



DECISION AND REASONS FOR DECISION

In the matter of an application by Fortress Melbourne Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to refuse to grant a late-night (on-premises) licence for the premises trading as Fortress Melbourne, located at Shop LG 25, Emporium Melbourne, 295 Lonsdale Street, Melbourne.

Commission:

Ms Helen Versey, Deputy Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Des Powell AM, Commissioner

Date of Hearing

4 December 2019

Date of Decision:

10 January 2020

Date of Reasons:

31 January 2020

Appearances:

Mr Martin Towey of LGS Legal on behalf of the Applicant

Mr Cameron Warfe, Counsel Assisting the Commission

Decision:

The Commission determined to set aside the decision of the Delegate and grant the late night (on-premises) licence subject to the conditions set out in Appendix A.

Signed:

A handwritten signature in black ink that reads "Helen K. Versey".

Helen Versey

Deputy Chair



BACKGROUND

1. On 15 March 2019, Fortress Melbourne Pty Ltd (**Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for a late night (on-premises) licence for the premises proposing to trade as Fortress Melbourne, located at Shop LG 25, Emporium Melbourne, 295 Lonsdale Street, Melbourne (**Premises**) (**Original Application**).
2. The Original Application sought a late night (on-premises) licence for an esports and video-gaming facility with a maximum patron capacity of 1,000 patrons, with the following trading hours:

Good Friday and ANZAC Day	Between 12noon and 3am the following morning
On any other day	At any time

(**the Licence**)
3. The Applicant indicated it would seek approval under section 120 of the *Liquor Control Reform Act 1998* (**LCR Act**),¹ to permit persons under the age of 18 years to attend the Premises, without being in the company of a responsible adult.
4. In accordance with section 33(1) of the LCR Act a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) on 15 March 2019. On 29 April 2019, Victoria Police informed the Commission that it did not object to the Original Application.
5. In accordance with section 33(2) of the LCR Act, a copy of the Original Application was served on the City of Melbourne (**Council**) on 15 March 2019. Council did not provide a response.
6. On receipt of the Original Application on 15 March 2019, the Commission requested further information from the Applicant as required by the LCR Act. This included: a complete application for permanent approval to permit underage persons on licensed premises under section 120 of the LCR Act, a declaration of the right to occupy the Premises and a completed statement of display. The Commission also requested that the Applicant provide a submission addressing the Minister for Consumer Affairs, Gaming and Liquor Regulation's Decision-making Guidelines for Applications for liquor licences in affected municipalities to trade after 1.00am, dated 16 July 2015 (**2015 Freeze Guidelines**).² The Commission requested this information by 24 April 2019, which was later extended to 15 May 2019.
7. On 29 April 2019, the Applicant sought confirmation from the Commission that the statutory period for making objections had expired and no objections to the Original Application had been received

¹ All references to sections in this decision are references to sections of the LCR Act, unless otherwise indicated.

² The Delegate's Statement of Reasons referred to an earlier version of the 2015 Freeze Guidelines, dated 26 June 2015, in error. However, the correct 2015 Freeze Guidelines were applied by the Delegate in the Original Decision.



as at that date. The Applicant also said it was seeking a Ministerial exemption from the 2015 Freeze Guidelines.³

8. After business hours on 15 May 2019, the Applicant emailed to the Commission a copy of a document titled “Patron/Venue Management Plan” for the Premises. On 16 May 2019, the Applicant sought an extension of time to provide the outstanding documentation until 30 July 2019 but on the same day, a delegate of the Commission (**Delegate**) refused to grant the Original Application (**Original Decision**) because, in summary, it did not satisfy the 2015 Freeze Guidelines and the Delegate considered would be likely to detract from, or be detrimental to, the amenity of the area. Further, the Delegate considered the Original Application did not satisfy public display and advertising requirements. The Delegate did not consider the request for unaccompanied minors to be allowed on the Premises, because the application under section 120, and a submission in relation to patron monitoring and measures to prevent secondary supply, had not been received.

Application for Internal Review

9. On 11 June 2019, the Applicant applied for internal review of the Original Decision to refuse to grant the Licence (**Review Application**), on the basis that information would be available to the Commission on review that was not available to the Delegate. The Review Application included completed documentation that had been requested by the Delegate as well as further relevant information, as set out in paragraph 32.
10. In addition, on 29 June 2019, the Minister published new Decision-making Guidelines for Applications for liquor licences in affected municipalities to trade after 1am (**2019 Freeze Guidelines**), effective on 1 July 2019. The 2019 Freeze Guidelines revoke and replace the 2015 Freeze Guidelines dated 16 July 2015 and state that they apply to applications made to the Commission after 30 June 2019 and before midnight on 30 June 2021. However, the 2019 Freeze Guidelines do not apply to applications that are deemed by the Minister to be of major cultural importance or major economic significance to the State.
11. On 1 July 2019, the Applicant requested that the Minister consider whether the application was of major cultural or economic significance to the State. The Commission agreed to not determine the Review Application until this matter had been decided by the Minister.

³ The 2015 Freeze Guidelines provided that they do not apply to applications for liquor licences for premises deemed by the Minister to be of major cultural importance to the State.



