

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by BBQ-K Plus Pty Ltd for an internal review of a decision by a delegate to grant an application to vary the category of a licence for the premises located at Level 3, 52 Montclair Avenue, Glen Waverley, trading as BBQ-K Plus

Commission: Mr John Larkins, Deputy Chair
Mr James O'Halloran, Deputy Chair
Ms Thu-Trang Tran, Commissioner

Date of Decision: 22 July 2024

Date of Reasons: 22 July 2024

Decisions: The Commission has determined to vary the decision of the delegate and grant the application for a change of category of licence subject to the conditions set out in Appendix A

Signed:



John Larkins, Deputy Chair

Background

Original Application

1. On 8 June 2023, BBQ-K Plus Pty Ltd (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ to vary the category of its restaurant and cafe licence to an on-premises licence (**Original Application**) for premises located at Level 3, 52 Montclair Avenue, Glen Waverley (**Premises**).
2. The Licensee primarily serves Korean-style barbeque food at the Premises and offers an option of karaoke in four 'private dining rooms' as an ancillary part of its restaurant business.
3. The Licensee had been trading at the Premises under a restaurant and cafe licence since being transferred that licence on 19 November 2021.
4. The reason for making the Original Application was for the Licensee to be able to have karaoke or live entertainment played on the Premises at a level higher than background music level.
5. On 22 September 2023, a delegate of the Commission (**Delegate**) sought further information from the Licensee. On 13 October 2023, the Licensee submitted, amongst other pieces of information, an outline of amenity controls, including proposed signage and CCTV installation.
6. In accordance with section 33(1), the Commission served a copy of the Original Application on the Chief Commissioner of Police and the Licensing Inspector² (together, **Victoria Police**) on 5 December 2023. On 2 January 2024, Victoria Police advised that they did not object to the Original Application.
7. In accordance with section 33(2), the Commission served a copy of the Original Application on the City of Monash (**Council**) on 5 December 2023. No response was received from the Council.

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

² LCR Act, section 3(1), see '*licensing inspector*'.

8. On 8 December 2023, the Licensee provided confirmation that the public notice of the Original Application had been displayed in accordance with the LCR Act,³ and provided an updated venue management plan noting that CCTV would be installed in the private karaoke rooms for monitoring purposes and staff would regularly physically check the rooms for any 'antisocial behaviour and alcohol intoxication'.
9. On 13 December 2023, the Delegate wrote to the Licensee advising:

...premises providing karaoke entertainment are considered high-risk due to the association of excessive liquor consumption with this activity. Therefore it is standard procedure to endorse conditions to mitigate this risk on these licenses if granted.
10. The Delegate requested further information regarding the Licensee's proposed operation hours of its karaoke facilities.
11. On 18 December 2023, the Licensee responded (in summary):
 - a) karaoke would be available to patrons in the private dining rooms from 7pm to 1am the following day, all week; and
 - b) 'staff will not serve alcohol to minors and will instruct that the customers do not allow alcohol to minors'.
12. On 8 February 2024, the Licensee informed the Delegate as part of its communications regarding the Original Application that it did not want minors to be excluded from accessing any private karaoke room. Specifically, the Licensee stated:

We want a family with minors to be able to use these facilities similar to our restaurant. We do not serve alcohol to minors in the restaurant and in these function rooms. [...] It is noted that there will be conditions required [sic] CCTVs to be installed to all these rooms to monitor the occupants' behaviours.
13. The red line plan of the licensed area (as submitted by the Licensee) indicated that the maximum capacity for each of the four private karaoke rooms was 12 patrons.

Delegate's decision

14. The Original Application was determined as an uncontested application pursuant to section 44(1) and considered on the grounds provided in section 44(2).
15. On 13 February 2024, the Delegate granted the Original Application (**Original Decision**).

³ Ibid, section 34.

16. The on-premises licence (32376342) (**Licence**) included, amongst other conditions, the following:

Minors are not permitted in the karaoke rooms at any time.

17. Other conditions imposed by the Delegate as part of the Original Decision included:

MAXIMUM CAPACITIES

Internal area 310 patrons

External area 50 patrons

CROWD CONTROLLERS

When karaoke is provided, crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 1 crowd controller for the first 50 patrons partaking in karaoke and 1 crowd controller for each additional 50 patrons or part thereof partaking in karaoke. Crowd controllers are to be present from 30 minutes before the start of the karaoke being provided, until 30 minutes after closure.

Applications for Internal Review

18. On 19 February 2024, the Licensee lodged an application for internal review of the Original Decision (**Review Application**). By way of the Review Application, the Licensee sought to vary the condition imposed on the Licence by the Delegate regarding minors from '[m]inors are not permitted in the karaoke rooms at any time' to:

Minors are not permitted in the karaoke rooms at any time, except when they are under the supervision of their adult family members.

