

## Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by GRHO Pty Ltd for an internal review of a decision by a delegate to refuse to vary a late night (general) licence for premises trading as Grosvenor Hotel, located at 10 Brighton Road, Balaclava

**Commission:** Mr John Larkins, Deputy Chair  
Mr James O'Halloran, Deputy Chair  
Ms Susan Timbs, Commissioner

**Date of Decision:** 18 January 2024

**Date of Reasons:** 15 March 2024

**Decision:** The Commission has determined to set aside the decision of the delegate and, in substitution, grant the application subject to the conditions set out in Appendix A

**Signed:**



**John Larkins, Deputy Chair**

## Background

### Original Application

1. On 16 March 2023, GRHO Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*<sup>1</sup> for a variation of the late night (general) licence (**Licence**) for the premises located at 10 Brighton Road, Balaclava (**Premises**) trading as Grosvenor Hotel (**Original Application**).
2. The Licence included the following special conditions relating to the St Kilda Festival (**Festival Conditions**):
  - *On the St Kilda Festival Main Day the sale of packaged liquor (other than wine) for off premises consumption shall be restricted to: products which are not supplied in glass containers; and products which have an alcohol content not greater than 5% alcohol by volume; and*
  - *no more than two containers not exceeding 375 ml per customer per purchase The supply of wine is restricted to two bottles of wine per customer per purchase.*
  - *The licensee shall provide signage at all entrances and exits of the premises which state that the City of Port Phillip Local Law prevents the consumption of alcohol in public places within the Festival area.*
3. By way of the Original Application, the Applicant sought to remove the Festival Conditions from the Licence.
4. In accordance with section 33, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector<sup>2</sup> (together, **Victoria Police**) and the City of Port Phillip (**Council**) on 15 May 2023. On 6 June 2023, Victoria Police advised that it did not object to the Original Application. On 20 June 2023, the Council also advised that it did not object to the Original Application.
5. On 22 September 2023, a delegate of the Commission (**Delegate**) refused to grant the Original Application (**Original Decision**). In reasons dated 31 October 2023, the Delegate stated that he was not satisfied that the removal of the Festival Conditions aligned with the objects of the LCR Act and that the Premises remained a potential avenue to supply liquor to St Kilda Festival patrons.

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<sup>1</sup> All references to legislation are references to the LCR Act unless stated otherwise.

<sup>2</sup> As to the meaning of "licensing inspector", see section 3(1).

## Application for Internal Review

6. On 5 October 2023, the Applicant applied for an internal review of the Original Decision (**Review Application**). Its reasons for seeking the review were that, given the area surrounding the Premises and what the St Kilda Festival is currently, the Festival Conditions were outdated.
7. On 18 January 2024, the Commission on review decided to set aside the Original Decision and, in substitution, grant the Original Application subject to the conditions set out in Appendix A.
8. The reasons for the Commission's decision on review are as follows.

## Legislation and the Commission's task

### The Commission's internal review power

9. Division 2 of part 9 of the LCR Act governs internal review applications. Under section 152, the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
10. 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.<sup>3</sup>
11. 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;<sup>4</sup>
  - or

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<sup>3</sup> Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

<sup>4</sup> LCR Act, sections 44, 49 and 157.

- (b) refuse to grant the Original Application.<sup>5</sup>

## Determination of an uncontested application

12. Under the LCR Act, an application for the variation of a licence may be contested or uncontested. The Original Application was uncontested, as no objections were received under division 5 of part 2 within the relevant period.<sup>6</sup>
13. 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).*
14. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that the granting of the application would be conducive to or encourage harm.<sup>7</sup>

## Exercising the internal review power

15. 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. The objects of the LCR Act are set out at section 4(1) as follows:

*The objects of this Act are—*

- (a) *to contribute to minimising harm including by—*
- (i) *providing adequate controls over the supply and consumption of liquor; and*
  - (ii) *ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and*
  - (iii) *restricting the supply of certain other alcoholic products; and*
  - (iv) *encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and*
- (b) *to facilitate the development of a diversity of licensed facilities reflecting community expectations; and*
- (c) *to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and*

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<sup>5</sup> LCR Act, sections 44 and 157.

<sup>6</sup> LCR Act, section 3(1) (definition of “uncontested application”).

<sup>7</sup> LCR Act, section 44(2)(b)(ii).

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

16. 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.<sup>8</sup>*

17. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;<sup>9</sup> and
- (b) may consider further information, material or evidence.<sup>10</sup>

19. 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.