12. On 17 October 2019, the Minister published a notice in the Government Gazette exempting the Applicant from the 2019 Freeze Guidelines in respect of the proposed Premises as she deemed this proposed venture to be of major economic significance to the State.
13. Given the new information in the Review Application, including the Minister's exemption of the application from the 2019 Freeze Guidelines, on 22 October 2019, the Commission served a copy of the Review Application on the Council and Victoria Police and sought to confirm if they maintained the position of 'no objection'. On 23 October 2019, the Council confirmed that it did not object to the grant of the Licence the subject of the Review Application. On 29 October 2019, Victoria Police confirmed that it did not object to the grant of the Licence the subject of the Review Application.

LEGISLATION AND THE COMMISSION'S TASK

The Commission's internal review power

14. 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 eligible to apply for review of that decision. The Review Application was made under section 153 of the LCR Act.
15. Pursuant to section 157(1), the specific task of the Commission with respect to the Review Application is to make a fresh decision that:
 - (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁴
16. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. Section 3(1) of the LCR Act defines an "uncontested application" as,
 - an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174) ...
17. As no objection has been received by the Commission, the matter before the Commission on review is therefore uncontested.

⁴ Sections 157(2) to (5) of the LCR Act and section 25(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* further prescribe the manner in which the Commission is to undertake internal reviews.



18. The Commission on review stands in the shoes of the original decision maker (in this case, the Delegate) and, in respect of an uncontested application, must either:
- (a) grant the application (and may do so subject to conditions);⁵ or
 - (b) refuse to grant the application.⁶

Exercising the internal review power

19. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act. Section 5 of the VCGLR Act states

- (1) The Minister may issue decision-making guidelines in respect of the regulation of gambling or liquor.
- (2) Decision-making guidelines issued by the Minister under this section must be published in the Government Gazette.

20. The 2015 Freeze Guidelines considered by the Delegate and the 2019 Freeze Guidelines in operation during the consideration and determination of the Review Application are guidelines issued by the Minister under section 5 of the VCGLR Act.

21. The 2019 Freeze Guidelines relevantly provide that the Minister publishes:

these guidelines representing the policy of the Victorian Government concerning applications to the Victorian Commission for Gambling and Liquor Regulation (commission) for liquor licences to trade after 1am in the municipalities of Melbourne (including the area known as Docklands), Stonnington, Yarra and Port Phillip (inner Melbourne municipalities)

...

In order to restrict late-night liquor licences in the inner Melbourne municipalities, it is the intention of the Victorian Government that the commission have regard to these guidelines when considering whether the grant of an application would detract from or be detrimental to the amenity of the area in which premises to which the application relates are situated, or that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

The 2019 Freeze Guidelines further state that they apply to applications for the grant of late night (on-premises) licences, but do not apply to:

⁵ Sections 44, 49 and 157 of the LCR Act.

⁶ Sections 44(2), 44(3) and 157 of the LCR Act.



(2) an application for a liquor licence for a premises or venture deemed by the Minister, by notice published in the Government Gazette, to be of major cultural importance or major economic significance to the State.

22. The objects of the LCR Act are set out in section 4(1), which provides:

The objects of this Act are—

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, 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.

23. Section 4(2) of the LCR Act provides further that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.⁷

24. Pursuant to section 44(2) of the LCR Act, the Commission may refuse to grant an uncontested application on certain grounds, including (but not limited to):

- (a) that the grant of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated; and
- (b) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol.

25. For the purposes of the LCR Act and relevantly in this matter, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.⁸ Section 3A(2) of the LCR Act lists the following factors that may be taken into account in determining whether the

⁷ See further *Kordister Pty Ltd v Direction of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

⁸ Section 3A(1) of the LCR Act.



grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an area:

- the possibility of nuisance or vandalism;
- the harmony and coherence of the environment;
- any other prescribed matters.

However, the definition of 'amenity' for the purposes of the LCR Act is not limited by these factors.⁹

26. Section 3AA of the LCR Act states that evidence of the following factors, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to, that premises, are taken to constitute evidence of detracting from, or detriment to, the amenity of the area in which the licensed premises is situated –
- i. violent behaviour;
 - ii. drunkenness;
 - iii. vandalism;
 - iv. using profane, indecent or obscene language;
 - v. using threatening, abusive or insulting language;
 - vi. behaving in a riotous, indecent, offensive or insulting manner;
 - vii. disorderly behaviour;
 - viii. causing nuisance;
 - ix. noise disturbance to occupiers of other premises;
 - x. obstructing a footpath, street or road;
 - xi. littering.
27. The Commission considers that, while the grounds of refusal set out in section 44(2) are a relevant consideration, the ultimate determination of an uncontested application is to be made pursuant to sections 44 and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
28. In exercising the internal review power, in accordance with section 57(2) of the LCR Act, the Commission must consider all the information, material and evidence before the original decision maker. It may also consider further information or evidence.¹⁰
29. Section 49 of the LCR Act provides that the Commission may impose any condition it thinks fit on the grant of an application.

⁹ Section 3A(3) of the LCR Act.

¹⁰ Sections 157(2) and (3) of the Act.



Allowing minors on licensed or authorised premises

30. Section 120(1) of the LCR Act provides that:

if a person under the age of 18 years—

- a. is on licensed premises or any authorised premises; and
- b. is not—
 - i. in the company of a responsible adult; or
 - ii. on the premises for the purpose of partaking of a meal; or
 - iii. in the case of a licence under which accommodation is provided, a resident of those premises –

the licensee or permittee is guilty of an offence.

