



DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to grant a restaurant and café licence in respect of the premises trading as the Red Brick Café, located at 1/215 Mont Albert Road, Surrey Hills.

Commission: Mr Ross Kennedy PSM, Chair
Ms Deirdre O'Donnell PSM, Deputy Chair
Ms Danielle Huntersmith, Commissioner

Date of Hearing: 14 July 2020

Date of Decision: 27 August 2020

Date of Reasons: 27 August 2020

Appearances: Ms Mary-Anne Walshe, Applicant
Ms Natalie Naylor, Objector
Mr Christopher Kabay, Director on behalf of the Licensee
Mr Cameron Warfe, Counsel Assisting the Commission

Decision: The Commission has determined to affirm the decision of the Delegate and grant the licence subject to the conditions set out in Appendix A.

A handwritten signature in black ink, appearing to read 'Ross Kennedy'.

Signed:

Ross Kennedy
Chair



4. Pursuant to section 33(1) of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police and relevant Licensing Inspector on 13 November 2019. Victoria Police, on behalf of the Chief Commissioner and Licensing Inspector, confirmed on 6 December 2019 that it did not object to the grant of the Original Application.
5. A copy of the Original Application was also served on the Boroondara City Council (**the Council**) pursuant to section 33(2) of the LCR Act. On 9 December 2019, the Council informed the Commission that a planning permit was required to use the land as proposed under the Original Application under the Boroondara Planning Scheme, and that it did not object to the grant of the Original Application.
6. On 21 November 2019, the Commission received a letter in support from a local resident, David Timms, who submitted that the Premises was a fantastic part of the local community. Mr Timms noted that there had been similar licensed premises in the area that have not had a negative impact on amenity.
7. A total of three valid public objections to the Original Application were received by the Commission (**Objections**) from residents who live in close proximity to the Premises. In summary, the Objections submitted the addition of liquor at the Premises would detract from or be detrimental to the amenity of the area in which the Premises are situated. Specifically, the Objections noted the quiet residential nature of Mont Albert Road and raised the following concerns:
 - (a) increased patron noise emanating from the Premises, in particular affecting nearby residences in immediate proximity to the Premises;
 - (b) increased proposed trading hours would allow the Licensee to operate as a public bar rather than a café, and potentially increase the incidents of intoxicated patrons demonstrating unruly behaviour leading to violence, vandalism and other disturbances; and
 - (c) the lack of available parking in the vicinity of the Premises would worsen if a liquor licence was granted.
7. A copy of the Objections were provided to the Licensee for comment.
8. On 10 January 2020, the Licensee wrote to the Commission to address the concerns raised in the Objections. The Licensee submitted the following:
 - (a) Mont Albert Road is a main thoroughfare for traffic and also has other commercial shops;



- (b) While acknowledging the extra stress placed on parking, there is sufficient parking on surrounding streets and many of its current clientele walk to the Premises; and
- (c) The directors of the Licensee and its staff have undertaken the necessary training to manage any potential risk arising from the introduction of liquor at the Premises.
9. In addition, the Licensee submitted that trade in the footpath trading area would cease at 5pm each day, and also reduced the overall trading hours at the Premises, as follows:
- | | |
|---------------------------|------------------------|
| Monday to Wednesday | Between 7am and 5pm |
| Thursday and Friday | Between 7am and 9pm |
| Saturday | Between 8am and 9pm |
| Sunday | Between 10am and 11pm |
| Good Friday and ANZAC Day | Between 12noon and 9pm |
10. On 31 January 2020, the Commission's delegate (**the Delegate**) determined to grant the Original Application (**the Original Decision**). In granting the Original Application, the Delegate noted that:
- (a) the Premises currently operates as a café and the Original Application does not seek to substantially change its business;
- (b) the supply of liquor, served in accordance with the standard conditions of a restaurant and café licence, would not significantly increase patronage or noise of the existing café, nor would it likely lead to unreasonable levels of intoxication and drunkenness;
- (c) as such, there is unlikely to be a significant change in the demand for parking, and any problems faced by residents in relation to unlawful parking should be referred to Council as the relevant authority;
- (d) neither Victoria Police nor the Council objected to the grant of the Original Application; and
- (e) the Licensee's experience in operating the current café, completion of relevant RSA training and the reduction in trading hours will all contribute towards mitigating any impact on the amenity of the area.
11. The Delegate determined to impose standard conditions relevant to a restaurant and café licence, adopted the reduced trading hours as proposed by the Licensee and also imposed a maximum capacity of 40 persons.