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

## Conduct of an inquiry

21. 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 application.

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<sup>8</sup> See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

<sup>9</sup> LCR Act, section 157(2).

<sup>10</sup> LCR Act, section 157(3).

22. 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.

## Material before the Commission

23. 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) Review Application received on 5 October 2023;
  - (b) statement of reasons for the Original Decision dated 31 October 2023;
  - (c) submissions presented at a directions hearing of the Review Application on 18 December 2023;
  - (d) email communication received from the Applicant on 7 January 2024 attaching:
    - (i) written submissions; and
    - (ii) email communication from the Council to the Applicant dated 2 January 2024.

## Hearing

24. A directions hearing was held in relation to the Review Application on 18 December 2023 (**Hearing**). Mr Jonathan Sherren, director of the Applicant, appeared on behalf of the Applicant.
25. The Commissioners requested Mr Sherren to provide the following information:
- (a) any response to the Delegate's statement of reasons for the Original Decision;
  - (b) a description of the changes to St Kilda Festival since the Festival Conditions were first introduced, including in relation to access, public transport, dry areas and family friendliness;
  - (c) confirmation that those with direct responsibility for St Kilda Festival at the Council do not object to the Festival Conditions being removed from the Licence;
  - (d) a summary of contact Mr Sherren had with Victoria Police regarding the Original Application; and
  - (e) takings for the Premises for sales for on-premises and off-premises consumption for Sundays in February in recent years.

## Written submissions

26. Mr Sherren provided written submissions on 7 January 2024.
27. Mr Sherren submitted that St Kilda Festival had changed since the Festival Conditions were imposed in the following ways:
  - (a) Cars could now park at the entrance to the St Kilda Festival zone, where previously cars had to park 2 km away. This meant that now no one parks anywhere near the Premises.
  - (b) Festival goers are now encouraged to go into the CBD and catch a tram out which enters the festival zone at the top end of Fitzroy Street.
  - (c) St Kilda Festival used to be just the Sunday and encouraged hundreds of thousands of people to descend on St Kilda for a one day event of partying and drinking. St Kilda Festival now is a weekend long festival which does not encourage public intoxication and disarray.
  - (d) There used to be one main stage with where alcohol was permitted in the entire area. There are now several stages at different locations with the majority of the areas near the stages being dry areas. There are very limited areas in which you can drink alcohol and lots of restrictions on the amount of alcohol you can purchase at different times. Various hospitality venues within the St Kilda Festival zone are allowed to extend their trading onto the footpath with the same restrictive conditions.
  - (e) The festival has become much more family friendly. There is now a children's area with entertainers and rides for children. There are also many more family friendly areas with a focus on food stalls and similar family friendly entertainment.
28. Mr Sherren stated that, on or around 25 May 2023, a police constable from the licensing division responsible for the Council area and St Kilda Festival called him to talk about the Original Application. He said that they discussed the Festival Conditions in detail and she stated that she was not sure why these conditions were on the Licence and that Victoria Police would not be objecting to the Original Application.
29. Mr Sherren provided a table showing takings for the Premises on Sundays in February 2022 and February 2023. That table indicates that sales on the Sunday of St Kilda

Festival weekend for on-premises consumption were comparable to other Sundays and for off-premises consumption were markedly lower than other Sundays.

30. Mr Sherren also provided an email to him from the Council officer responsible for delivery of the St Kilda Festival dated 2 January 2024. The Council officer confirmed that the Council has no objection to the Festival Conditions being removed from the Licence, for the following reasons:

*Given the distance from the Grosvenor to the Festival site it is highly unlikely that a customer would carry a significant amount of liquor from the hotel to the Festival site, and we view this possibility as low risk. There are a number of packaged liquor outlets within close proximity to the Grosvenor Hotel that are not restricted due to the lower level of risk and the different postcode, and we see the Grosvenor as presenting a similar low level of risk.*

## Reasons for decision on review

### Issues for determination on review

31. 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 determine the following key issues:
- (a) first, whether granting the Review Application would be conducive to or encourage harm;<sup>11</sup> and
  - (b) secondly, whether granting the Review Application would be contrary to the objects of the LCR Act.<sup>12</sup>
32. Each of these issues are discussed in turn.

### Whether granting the Review Application would be conducive to or encourage harm

33. An application may be refused if granting the application would be conducive to or encourage harm.<sup>13</sup>
34. As stated above, “harm” for the purposes of the LCR Act means harm arising from the misuse and abuse of alcohol. This includes harm to minors, vulnerable persons or

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<sup>11</sup> LCR Act, section 44(2)(b)(ii). The Commission notes that, in determining this matter, it has also considered each of the other grounds set out in section 44(2).