Subsection 120(2) provides that section 120(1) of the LCR Act does not apply, inter alia:

...

- (e) 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.

MATERIAL BEFORE THE COMMISSION

31. The Commission had before it and considered all of the material received by the Delegate in the Original Application, which included:

- (a) The Original Application received 15 March 2019, consisting of:
 - i. application form for late night general or on-premises liquor licence, dated 13 March 2019;
 - ii. covering letter, dated 14 March 2019, and supplementary documents including Movember Foundation feature article on video games; Neilson Sports and Entertainment Report 'The Esports Playbook: Australia'; Notice of private ruling from the Australian Taxation Office (**ATO**) that the Applicant meets the criteria of an Early Stage Innovation Company and reasons for that decision;
 - iii. relevant questionnaires and declaration of associates forms by the Applicant and its associates;
 - iv. Australian Securities and Investment Commission (**ASIC**) current organisation extract and credit report for the Applicant, dated 13 March 2019;



- v. evidence of completion of New Entrant Training and Responsible Service of Alcohol Program by a director of the Applicant, Jon Satterley;
 - vi. patron capacity report for the proposed Premises containing various plans of the premises including a proposed red-line plan, dated 12 March 2019;
 - vii. change of use application lodged on behalf of Vicinity Centres in relation to Emporium Melbourne to allow a restricted recreation facility at the Premises, dated 21 December 2018 and attachments including Melbourne Planning Scheme extracts of clause 52.27, schedule to clause 52.27 and incorporated documents clause 81 for Emporium Melbourne Development – July 2009;
- (b) correspondence between the Delegate and the Applicant dated 29 April 2019 regarding the Applicant's attempts to obtain a letter of support from Council with respect to the Original Application in accordance with the 2015 Freeze Guidelines; and
- (c) correspondence from Victoria Police advising that it did not object to the Original Application, dated 29 April 2019.
32. The Commission also had before it and considered additional information and evidence as follows:
- (a) correspondence between the Applicant and the Delegate, received after the Original Decision was made, dated 16 May 2019;
 - (b) the Review Application, dated 11 June 2019, attaching a copy of the Original Decision, dated 16 May 2019;
 - (c) correspondence between the Commission and the Applicant regarding the application for an exemption from the 2019 Freeze Guidelines dated 28 August and 1 October 2019;
 - (d) completed application for permanent approval to permit underage persons on licensed premises under section 120 of the LCR Act, dated 30 April 2019;
 - (e) letter from the Minister to the Commission advising that an exemption from the 2019 Freeze Guidelines had been granted to the Applicant, received 18 October 2019;
 - (f) correspondence from Council stating that it does not object to the grant of the Licence the subject of the Review Application, dated 23 October 2019;
 - (g) correspondence from Victoria Police stating that it does not object to the grant of the Licence the subject of the Review Application, dated 29 October 2019;
 - (h) submission from the Applicant in support of Review Application attaching:



- i. a report titled 'Independent Assessment and Venue Management Plan' for the proposed Premises prepared by Dr Tony Zalewski, dated 22 October 2019;
 - ii. witness statement of Mr Satterley, dated 26 November 2019 attaching ATO ruling and promotional material for the Applicant;
 - iii. witness statement of a director of Applicant, Adrian Giles, dated 26 November 2019;
- (i) evidence of completion of New Entrant Training and Responsible Service of Alcohol Program by a director of the Applicant, Adrian Giles, dated 26 November 2019;
 - (j) declaration showing right to occupy the Premises, dated 2 December 2019; and
 - (k) two completed statements of display, dated 11 July 2019 and 2 December 2019.

Public hearing

33. On 4 December 2019, the Commission held a public hearing (**Hearing**) for the Review Application. The Applicant was represented at the Hearing and made oral submissions for the Commission's consideration.
34. Following the Hearing, the Commission received a set of proposed licence conditions from the Applicant for its consideration in the event the Commission were minded to grant the Licence the subject of the Review Application.
35. On 18 December 2019 Deputy Chairs Versey and O'Donnell conducted a site visit of the proposed Premises in the company of the Applicant.

REASONS FOR DECISION ON REVIEW

Issues for determination on review

36. In making its decision on review, the Commission must determine the following issues:
 - (a) the application of the Freeze Guidelines to the Review Application;
 - (b) whether the grant of the Licence would detract from, or be detrimental to, the amenity of the area in which the Premises are located;
 - (c) whether the grant of the Licence would be conducive to or encourage the misuse or abuse of alcohol;
 - (d) whether the Licence should be granted or refused, having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation; and



(e) whether to grant the application for approval of unaccompanied minors on the Premises pursuant to section 120 of the LCR Act.