12. On 28 February 2020, the Commission received an application for internal review of the decision (**the Review Application**) from one of the original objectors, Mary-Anne Walshe (**the Applicant**).
13. The Review Application included a request that the Original Decision not take effect until the determination of the Review Application, also known as a stay of the decision (**Stay Request**).
14. On 10 March 2020, after reviewing all the material available to the Commission's Delegate, the Commission determined not to grant the Stay Request.

LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

15. Division 2 of Part 9 of the LCR Act governs internal review applications. The Original Decision is a reviewable decision under section 152 of the LCR Act, as the decision was made under section 47 of the LCR Act as a contested application. Any objector is eligible to make an application for review of the decision by the Commission under section 153 of the LCR Act, therefore the Applicant is eligible to apply for review of the Original Decision.
16. Pursuant to section 157(1) of the LCR Act, the specific task for the Commission with respect to the Review Application is to make a fresh decision that either:
 - (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.
17. Under the LCR Act, an application for grant of a restaurant and café licence may be contested or uncontested. The Original Application constitutes a contested application under section 3(1) of the LCR Act, in that it is an application for the grant of a licence in respect of which objections under Division 5 of Part 2 of the LCR Act have been received.
18. The Applicant objected to the grant of the licence on the grounds of amenity. Section 38(1), which is within Division 5 of Part 2 of the LCR Act, provides that "any person may object to the grant, variation or relocation of a licence on the ground that the grant, variation or relocation would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated". Accordingly, the Original Application was contested, and the Review Application remains contested.



19. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the contested application. In doing so, it must consider all the information, material and evidence that was before the original decision maker.¹ It may also consider further information, material or evidence as part of making its decision.²

Conduct of an inquiry

20. The general conduct of an inquiry, including an internal review, is governed by the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate.
21. Section 33(1) of the VCGLR Act provides that “the Commission may conduct any inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.” The functions of the Commission are listed in section 9 of the VCGLR Act.
22. Section 33(3) of the VCGLR Act provides that when the Commission is conducting an inquiry for the purposes of performing a function under section 9(1)(a), (b), (c) or (d), the Commission has certain powers specified in the subsequently repealed Division 5 of Part I of the *Evidence (Miscellaneous Provisions) Act 1958*. These powers include the power to examine a witness on oath and the power to send for witnesses and documents.
23. Section 25(3)(a) of the VCGLR Act provides that the Commission in performing a function or duty, except when exercising a power under Division 5 of Part I of the *Evidence (Miscellaneous Provisions) Act 1958*, is not bound by the rules of evidence and may inform itself in any way it thinks fit. Section 25(3)(b) specifies that the Commission is bound by the rules of natural justice.

Determination of a contested application

24. Section 154 of the LCR Act provides that the Commission must notify every person who provided the original decision maker information or material, or gave evidence to the original decision maker, in writing that the Review Application has been received. The notification must specify that the Commission on review:

¹ Section 157(2) of the LCR Act.

² Section 157(3) of the LCR Act.



- (a) will not be limited to the information or material provided or evidence given to the original decision maker; and
 - (b) may request further information or material from the person or may require the person to give evidence before the Commission.
25. Where an application is a contested application, pursuant to section 47(1) of the LCR Act:
- “Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.”*
26. Under section 47(3) of the LCR Act, before granting or refusing a contested application, the Commission:
- “(a) may have regard to any matter that the Commission considers relevant; and*
 - (b) may make any enquiries the Commission considers appropriate; and*
 - (c) must give the applicant and each objector a reasonable opportunity to be heard.”*
27. Section 9(3) of the VCGLR Act provides that:
- “The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”³*
28. Section 9(4) of the VCGLR Act provides that:
- “The Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5.”*
29. Accordingly, in exercising its discretion to either grant or refuse a contested application under section 47(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act. The objects of the LCR Act are set out in section 4(1), which provides:
- “(1) 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*

³ The VCGLR Act does not contain any specific objects.



