate's decision to grant the licence in part, subject to the conditions set out in Appendix A and B; and
 - b) affirm the Delegate's decision to refuse the Permanent Underage Authority.

The preceding 125 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chairperson), Ms Susan Timbs (Commissioner), and Mr Steven Brnovic (Commissioner).

Appendix A

Type of licence

This licence is an on-premises licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Special conditions

- 1) At all times when the premises at 547-549 The Esplanade, Lakes Entrance (the **Premises**) are open for trade in liquor, at least two staff members who have completed an approved Responsible Service of Alcohol course within the preceding three years:
 - a. must be present at the Premises;
 - b. at least one of those staff members must be present at all times in the retail sale area where lollies, toys, ice cream and liquor are sold;
 - c. staff members must monitor patrons:
 - i. in the retail sale area from the points of sale and
 - ii. on the Premises via the CCTV cameras and
 - iii. regularly physically monitor patrons on the mini golf courses and viewing areas near the mini golf courses.
- 2) The point of sale and supply of liquor that is displayed for sale must be concealed from the view of any persons under the age of 18.
- 3) Any liquor that is not displayed for sale must be securely stored and concealed from any persons under the age of 18.
- 4) Any liquor supplied must be served to patrons in vessels that do not have any labels which would promote liquor product.
- 5) The licensed premises must be physically separated by ropes or planters or other similar means to demarcate it from the retail sale area and point of sale where lollies, toys and ice cream are displayed for sale and sold.
- 6) The Premises must display signage that educates patrons on the dangers of consuming liquor in front of underage persons.
- 7) Implement and comply with a venue management plan approved by Liquor Control Victoria (**VMP**). The VMP is to include the following risk management provisions (**Risk Management Provisions**) in addition to all other provisions necessary to achieve compliance with the Licensee's obligations under the Licence:
 - a. the duties and responsibilities of staff members in the following areas:
 - i. following the principles of responsible service of alcohol;
 - ii. assisting customers to drink within appropriate limits;
 - iii. assessing alcohol affected customers and identifying those to whom sale or service must be refused; and
 - iv. refusing to provide alcohol.
 - b. that the licensee must prevent secondary supply of liquor to any persons under the age of 18.
- 8) The licensee must:
 - a. provide a copy of the VMP to Liquor Control Victoria;

- b. make the VMP (as amended and approved by Liquor Control Victoria from time to time) available for inspection at the licensee's premises on request by a liquor licensing inspector or member of Victoria Police; and
 - c. where the licensee amends its VMP in such a way as to vary its provisions relating to the Risk Management Provisions, the licensee must submit to Liquor Control Victoria a copy of that amended VMP within five (5) business days of the amendment, and such amendments must be to Liquor Control Victoria's satisfaction.
- 9) The licensee must comply with the VMP as approved from time to time.
 - 10) The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and mini golf areas. The surveillance recording system must operate from 30 minutes before opening and until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by Victoria Police or a person authorized in writing by Liquor Control Victoria, or otherwise retained for at least one month. The positioning of cameras is to be to the satisfaction of the Licensing Inspector.
 - 11) Signs are to be displayed in all areas subject to camera surveillance. Such signs shall read: "For the safety and security of patrons and staff this area is under electronic surveillance."
 - 12) The licensee must not conduct advertising or promotions that are likely to encourage irresponsible consumption of liquor or that are not in the public interest.

Responsible Service of Alcohol

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

Maximum capacities

60 patrons

Trading hours

Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12noon and 1am the following morning
On any other day	Between 7am and 1am the following morning

Approvals/Consents

Section 9(1)(b) – Any of the areas endorsed as authorised area on the approved plan may operate as authorised premises for pre-booked events and functions only for persons aged 18 years or older when the following conditions are satisfied:

- at the entrances to the premises a notice of no less than A4 size is displayed which states:
"No person under the age of 18 years is permitted" in letters no less than 10mm in height followed by the words: "This area is an authorised area permitting the supply and consumption of liquor pursuant to an on-premises licence under the Liquor Control Reform Act 1998" in letters no less than 5mm in height.

Liquor can be supplied either within the licensed premises or within the authorised premises.

Liquor supplied under this license may only be consumed within the licensed premises or the authorised premises.

No persons under the age of 18 are permitted anywhere on the Premises when the authorised areas are operating as authorised premises.

Appendix B