37. Each of these issues are discussed in turn below.

Freeze Guidelines

38. As indicated above at paragraph 18, when performing its internal review function, the Commission must have regard to any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.
39. The 2015 Freeze Guidelines state that they apply to applications determined by the Commission after 30 June 2015 and before midnight on 30 June 2019. The 2019 Freeze Guidelines state that they revoke and replace the 2015 Freeze Guidelines and apply to applications made to the Commission after 30 June 2019 and before 30 June 2021. Whilst the Original Application and the Review Application were not made after 30 June 2019, the decision as to whether to grant the Licence sought in the Review Application will be made after 30 June 2019. In addition, the 2019 Freeze Guidelines represent the current policy of the Victorian Government concerning liquor licences that seek to trade after 1am in the relevant inner Melbourne municipalities, of which City of Melbourne is one. Therefore, having not been determined by 30 June 2019, the Commission considers that the 2019 Freeze Guidelines apply to the Review Application.
40. As detailed in paragraphs 10 and 20 above, the 2019 Freeze Guidelines apply to applications for liquor licences to trade after 1am including in the City of Melbourne, where the proposed Premises is located. The 2019 Freeze Guidelines state the Commission is to have regard to the guidelines when considering whether the grant of an application would detract from, or be detrimental to, the amenity of the area in which the premises to which the application relates are situated, or that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.
41. The 2019 Freeze Guidelines further state that they do not apply to applications for a liquor licence for a premises or venture deemed by the Minister, by notice published in the Government Gazette, to be of major cultural importance or major economic significance to the State. As discussed in paragraph 12, on 17 October 2019 the Minister caused notice to be published in the Government Gazette that the Application is exempt from the 2019 Freeze Guidelines with respect to the proposed Premises that is the subject of the Review Application.
42. The Commission therefore finds that the 2019 Freeze Guidelines do not apply to this Review Application due to the Ministerial exemption.



Amenity

43. The Commission has considered whether the grant of the Licence would detract from, or be detrimental to, the amenity of the area in which the Premises are located.
44. Section 3A of the LCR Act lists the factors which may be considered in determining whether the grant of the Licence would detract from, or be detrimental to, the amenity of the area in which the premises are located.¹¹ Due to the exemption issued by the Minister, the Commission is not required to have regard to the 2019 Freeze Guidelines when considering the potential amenity impact associated with the Review Application. However, the Commission can consider the factors in section 3A and evidence constituting detraction from, or detriment to, the amenity of the area as listed in section 3AA of the LCR Act, extracted at paragraph 26.
45. The proposed Premises are to be located in Emporium Melbourne, a centre for shopping, dining and other services between Little Bourke and Lonsdale Streets in the Melbourne CBD. There will be two entry/exits to the proposed Premises – one from Emporium and one on Caledonian Street. When Emporium is closed, the only entry/exit will be via Caledonian Street. The Premises are proposed to operate as a licensed premises for 24 hours a day, with a patron capacity of 1,000 over two levels and with the intention of staging and broadcasting major esports tournaments and other events.
46. There are several late-night liquor licences and other businesses operating in the area. No objections were received from any residents, surrounding businesses, Victoria Police or Council who all have rights under the LCR Act to object to an application on the basis that it may detract from, or cause detriment to, the amenity of the area in which the proposed Premises are located.

The Applicant's submissions

47. In his written submission, Mr Satterley submitted that the proposed Premises will be “the best esports and video game focused entertainment venue in the world – more advanced and better equipped than the current pinnacle in Vegas”. His submission detailed the offering at the proposed Premises which would relevantly include:
 - (a) unlicensed entrance area, retail outlet opening on to Emporium ground floor and lobby;
 - (b) lower ground and basement level for esports and gaming including:
 - i. 156 networked PCs;

¹¹ Factors in section 3A(3) include possibility of nuisance and vandalism, harmony of environment and other prescribed matters.



- ii. 50+ gaming consoles;
 - iii. areas for single and group participation on PCs and consoles;
 - iv. a restaurant/bar area themed as a medieval tavern;
 - v. auditorium with flexible configuration to allow the staging of different sized competitions with mezzanine viewing area;
 - vi. café area for lighter meals; and
 - vii. kitchen facilities to provide meals whenever the venue is open.
48. Mr Satterley said there would be a full beverage offering at the Premises with local and international beer, wine and spirits, anticipating that high-end alcohol will be most popular. However, he stressed that food and drinks would not be “the main attraction” at the proposed Premises. He considered that the best comparison to the proposed Premises is a Gold Class cinema, “where food and drinks are served as ancillary (to the main event which is the movie). The provision of upmarket refreshments enhances and rounds out the experience.”
49. To manage what Mr Satterley termed the “heavier responsibilities” associated with the proposed extended liquor licence, the Applicant has engaged an experienced hospitality operator as general manager. Further, security consultant Dr Zalewski was engaged to assess the compliance and safety requirements of the proposed Premises and develop the draft Venue Management Plan having regard to, among other things, “the impact that the venue may have on the amenity of the area around Lonsdale Street including vandalism, noise, behaviour of patrons leaving late at night, availability of transport”.
50. Dr Zalewski’s report states that adopting a venue management plan will assist the Applicant to manage the risk of detriment to the amenity of the area, because the issues will have been addressed through operational system controls and staff training in deployment of relevant protocols. The draft Venue Management Plan identifies: management of queues; perimeter monitoring and controls; management of patron capacity and overcrowding; and external movements of patrons including on venue closure or cessation of a major event as relevant considerations to address amenity.
51. At the Hearing, Dr Zalewski submitted his views about the security that would be required at the proposed Premises to manage the risk of detriment to the amenity of the area. However, he noted that, at this stage “the activity patterns”, i.e. peak times of trading, are not apparent. Taking into account the design of the operation and the type of patrons that would be attracted to the proposed Premises, Dr Zalewski did not consider that there should be a “span of control”



by security due to the likelihood of peaks and troughs in trading, but that there should still be some level of “guardianship”.