19. The Licensee provided the following reasons in support of the Review Application:
- a) the primary use of the Premises is as a family restaurant. The four private karaoke rooms, whilst ancillary to the restaurant space, are not used exclusively for karaoke, they are used for dining too;
 - b) while it is agreed that minors should not be unaccompanied in the private karaoke rooms, they should be permitted in the private karaoke rooms with adult supervision as 'a family with minors under their parents' supervision should be allowed to use these rooms for karaoke'; and
 - c) CCTV will be installed in the private karaoke rooms and monitored by staff. Further, staff will regularly enter the private karaoke rooms to monitor the conduct of patrons.

20. The Licensee lodged no objection to the conditions imposed by the Delegate regarding 'Maximum Capacities' or 'Crowd Controllers' as set out in paragraph 17 above.
21. Instead, the focus of concern for the Licensee related to the prohibition of any minors in the private karaoke rooms. This is because the Licensee wanted families with children to not be precluded from enjoying the private karaoke rooms, particularly at pre-booked functions at the Premises.

Legislation and the Commission's task

The Commission's internal review power

22. Division 2 of part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision.
23. The Licensee is considered an eligible person to apply for review of the Original Decision, by way of its Review Application, made pursuant to section 153.
24. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
 - (a) affirms or varies the Original Decision; or
 - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.⁴
25. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
 - (a) grant the Original Application and, if so, whether to do so subject to conditions;⁵
or
 - (b) refuse to grant the Original Application.⁶

⁴ Ibid, sections 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

⁵ Ibid, sections 44, 49 and 157.

⁶ Ibid, sections 44 and 157.

Determination of a contested application

26. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Original Application was uncontested, as no objections were received under division 5 of part 2 within the relevant period.⁷
27. 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).*
28. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that granting of the application would be conducive to or encourage harm.⁸

Exercising the internal review power

29. 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.
30. 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*

⁷ Ibid, section 3(1), see 'uncontested application'.

⁸ Ibid, section 44(2)(b)(ii).

- (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.*

31. 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.⁹

32. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;¹⁰ and
- (b) may consider further information, material or evidence.¹¹

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

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

⁹ 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).

¹⁰ LCR Act, section 157(2).

¹¹ *Ibid*, section 157(3).

Conduct of an inquiry

36. 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.
37. 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

38. The Commission on review had before it, and considered, all the materials before the Delegate. The Commission also received and considered the following materials:
 - (a) the Delegate's decision record, dated 13 February 2024;
 - (b) the Review Application, received 19 February 2024; and
 - (c) further submissions from the Licensee, dated 15 May 2024, including an updated venue management plan.
39. Additionally, two of three Commissioners hearing the matter attended the Premises and immediate surrounds, in the company of Mr Dong Chun, manager for the Licensee, on 25 March 2024.

On-the-papers determination of the Review Application

40. The Commission informed the Licensee that it was possible to determine the Review Application 'on the papers,' without a hearing, and the Licensee confirmed that it was comfortable with the Commission determining the matter on the papers.

Further submissions, 15 May 2024

41. In response to enquiries made by the Commission on 1 May 2024, the Licensee confirmed (in summary):
 - (i) barbeque cooking facilities were to be installed in each of the private karaoke rooms to make it clear to patrons that karaoke facilities remain ancillary to the Premises' operation as a restaurant; and

- (ii) the proposed wording for a revised condition regarding minors as specified in the Review Application should be amended from, 'Minors are not permitted in the karaoke rooms at any time, except when they are under the supervision of their adult family members' to, 'Minors are not permitted in the karaoke rooms at any time, except when they are under the supervision of a responsible adult'.
42. The Licensee also proposed an additional licence condition to the effect that it would be required to comply with its latest venue management plan submitted on 15 May 2024, if the Review Application were to be granted. The 15 May 2024 venue management plan contained controls to eliminate risks associated with minors with a responsible adult in private karaoke rooms, such as any alcohol to be served with meals, free self-serve water to always be available, and RSA-trained¹² staff regularly monitoring the rooms.
43. The Licensee also lodged an amended red line plan of the licensed area, which proposed an increase in the maximum number of patrons for the largest private karaoke room from 12 to 17. The amended red line plan also proposed a reduction in the maximum patron capacity number for the smaller private karaoke rooms from 12 to 11.
44. While the Licensee did not seek an amendment to the 'Maximum Capacities' as imposed by the Delegate on the Licence, the Licensee advised that the maximum number of patrons as any one time did not exceed 202.
45. The Licensee confirmed that the planning permit contained no maximum patron capacity given that the Premises is located within a public principal transport network area and noted that the 'Maximum Capacities' as imposed by the Delegate are consistent with the 'Maximum Capacities' imposed on the former restaurant and cafe licence for the Premises.¹³

Reasons for decision on review

Issues for determination on review

46. 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

¹² Understood by the Commission to be employees of the Licensee having completed an *approved responsible service of alcohol program* as defined in section 3(1) of the LCR Act, for the purposes of sections 26B and 26C of the LCR Act.

¹³ The Commission acknowledges the Licensee's submissions lodged on 13 October 2023.