- (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.”*

30. 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.”

31. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”.⁴ However, as was also noted by the Court of Appeal, “this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects”.⁵

32. Pursuant to sections 47(2) and 44(2) of the LCR Act, the Commission may refuse to grant the Original Application on a number of grounds, including:

- (a) that the proposed licensee is not a suitable person to hold or carry on business under a licence;⁶
- (b) 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;⁷ and

⁴ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁵ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

⁶ Section 44(2)(a) of the LCR Act.

⁷ Section 44(2)(b)(i) of the LCR Act.



(c) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol.⁸

33. 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.⁹ Section 3A(2) of the LCR Act lists the following factors that may be taken into account in determining whether the grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an area:
- (a) the possibility of nuisance or vandalism;
 - (b) the harmony and coherence of the environment;
 - (c) any other prescribed matters.

However, the definition of 'amenity' for the purposes of the LCR Act is not limited by these factors.¹⁰

34. Section 49 of the LCR Act provides that the Commission may impose any condition it thinks fit on the grant of an application.

MATERIAL BEFORE THE COMMISSION AND PUBLIC HEARING

35. The Commission on review had before it, and considered, all of the materials received by the Delegate and which are detailed above. The Commission also had before it the Decision and Reasons for Decision of the Delegate in relation to the Original Application, dated 31 January 2020.
36. The Commission also received the following documents:
- (a) the Review Application, together with supporting documents from the Applicant;
 - (b) emails received from the Applicant on various dates, attaching:
 - i. a copy of "Amendment to Permit Delegate Report" dated 21 January 2020 relating to the planning application for the Premises;
 - ii. documents relating to the planning appeal before the Victorian Civil and Administrative Tribunal; and
 - iii. photographs of patrons utilising the footpath trading area of the Premises;

⁸ Section 44(2)(b)(ii) of the LCR Act.

⁹ Section 3A(1) of the LCR Act.

¹⁰ Section 3A(3) of the LCR Act.



- (c) email from the Licensee dated 12 July 2020; and
 - (d) letters from 11 members of the public indicating support for the Licensee and the Premises.
37. On 14 July 2020, the Commission conducted a public hearing in relation to the Review Application (**the Hearing**).¹¹ Given the requirements of social distancing as a result of the COVID-19 pandemic, the Hearing was conducted remotely, with the parties appearing via audio-visual or telephone link.
38. The Applicant appeared at the Hearing via telephone and gave evidence to the Commission. The Licensee was represented by one of its directors, Mr Christopher Kabay. The Commission also heard evidence from another of the original objectors, Natalie Naylor, as well as the author of the original letter of support, Mr Timm.
39. Commissioners Kennedy and Huntersmith separately conducted an external inspection of the Premises and the surrounding area prior to the Hearing.

DETERMINATION OF THE REVIEW APPLICATION

40. In making its decision on review, the Commission must determine the following relevant issues:
- (a) whether the grant of the licence would detract from or be detrimental to the amenity of the area in which the Premises are located;¹² and
 - (b) 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.¹³

Amenity

41. The Commission must determine whether the grant of the licence would detract from or be detrimental to the amenity of the area in which the Premises are located, which may give rise to a ground of refusal under sections 47(2) and 44(2).
42. In the past, "noise levels" and "parking facilities" were factors listed in section 3A(2) of the LCR Act that the Commission may take into account when determining whether a grant of a licence would detract from or be detrimental to the amenity of an area. Since that time, an amendment to the LCR

¹¹ On 23 June 2020, a differently constituted Commission was scheduled to conduct a public hearing in relation to the Review Application. However, this hearing was indefinitely adjourned on 22 June 2020 following the identification of a conflict of interest between one of the sitting commissioners and one of the original objectors. For the avoidance of doubt, the conflicted commissioner played no further part in the determination of the Review Application.