52. Dr Zalewski considered that, in the first three months of trading, there should be more security present at the peak times for other licensed premises to minimise risks on Friday and Saturday nights arising outside of the venue and while the Applicant is establishing the activity patterns. However, due to the unique nature of the Review Application, attracting patrons that may “have their heads down at a computer screen” and for which liquor is “ancillary to the gamer focus”, he recommended that crowd controllers should be engaged at the discretion of management. Dr Zalewski also commented that a different type of crowd controller from the “classic late night controller” may need to be engaged, provided that person was still in a position to manage issues that may arise outside of the venue rather than inside, if necessary.
53. Mr Satterley said that the proposed Premises was not likely to attract 1,000 patrons every night of the week, but it requires this capacity to cater for an audience of that size when it stages large esports events, or broadcasts national or international esports events. Mr Satterley said that the nature of esports is such that there may not be 1,000 people at an event at any one time, but that those patrons might be spread across the day or weekend “a bit like going to the tennis for two days” on a one or two day pass. Or, a person who is a fan of one game might come at a specified time for the final or semi-final and then leave. He said that esports is not like a football match that happens for two hours only with a distinct start and finish time. Mr Satterley anticipated that there may be one to two smaller events or tournaments in a year and six major ticketed events with up to 1,000 patrons in a year. The Applicant aspires to eventually host 20 such major ticketed events and considers it would be good for Melbourne if they were to achieve it.
54. With respect to the nature of the clientele at the proposed Premises, Mr Satterley said that the “fans and the people who are involved in this culture and this community are... a breed apart from (people) who might be typically looking to build a licensed premises”. He said there is quite a “different nature” to the people they want to attract and it is a community that is the “polar opposite of the sort of crowd that you might find in Chapel Street at 3 in the morning”. He said the intention is to create a place that is inclusive and welcoming for these patrons and that the business tagline is “Gamers. You’re home.”

The Commission’s view

55. The Commission notes that the venue is in central Melbourne and that there was no objection received from Victoria Police, Council or any surrounding business or resident indicating a



concern for the amenity of the area if the Licence the subject of the Review Application is granted.

56. The Commission considers that a licensed premises operating with extended trading hours each night of the week and with a capacity of 1,000 people poses the risk of detracting from, or causing detriment to, the amenity of the area in which that premises is located. However, the Commission accepts the evidence of Mr Satterley that the primary focus of the Premises is esports and gaming and that the supply of liquor is secondary to that purpose. The Commission considers that this does mitigate the risk of detracting from, or detriment to, the amenity of the area compared with other types of licensed premises.
57. The Commission accepts the evidence that the major ticketed events and tournaments that are likely to attract large crowds will be spread out over a day or days rather than concentrated in a short time period, and finds that this will further mitigate the risk of detriment to the amenity of the area. The Commission finds a major ticketed event to include any event where tickets are available for purchase and 400 tickets have been sold, or any major event for which the Applicant will liaise with Victoria Police and the City of Melbourne according to the process in the draft Venue Management Plan.
58. The Commission was not persuaded by Dr Zalewski's evidence that, due to the need to establish activity patterns, the numbers and positioning of crowd controllers should be solely determined by the Applicant.
59. The Commission finds that one potential risk of detracting from, or detriment to, the amenity of the area is the operation of the single entrance/exit on Caledonian Street when the Emporium centre is closed because amenity issues could arise in association with patrons arriving and departing the Premises. However, the Commission considers that this risk can be appropriately mitigated by including the standard amenity conditions on the Licence, as well as additional special conditions. In particular:
 - (a) conditions requiring a crowd controller to be stationed on the Caledonian Street entrance from 1am to 5am on each Saturday and Sunday, public holiday or major ticketed event to monitor (and if required, refuse entry to) patrons seeking access to the proposed Premises from surrounding premises to continue drinking;
 - (b) conditions that only members, guests of members and attendees at a pre-booked function, tournament or major ticketed event and persons who have purchased time on the esports or video game equipment will be granted access to the Premises between the hours of 3am and 5am; and



- (c) a condition that the Applicant will conduct and supervise all aspects of the management of the Premises in accordance with the Venue Management Plan (when it has been finalised), which must be submitted to the Commission prior to the Licence being deemed effective.

The Commission considers all the above should appropriately mitigate the risk of detracting from, or detriment to, the amenity of the area in this matter.

60. The Commission therefore considers that the potential amenity impact associated with the grant of the Licence is not such that it would warrant the refusal of the Licence the subject of the Review Application.