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.¹⁴

Discretion to grant or refuse the Review Application

47. The Commission has a discretion under section 44(1) to grant or refuse the Review Application. In exercising this discretion, the Commission must have regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
48. The Commission could also refuse to grant the Review Application on the basis of any of the matters listed in section 44(2)(a) and (b), which relevantly include that the granting of the application would be conducive to or encourage the misuse and abuse of alcohol.¹⁵

Misuse and abuse of alcohol

49. The Commission considers that the Licensee provided detailed information as part of the Review Application, and notes that some of that information was not before the Delegate as part of the Original Application.
50. The Commission considers that the Licensee is cognisant of its obligations as a licensee, including in relation to the ancillary part of its restaurant business involving the option of offering karaoke in private dining rooms.
51. The Commission also noted that the Licensee submitted on 15 May 2024 a revised proposed licence condition which specifies that minors are not permitted in the karaoke rooms at any time, except when in the company of a responsible adult. Further, the Commission notes that the Licensee proposed an additional licence condition to the effect that it must comply with its venue management plan. This plan provides that staff will be trained to monitor for risks of secondary supply and 'anti-social behaviours', alcohol is to be served with meals, and free self-serve water is to always be available.
52. As part of its commitment to the responsible service of alcohol on the Premises, the Commission notes the Licensee's 15 May 2024 venue management plan incorporates a commitment to 'educating patrons, particularly young people, about potential harms associated with alcohol by display [sic] advertising in the toilet about the harms associated with alcohol abuse'.

¹⁴ LCR Act, sections 4 and 172D(3).

¹⁵ Ibid, section 44(2)(b)(ii).

53. The Commission has taken into account the Licensee's considerable experience in running venues similar to the Premises, and notes that neither Victoria Police, the Council, nor a member of the public objected to the Original Application.
54. Even though the maximum number of patrons for the largest private karaoke room was proposed to be increased on internal review from 12 to 17, the Commission notes that such a proposed maximum number for that space would not be inconsistent with any planning permit, building surveyor report, or the Commission's own internal policy on maximum patron capacity, particularly having regard to the dimensions of the largest private karaoke room.¹⁶
55. The Licensee also confirmed on internal review a reduction in the maximum patron capacity number for the smaller private karaoke rooms from 12 to 11, if the Review Application were to be granted.
56. The site visit at the Premises as referred to in paragraph 39 above assisted the Commissioners with their deliberations of this Review Application.
57. The Commission has also had regard to the Crowd Controllers condition as imposed by the Delegate on the Licence, which the Licensee has not objected to on internal review.
58. For a combination of the above reasons, the Commission does not consider the potential for the misuse and abuse of alcohol as a ground to refuse to grant the Review Application, particularly with the imposition of the conditions as set out in Appendix A.
59. Overall, the Commission is satisfied that no grounds exist for refusal under section 44(2).

Objects of the LCR Act

60. Having regard to the objects of the LCR Act, particularly the harm minimisation object, the Commission is satisfied that adequate controls exist over the supply and consumption of liquor at the Premises and that any risk of harm would be minimised with the imposition of the conditions as set out in Appendix A.

¹⁶ Ibid.

Decision on review

61. Based on the reasons set out above, the Commission is satisfied that, subject to the conditions set out in Appendix A herein, the granting of the Review Application is appropriate in the circumstances.
62. Accordingly, the Commission has determined to vary the decision of the delegate and grant the application for a change of category of licence subject to the conditions set out in Appendix A.

The preceding 62 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Mr James O'Halloran (Deputy Chair) and Ms Thu-Trang Tran (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

- Minors are not permitted in the karaoke rooms at any time, except when in the company of a responsible adult.
- Food must be available at the Premises, including in each of the karaoke rooms, at all times alcohol is served.
- 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, dining, and entertainment areas including all cubicles where karaoke occurs. The surveillance recording system must operate from 30 minutes before the start of the trade 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 Commission, or otherwise retained for at least 1 month. The positioning of the cameras is to be to the satisfaction of the Licensing Inspector.
- When karaoke or live entertainment is provided, crowd controllers, licensed under the *Private Security Act 2004*, are to be employed at a ratio of 1 crowd controller for the first 50 patrons partaking in karaoke and 1 crowd controller for each additional 50 patrons or part thereof partaking in karaoke. Crowd controllers are to be present from 30 minutes before the start of the karaoke being provided, until 30 minutes after closure.
- 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".

- Free drinking water must be provided at the Premises at all times, including self-service in each of the karaoke rooms.

Venue Management Plan

The licensee must conduct and supervise all aspects of the management of the premises in accordance with the licensee's Venue Management Plan, as amended from time to time.

The Venue Management Plan must be retained on the licensed premises in the possession of the licensee, nominee, manager or other person in charge.

The Venue Management Plan must be available to an authorised member of Victoria Police or a person authorised in writing by the Commission if requested.

Maximum Capacities in the Karaoke Rooms

Maximum capacity of 11 patrons in each of the smaller karaoke rooms and 17 patrons for the largest karaoke room, as per the endorsed red line plan.

Trading hours

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