¹² Sections 44(2)(b)(i) and 47(2) of the LCR Act.

¹³ Section 4 of the LCR Act, in particular subsection (2).



Act removed "noise levels" and "parking facilities" as factors (along with reference to traffic movement) to reduce duplication between the planning and liquor processes.¹⁴

43. In circumstances where the Licensee's planning application remains under consideration by the Victorian Civil and Administrative Tribunal, the Commission considers it appropriate to assess concerns regarding noise-related amenity and parking availability so it can be satisfied that amenity of the area would not be negatively impacted upon by the grant of the application. If such issues had been finally determined as a part of the planning process, the Commission would have placed less weight on these concerns to reduce any possible duplication between the liquor and planning processes. Having said that, the Commission notes that a Council delegate has previously considered the likely amenity impacts and determined to grant the planning amendment as sought by the Licensee.
44. Similar to the objections raised before the Delegate in considering the Original Application, the Applicant and other objectors referred to the following concerns that granting the licence would have a detrimental impact on the amenity of the area in which the Premises are located:
- (a) increased proposed trading hours would allow the Licensee to operate as a public bar rather than a café, and was not in keeping with the quiet residential neighbourhood;
 - (b) increased patron noise emanating from the Premises, in particular affecting nearby residences in immediate proximity to the Premises;
 - (c) potential incidents of intoxicated patrons demonstrating unruly behaviour leading to violence, vandalism and other disturbances;
 - (d) increased exposure of alcohol to families and small children, particularly in relation to consumption of alcohol in the footpath trading areas; and
 - (e) the lack of available parking in the vicinity of the Premises would worsen if a liquor licence was granted.

Operation of the Premises as a public bar

45. The Applicant submitted that the proposed trading hours at the Premises would permit the café to operate as a public bar, which would not be in keeping with the quiet residential nature of the surrounding neighbourhood.

¹⁴ Explanatory Memorandum at clause 29, Second Reading Speech at 928.



46. The Commission accepts that the Premises is located in a Neighbourhood Residential Zone (which allows for non-residential uses that serve local community needs, such as a café with appropriate planning permission) that is predominantly residential in nature. However, the Commission considers that the Premises is of modest size and capacity, in particular with regard to the footpath trading area and which is subject to planning restrictions of a maximum of three tables and six chairs. The Commission also notes that the proposed trading hours sought by the Licensee are less than the ordinary trading hours set out under the LCR Act. This is particularly the case with regard to the proposed trading hours for the footpath trading areas, which would see the service and consumption of liquor cease in that area at 5pm each night.
47. The Commission does not accept that granting the Licence would permit the Licensee to operate the Premises as a public bar. The Licence contains standard conditions for a restaurant and café that the predominant activity carried out at all times on the Premises must be the preparation and serving of meals for consumption on the Premises, as well as requiring the provision of seating for at least 75% of the patrons attending the Premises.
48. The Commission ultimately finds that granting this category of licence to a long established premises in a Neighbourhood Residential Zone would not be inappropriate in all the circumstances. The Commission considers that the Licensee is aware of and considerate to the proximity of the Premises to surrounding residences, and has made appropriate concessions as to the proposed operation of the café in those circumstances.

Excessive patron noise

49. The Applicant submitted that existing patron noise from the Premises would worsen in the event that a licence was granted. The Applicant noted the proximity of the Premises from her residence, and the fact that bedroom windows along Mont Albert Road are facing towards to the Premises. Ultimately, the Applicant submitted that such noise impact would be detrimental to existing and proposed residential properties in the immediate vicinity of the Premises.
50. The Commission accepts that the conduct of a café business will be attended by a certain level of patron noise, and the introduction of liquor at the Premises has the potential to create situations where noise levels may have an increased impact on the amenity of the area surrounding the Premises. Despite this, the Commission has taken into account that the Premises has been an existing café for a number of years, and there have been no significant issues in relation to patron noise from the Premises during this time. The Commission also notes the modest size and capacity of the Premises, as well as the proposed operating hours for both the interior and footpath trading areas of the Premises. Further, based on the evidence presented at the Hearing,



the Commission is satisfied that the Licensee has demonstrated a committed and proactive attitude towards minimising the impact of its business on the amenity of the area surrounding the Premises.