<sup>12</sup> LCR Act, sections 4(1) and 172D(3).

<sup>13</sup> LCR Act, section 44(2)(b)(ii).



communities, including groups within communities; family violence; and anti-social behaviour, including behaviour that causes personal injury or property damage.<sup>14</sup>

35. The Commission on review notes that it received more comprehensive information and fresh information which was not before the Delegate.
36. Victoria Police and the Council did not object to the Original Application. At the Commission's request, Mr Sherren obtained confirmation that the Council officer responsible for delivery of the St Kilda Festival has no objection to the Festival Conditions being removed from the Licence.<sup>15</sup>
37. The Council's and Victoria Police's positions are highly relevant, although not determinative of whether granting the Review Application would be conducive to or encourage harm. The Commission is the ultimate arbiter of this issue.
38. The Festival Conditions were placed on the Licence in 2009 after consultation with Victoria Police, the Council and members of the Port Phillip Licensees Accord. Other general and packaged liquor licences in the vicinity of the St Kilda Festival site had similar conditions imposed.
39. When the Commission decided the Review Application, 43 general and packaged liquor licences had St Kilda Festival special conditions. Except for the Licence, all of those licences are located in St Kilda or St Kilda East.
40. The Commission accepts that the St Kilda Festival has changed significantly since the Festival Conditions were imposed on the Licence. Those changes include parking and public transport arrangements, the structure of the festival, the stage set up and festival patrons (the festival is more family friendly).
41. Having regard to the changed nature of the festival, the inconsistent treatment of the Premises and the Council's and Victoria Police's positions, the Commission considers that there is no reason for the Festival Conditions to remain on the Licence. Accordingly, the Commission is satisfied that removing the Festival Conditions from the Licence would not be conducive to or encourage harm.

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<sup>14</sup> LCR Act, section 3(1) (definition of "harm").

<sup>15</sup> See [28], [30] above.

### Whether granting the Review Application would be contrary to the objects of the LCR Act

42. Although the Commission is satisfied that no grounds for refusal exist under section 44(2), the Commission must still exercise its discretion whether or not to remove the Festival Conditions from the Licence. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, as well as with regard to the objects of the LCR Act.<sup>16</sup>
43. Having regard to all the material before it, the Commission considers that removing the Festival Conditions from the Licence would not be contrary to the LCR Act's objects.

### Decision on review

44. Based on the reasons set out above, the Commission is satisfied that granting the Original Application the subject of the Review Application is appropriate in the circumstances.
45. The Commission has therefore determined to set aside the decision of the Delegate and, in substitution, grant the Original Application subject to the conditions set out in Appendix A.

***The preceding 45 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Mr James O'Halloran (Deputy Chair) and Ms Susan Timbs (Commissioner).***

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<sup>16</sup> LCR Act, sections 4(1), 44(4)(a) and 172D(3). See [15], [21] above.

## Appendix A

### Type of licence

This licence is a late night (general) licence and authorises the licensee to supply liquor on the licensed premises for consumption on or off the licensed premises during the trading hours specified below.

### Amenity

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

When live or recorded amplified music other than background music is provided:

- 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 entertainment/dance floor areas. The surveillance recording system must operate from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Victorian Liquor Commission, or otherwise retained for at least one month. The position of the cameras will be to the satisfaction of the Licensing Inspector.
- Signs, as described below, 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”.
- Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving at and departing from the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.

Crowd controllers licensed under the Private Security Act, are to be employed at a ratio of two crowd controllers for the first 100 patrons and one crowd controller for each additional 100 patrons or part thereof. One such crowd controller is to be present in the street outside the premises to monitor behaviour of patrons arriving and departing the premises from 11:30 pm until 30 minutes after the sale of liquor ceases.

### Maximum capacities

Not more than 320 patrons are permitted on the licensed premises at any one time.

### Trading hours

FOR CONSUMPTION OFF THE LICENSED PREMISES -

Sunday	Between 10am and 12 midnight
Good Friday and ANZAC Day	Between 12 noon and 12 midnight
On any other day	Between 7am and 12 midnight

# Victorian Liquor Commission

Liquor Control Victoria



## FOR CONSUMPTION ON THE LICENSED PREMISES -

Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12 noon and 3am the following morning
Monday to Thursday	Between 7am and 1am the following morning
Friday & Saturday	Between 7am and 3am the following morning