Misuse and abuse of alcohol

61. As stated at paragraph 36(c), the Commission must consider whether the grant of an application for a licence would be conducive to or encourage the misuse or abuse of alcohol. The minimisation of harm arising from the misuse and abuse of alcohol is the primary regulatory object of the LCR Act.
62. As discussed, the proposed Premises is a 24 hour esports and video gaming facility to be located in Emporium Melbourne. The extent of the esports and video gaming offering at the Premises is detailed in paragraph 47. Food and beverages will be available at the bar and restaurant, and a café for lighter meals. Food and beverages will be available at all times the Premises is open.
63. The Applicant also proposed that, if the Review Application is granted, it would submit to a condition being imposed on the Licence that, if the Commission formed the view that the Premises had ceased to be an esports and video gaming facility, the trading hours of the Premises would reduce to 7am to 11pm Monday to Saturday, 10am to 11pm on Sunday and 12 noon to 11pm on Good Friday and ANZAC Day, being ordinary trading hours for an on-premises licence and a late night (on-premises) licence.¹²

The Applicant's submissions

64. The Applicant proposed that, except for the entry/exit opening on to Emporium, the entire Premises should fall within the red-line area where supply and consumption of alcohol can occur 24 hours a day. In summary, the Applicant argued that, because alcohol is ancillary to the provision of esports and video gaming facilities, and due to the unique nature of the patrons likely to be attracted to the Premises, alcohol should be able to be made available throughout

¹² See section 3 of the LCR Act.



the entire Premises at all times of day without increasing the risk of harm arising from misuse and abuse of alcohol.

65. At the Hearing, Mr Satterley gave evidence that, in terms of revenue, expenditure predictions indicated that food and beverage sales were likely to comprise approximately 30% of revenue with the bulk derived from the esports and gaming side of the business (comprising rentals of the PCs, membership, merchandise, ticketed events etc.) Mr Satterley contrasted this to a pub, where he considered 100% of revenue comprises food and beverage sales.
66. The Applicant argued that consumption of alcohol in this unique esports and video gaming environment, with the type of patrons that are likely to be attracted to that environment, is unlikely to pose a risk of harm arising from the misuse and abuse of alcohol. A summary of Mr Satterley's view on the type of patron he anticipates will be attracted to the Premises is set out above at paragraph 54. Mr Satterley also said that "the nature of the community is one that is not known for or thought of as abusers of alcohol" and "whilst (alcohol) might be available... the communities that exist in games and board games and all of that aren't typically immersed in drinking culture".
67. Mr Satterley did not see any increased risk of harm arising from alcohol being served to patrons playing the esports terminals, including by a person who had ordered that alcohol through his or her esports terminal. He noted that Dr Zalewski had assumed that service of alcohol would not occur in this way and that the risk mitigations in the draft Venue Management Plan were drafted accordingly, but he did not consider that service to a terminal would increase the risk above what had been identified in the draft Venue Management Plan. He said that "the folks who are playing video games on expensive PCs are not the sort of people that would challenge this in terms of our basic management plan".
68. The Applicant submitted that the requirement for a 24 hour licence arises due to the nature of international esports and video gaming. That is, patrons could be playing (or watching) games live with teammates or opponents in different time zones all over the world, and it is necessary for the facility to be operating at all times to facilitate this. Mr Satterley said that, "part of fostering this community is providing incredible facilities, fast broadband, super-powered computers, so that people... come out and have a live social experience where they can not only be in a social environment with other human beings in real life, but they can be having a nice experience with their online compatriots in the games that they play." The Applicant also intends to make food available at all times whenever the proposed Premises is open.



The Commission's view

69. The Commission considers there is an inherent risk associated with granting a 24 hour licence, as it potentially enables a person to continually consume alcohol for an entire day (and days beyond that) at the licensed premises without the closure of the premises ensuring a break in that drinking.
70. However, the Commission accepts that the proposed Premises is of a unique and different nature and accepts the evidence regarding the type of venue, the likely patronage and considers that there are less likely to be misuse and abuse of alcohol concerns given this nature and that the supply of liquor is designed to be only ancillary to the predominant focus of the proposed Premises (of esports and gaming). It is further unique given the global nature of the esports events staged overseas or when played by those in Melbourne with others based overseas, which cross various time zones.
71. Having said that, the grant of a licence with such extended trading hours requires careful consideration. The Commission notes the Applicant's proposal for the entire Premises (except reception) to fall within the red-line area, with particular concern about the proposed supply of liquor to patrons at an esports terminal (including where that person could purchase liquor through the terminal with less interaction with staff). The Commission finds that the Applicant's ability to meet responsible service of alcohol (**RSA**) requirements with proper observation of persons ordering and consuming liquor may be diminished if alcohol is permitted to be ordered through the terminals, 24 hours a day, even when staff certified in RSA deliver that alcohol to the table.
72. Therefore, the Commission finds that at this time in the early operation of the business, to mitigate this concern, it is appropriate to prohibit the supply and consumption of alcohol at the esports terminals by persons operating those terminals. The Commission considers that the potential risk may be mitigated if that person is required to leave their terminal to order and consume alcohol, which will ensure that staff can ascertain if the person is intoxicated and that service should be refused.
73. The Commission accepts the evidence that the Premises are likely to attract patrons from the community of esports and video gaming enthusiasts described by the Applicant. However, the Commission notes that no specific evidence was provided during the Review Application to support the Applicant's view that this community is at a lower risk of harm from misuse and abuse of alcohol than other groups. Ultimately, the proposed Premises will have a liquor licence with late trading hours, and consequently it is possible that persons could seek to attend the



Premises for the sole purpose of consuming alcohol, particularly when leaving from other licensed premises when they close. This potential risk requires mitigation.