51. The Commission acknowledges the concerns of the Applicant regarding the potential for patrons utilising the footpath trading area to contribute to noise impacts for surrounding residences. The Commission accepts that it is more likely that patrons utilising the external footpath area (rather than those inside the Premises) will contribute more to any noise that may impact on surrounding residences. For this reason and to minimise the impact in this regard, the Commission has determined to impose a maximum capacity for the footpath trading area of eight patrons (reflecting the current permitted seating of six patrons and in line with the 75% seating requirements of a restaurant and café licence). This will ensure that there are not excessive numbers of patrons using the external footpath area at any one time, mitigating the risk of this impact materially affecting the Applicant and other residents.
52. Finally, the Commission notes that any noise emanating from the Premises would be subject to the standard noise amenity conditions for a restaurant and café licence.
53. Consequentially, the Commission finds that the provision of alcohol at the Premises in accordance with the conditions of the Licence is unlikely to result in issues of excessive patron noise following the grant of a licence to the Licensee.

Potential intoxication of patrons and unruly behaviour

54. The Applicant and the objectors at first instance raised concerns regarding the potential for intoxicated patrons at the Premises leading to incidents of violence and anti-social behaviour upon leaving the Premises.
55. The Licensee submitted that all staff have undertaken the necessary training with regard to the Responsible Service of Alcohol, and each director had also completed the New Entrant Training as required. Mr Kabay also gave evidence that he was confident that the Licensee was thoroughly prepared to operate the Premises in a safe and responsible manner, and appropriately deal with any issues relating to intoxication if they occurred.
56. The Commission finds that there is no evidence of any existing or reported issues relating to anti-social behaviour at the Premises. The Commission accepts the evidence of the Licensee that its directors and staff have undertaken the necessary training and will be responsible in their operation of the Premises. The Commission has also taken into account that neither Victoria Police nor the Council lodged objections in relation to the Original Application.



57. Overall, the Commission is satisfied that there is no evidence to substantiate the concerns of the Applicant and original objectors relating to potential incidents of intoxication and anti-social behaviours relating to the Premises. As such, the Commission finds that no such impact on amenity exists in this matter.

Increased exposure of alcohol to families and children

58. At the Hearing, Ms Naylor submitted that a further impact on the amenity of the area would be the increased exposure of alcohol to resident families and children as they went about their daily lives. For example, Ms Naylor stated that children going to and from school may be required to travel past the Premises and see patrons consuming alcohol, in particular within the footpath trading area.

59. While it accepts that granting the Licence could result in the type of impact as submitted by Ms Naylor, the Commission does not consider that this warrants the refusal of the grant of the Licence. The Commission notes that the consumption of alcohol at the Premises is likely to be relatively modest when done in accordance with the conditions of the Licence. Similarly, the Commission does not consider that it would be reasonable to refuse the inclusion of the footpath trading area within the red-line plan of the Premises, noting that the interior of the Premises is quite visible from the street and therefore consumption of liquor would still be observable through the windows even if consumption of liquor was not permitted within the footpath trading area.

Parking

60. The Applicant submits that the grant of the licence to the Licensee will exacerbate the existing parking issues in vicinity of the Premises. While accepting that the availability of parking around the Premises may be an issue at certain times, the Commission notes that this is not unusual for areas around retail and shopping strips on key lateral roads. Further, the Commission finds that the Premises is an existing café and, accepting the Licensee's submission that many existing patrons either walk, cycle or use public transport rather than drive to the Premises, the addition of a liquor licence is unlikely to significantly increase the demand for parking. Ultimately, the Commission considers that this concern is more appropriately dealt with under the relevant planning scheme (a position consistent with the amendments to the definition of 'amenity' referred to at paragraph 42 above).