74. The Commission placed limited weight on the risk mitigation measures in the draft Venue Management Plan because the final procedures and processes are not yet agreed due to the unknowns associated with the application.
75. The Commission finds that in this instance, the imposition of conditions discussed in paragraph 59 as measures to mitigate the risk of detracting from, or detriment to, the amenity of the area, should similarly mitigate risks of harm associated with the misuse and abuse of alcohol. In particular:
 - (a) with respect to the condition requiring security to be present at the Caledonian Street entry during the early hours of Saturday and Sunday mornings, public holidays and major ticketed events, the Commission considers that this condition may also mitigate the risk of harm arising from misuse and abuse of alcohol by persons from outside the esports and gaming community seeking to access a licensed premises during those hours;
 - (b) the condition imposed with respect to the numbers of crowd controllers required to present on the Premises when patronage exceeds a certain capacity may similarly mitigate the risk of harm arising from misuse and abuse of alcohol; and
 - (c) the Commission finds that the condition requiring adoption of the Venue Management Plan when it has been finalised and that, once the Premises is operating, can be adjusted to meet any emerging risks, may be similarly effective in managing the risk of misuse and abuse of alcohol. The Commission further notes that the Applicant intends to retain Dr Zalewski after the Premises opens to assist with this risk mitigation.
76. The Commission notes that the Applicant placed significant weight on the predominant purpose of the Premises being for esports and video gaming as justification for seeking a 24 hour licence and in support of their view that this is a low-risk proposition. As indicated above, the Commission has had significant regard to the nature of the Premises in addressing relevant risks posed. The Commission is concerned that if the nature of the business changed from an esports and video gaming facility to another facility without that focus, but retaining the extended hours, then the identified risks may increase. The Applicant itself recognised this risk and proposed a condition to be imposed by the Commission should the Licence be granted. Accordingly, the Commission has imposed a special condition referred to in paragraph 63 which would reduce the authorised trading hours should the nature of the business change.



77. Having regard to the primary object of the LCR Act which is the minimisation of harm arising from the misuse and abuse of alcohol, the Commission finds that the risk of misuse and abuse of alcohol that may arise as a result of the granting of the Licence that is the subject of the Review Application will be appropriately mitigated by the conditions imposed on the Licence.

General discretion

78. In addition to the harm minimisation objective contained in section 4(1)(a), the objects of the LCR Act also aim “to facilitate the development of a diversity of licensed facilities reflecting community expectations” and “to contribute to the responsible development of the liquor, licensed hospitality and live music industries”.
79. The Commission finds that the proposed Premises is unique in nature and will cater for an emerging subset of the Victorian community comprising esports and video gaming enthusiasts. The Commission accepts the evidence of Mr Satterley that this community is growing in number, as evidenced by the ‘Melbourne Esports Open’ in 2018 which, according to the Applicant, attracted 600,000 unique livestream viewers online and 12 million viewers on social media over the weekend. The Commission considers that granting the Licence the subject of the Review Application is consistent with the object of facilitating a diversity of licensed facilities reflecting community expectations.
80. The Commission is mindful that a licence with such extended trading hours is not common but, in exercising its discretion, has had regard to the decision by the Minister that the proposed Premises is an innovative venture with the potential to yield major economic benefits for the State. The Commission also notes the recognition of the ATO that the Applicant is an Early Stage Innovation Company at the time of the Original Application, supporting the Applicant’s contention that the proposed Premises is quite novel. As indicated above, the Commission has taken into consideration the proposed focus of the Premises (on esports, with the supply of liquor as a secondary or ancillary matter) and that the request for such extended trading hours arises from the unusual nature of esports events occurring globally and in different timezones.
81. The Commission finds that the public advertising and display requirements relating to the Application have been satisfied.
82. Having considered all the matters set out above and having regard to the objects of the LCR Act, the Commission has determined to exercise its discretion to set aside the decision of the Delegate and grant the late night (on-premises) licence subject to the conditions set out in Appendix A.



Application for unaccompanied minors

83. As discussed above, the Applicant also applied for permanent approval to permit unaccompanied underage persons on the licensed premises under section 120 of the LCR Act. The Applicant sought this approval to allow unaccompanied minors to participate in esports and video gaming at the Premises between the hours of 9am and 9pm Sunday to Thursday, and 9am to 10pm on Friday and Saturday.

The Applicant's submissions

84. The Applicant made submissions regarding the demographics of esports enthusiasts and video gamers. According to the material and Mr Satterley's evidence at the Hearing, the average age of a gamer is 33 and the average age of an esports player is 28. Nevertheless, the Applicant considered that minors should be permitted on the Premises unaccompanied, in the same way that minors can attend a Gold Class cinema to see a movie but where alcohol is available only to persons over the age of 18.
85. At the Hearing, Mr Satterley said that the Applicant had considered wrist banding minors during events and tournaments, or later in the evening. The Applicant did not propose to cordon off a separate "dry area" within the Premises for unaccompanied minors.

The Commission's view

86. The Commission finds that allowing unaccompanied minors across the entire proposed Premises presents a significant risk. Generally, the Commission only allows unaccompanied minors on licensed premises in very specific circumstances and for particular events with clear plans and strict controls to ensure that minors cannot obtain or consume liquor at the licensed premises.
87. The Commission finds that the Review Application does not contain a clear enough plan for the management of risks associated with allowing unaccompanied minors on the licensed Premises. The Commission notes that the Applicant chose not to limit the red-line area or designate a specific area in the proposed Premises for unaccompanied minors as alcohol free, which could have facilitated the management of risks associated with unaccompanied minors being permitted in licensed premises. The Applicant indicated that it considered some controls (such as wrist banding) and, with Dr Zalewski, had had discussions about managing minors. Nevertheless, the Commission considers that it was not entirely clear what the Applicant's plans were to ensure unaccompanied minors could not obtain or consume liquor.