61. In relation to claims that patrons of the Premises illegally park in the vicinity of the Premises, the Commission finds that there is insufficient evidence to support this claim. Further, even accepting that there have been instances of illegal parking in the area, the Commission does not consider



that this could be positively attributed to the Licensee. Finally, the Commission notes that the enforcement of parking restrictions and issues in this regard is ultimately a matter for Council.

62. Taking into account all of the evidence, the Commission determines that the grant of a licence to the Licensee would be unlikely to result in or contribute to any existing parking issues in the vicinity of the Premises, and therefore does not give rise to undue amenity concerns.

Conclusion on amenity

63. The Commission is satisfied that the Licensee has demonstrated that it has given due consideration to the potential for negative impacts on the amenity of the area when operating the Premises, in light of the evidence presented before the Delegate and at the Hearing before the Commission.
64. The Commission also refers to the letters of support of the Licensee it has received in relation to this matter. While these letters provide some evidence of the popularity of the Premises and the directors of the Licensee are considered to be doing a good job, the Commission does not consider that these letters outweigh or dispel the genuine concern raised by the Applicant and the objectors at first instance that the introduction of liquor at the Premises will have a detrimental impact on the amenity of the area. The Commission's above findings in relation to specific amenity concerns raised have been determined based on the likelihood of those impacts occurring and having a measurable impact on the amenity of the area.
65. In summary, the Commission finds that, subject to the conditions outlined in Appendix A, the grant of the Licence will not, on balance, detract from, or be detrimental to, the amenity of the area. The Commission also considers that the conditions outlined in Appendix A relating to the use of the Premises mitigate and minimise any potential negative impact with respect to amenity.

OTHER CONSIDERATIONS

66. In determining this Review Application, the Commission has also had regard to the objects of the LCR Act, in particular harm minimisation, including whether granting the licence would contribute to, and not detract from, the amenity of community life. Further, in addition to determining issues with respect to amenity (see above), the Commission has also considered whether granting the Licence would be conducive to, or encourage, the misuse or abuse of alcohol. On this issue, the Commission notes that there has been no evidence that granting the Licence would do so.
67. Finally, the Commission is satisfied that the Licensee has adequate knowledge of the LCR Act as demonstrated by the completion of New Entrant Training and RSA training by both directors of the Licensee as well as other persons associated with the operation of the Premises.



DECISION

68. Having regard to these findings and the objects of the LCR Act, pursuant to sections 47 and 157 of the LCR Act, the Commission has determined to affirm the decision of the Delegate and grant the restaurant and café licence subject to the conditions set out in Appendix A.

The preceding 68 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, Ms Deirdre O'Donnell, Deputy Chair and Ms Danielle Huntersmith, Commissioner.



Appendix A

TYPE OF LICENCE

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

RESTAURANT & CAFE CONDITIONS

This licence is subject to the following conditions:

- (a) the predominant activity carried out at all times on the premises must be the preparation and serving of meals for consumption on the licensed premises; and
- (b) tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at any one time; and
- (c) the licensee must not permit -
 - (i) the live performance of any musical works; or
 - (ii) the playing of any recorded musical works -
on the premises at higher than background music level at any time.

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.

The licensee shall ensure that the level of noise emitted from the licensed premises shall 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.

MAXIMUM CAPACITIES

Internal area	40 patrons
Footpath/External area	8 patrons
Total at any one time	40 patrons

TRADING HOURS

Good Friday and ANZAC Day	Between 12 noon and 9pm
Sunday	Between 8am and 8pm
Monday to Wednesday	Between 7am and 5pm
Thursday & Friday	Between 7am and 9pm
Saturday	Between 8am and 9pm

APPROVALS/CONSENTS

Section 9(1)(b)/9A(1)(b)/11A(3)(b) Footpath/External area. The licensee is authorised to supply liquor on premises, other than the licensed premises, authorised by the Victorian Commission for Gambling and Liquor Regulation and shown on the approved plan during the hours specified below for consumption on those premises.

Good Friday and ANZAC Day	Between 12 noon and 5pm
Monday to Friday	Between 7am and 5pm
Saturday & Sunday	Between 8am and 5pm