88. While noting that minors are not proposed to be unaccompanied after 9pm on Sunday to Thursday and 10pm on Friday and Saturday, the Commission remains concerned given the size of the Premises and the issues listed above. In this instance, the Commission finds that the risks associated with allowing unaccompanied minors on the licensed Premises in such a way that would allow them to move freely throughout a licensed premises with limited controls are too great. For these reasons, the Commission refuses the request for unaccompanied minors to be on the Premises at any time and the application under section 120 of the LCR Act is therefore refused.

DECISION ON REVIEW

89. Based on the matters set out above, the Commission on review has determined to set aside the decision of the Delegate and grant the late night (on-premises) licence subject to the conditions set out in Appendix A.
90. As can be seen, the Commission has imposed many conditions in this matter. This is because the proposed Premises is a novel operation and is not yet operative. It is open to the Applicant to apply to vary or remove certain conditions once the Premises is operating and once there is appropriate evidence of how identified risks are being managed and addressed in practice.

The preceding 90 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Ms Deirdre O'Donnell, Deputy Chair and Mr Des Powell AM, Commissioner.



Appendix A

TYPE OF LICENCE

This licence is a late night (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 must not cause or permit undue detriment (caused by noise or any other factor) 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.

ENTERTAINMENT/MUSIC NOISE

The licensee must ensure that the level of noise emitted from the licensed premises does not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 or as amended or replaced by the responsible authority from time to time.

SECURITY CAMERAS

The licensee must install and maintain a surveillance recording system that is able to clearly identify individuals, display time and date, and provide continuous images of all areas where patrons are permitted including entrances and exits, bars, and areas where entertainment occurs, excluding toilets, washrooms, change rooms and lactation rooms. The position of the cameras must be to the satisfaction of the Licensing Inspector or Gambling and Liquor Inspector. The surveillance recording system must operate at all times the venue is open and, when the venue is closed to the public, for 30 minutes after closure and from 30 minutes before the reopening to the public. A copy of the recorded images must be retained for at least one month and must be available upon request for immediate viewing and/or removal by Victoria Police, or a person authorised by the Victorian Commission for Gambling and Liquor Regulation.

Signs must be displayed in all areas subject to camera surveillance and must read: "For the safety and security of patrons and staff this area is under electronic surveillance".

CROWD CONTROLLERS

For the duration of major ticketed events and on each Friday and Saturday from 7pm until 6am the following morning:

- The licensee must ensure one crowd controller, licensed under the Private Security Act 2004



(Vic), is present and on duty when patron numbers on the licensed premises are between 0 and 100. In addition, a further one crowd controller must be present and on duty for each 100 additional patrons or part thereof up to 400 patrons. Thereafter a further one crowd controller must be present and on duty for each additional 200 patrons or part thereof.

CALEDONIAN STREET ENTRANCE

Between the hours of 1am and 5am on each Saturday and Sunday, public holiday or major ticketed event, an additional crowd controller must be present and on duty at all times at the Caledonian entrance of the premises.

SPECIAL CONDITIONS

In the event that the Victorian Commission for Gambling and Liquor Regulation determines that the predominant activity being carried out on the licensed premises has ceased to be that of an esports and video gaming facility, the licensed trading hours on this licence are as follows:

- Good Friday and ANZAC Day 12 noon to 11pm
- Sunday 10am to 11pm
- On any other day 7am to 11pm

SUPPLY AND CONSUMPTION OF LIQUOR AT ESPORTS TERMINALS

The licensee must not supply liquor at esports terminals. The licensee must not permit a patron to consume liquor while operating an esports terminal.

MINORS

A person who is under 18 years of age is only permitted on the licensed premises in the company of a responsible adult.

RESTRICTIONS OF ENTRY BETWEEN 3AM AND 5AM

Only members, guests of members, attendees at a pre-booked function, tournament or major ticketed event and persons who have purchased time on the esports or video game equipment are to be permitted entrance to the premises between the hours of 3am and 5am on any day.

VENUE MANAGEMENT PLAN

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



Venue Management Plan must be retained on the 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 the Victoria Police or a Gambling and Liquor Inspector if requested.

FOOD

At any time that liquor is made available for supply, patrons must be able to purchase food for consumption on the premises.

CONDITIONS OF APPROVAL

- (a) This licence is not effective until the building works have been completed and a certificate of completion provided to the Commission, the Venue Management Plan has been submitted to the Commission and the Commission has provided written confirmation of the effectiveness of the licence.
- (b) The licensee must apply for confirmation of the effectiveness of the licence on or before 9/01/2021.
- (c) If the licensee does not apply for confirmation on or before 9/01/2021 this licence is invalid without further notice.

MAXIMUM CAPACITIES

Basement: 727 patrons

Lower ground floor: 436 patrons

Overall maximum: 1,000 patrons

TRADING HOURS

At any time on any day except the period between 3am and 12 noon on ANZAC Day and Good Friday.