



DECISION AND REASONS FOR DECISION

In the matter of applications for internal review under section 153 of the *Liquor Control Reform Act 1998* by parties affected by a decision to grant on-premises licence no. 32357102, to D & E Missailidis Pty Ltd, regarding the premises trading as Miss Loui at 103 Bannons Lane, Yarrambat.

Commission:

Ms Helen Versey, Deputy Chair

Ms Danielle Huntersmith, Commissioner

Mr Andrew Scott, Commissioner

Appearances:

Mr Matt Dillon as Counsel for the Licensee

Mr Lee Konstantinidis as Counsel Assisting the Commission

Helen Stray

George & Gwendelene Barratt

Lydia & Joe Tartaglia

Date of decision:

2 December 2020

Date of reasons:

2 December 2020

Date of hearing:

26 August 2020

Decision:

The Commission has determined to vary the decision of the delegate to grant the application for an on-premises liquor licence, subject to the conditions at Appendix A.

Signed:

A handwritten signature in black ink, appearing to read 'Helen Versey'.

Helen Versey

Deputy Chair



REASONS FOR DECISION

BACKGROUND

The Original Application

1. On 19 February 2020, D & E Missailidis Pty Ltd (**the Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for an on-premises licence (**the Original Application**) for the business proposing to trade as 'Miss Loui', situated at 103 Bannons Lane, Yarrambat 3091 (**the Premises**).
2. The directors of the Licensee are Dimitrios & Evangelia Missailidis (**the Directors**).
3. The Original Application proposed to operate the Premises as a restaurant on a substantial acreage owned by the Directors and supply liquor in connection with the service of meals, to a maximum of 150 patrons. The development of the restaurant was proposed to involve the conversion of an existing shed on the land, which had not yet occurred.
4. The Original Application sought to supply liquor for consumption on the licensed premises during the following hours:
 - (a) Sunday Between 8am and 12 midnight.
 - (b) Good Friday & ANZAC Day Between 12 noon and 12 midnight.
 - (c) On any other day Between 8am and 12 midnight.
5. The Original Application included the following information:
 - (a) a completed application form for an on-premises licence dated, 15 December 2019;
 - (b) two completed declarations of associates, dated 15 December 2019;
 - (c) Australian Business Number details for "The Trustee for D & E Missailidis Family Trust" (ABN 47 942 543 657), as at 21 February 2020;
 - (d) an Australian Securities & Investments Commission (**ASIC**) Current Company Extract for the Licensee, as at 4 December 2019;
 - (e) an ASIC Current & Historical Company Extract for the Licensee, as at 2 December 2019;
 - (f) an ASIC Certificate of Registration of a Company for the Licensee;
 - (g) a building report dated 13 February 2020, assessing the patron capacity of the Premises in accordance with the *Liquor Control Reform Regulations 2009*;
 - (h) a declaration of the Licensee's right to occupy the Premises, dated 15 December 2019;



- (i) Responsible Service of Alcohol and Licensees' First Step certificates for one of the directors of the Applicant, dated 11 December 2019;
 - (j) a copy of an application for a planning permit with the Nillumbik Shire Council (the **Council**), for the redevelopment of the shed located on the Premises for use as a restaurant, dated 13 January 2020;
 - (k) written submissions from the Licensee's representative, dated 20 February 2020;
 - (l) a 'red line' plan outlining the proposed licensed area; and
 - (m) a statement of display dated 25 March 2020, indicating that the Original Application had been displayed by way of public notice between 25 February 2020 and 24 March 2020.
6. On 21 February 2020, a copy of the Original Application was served on the Chief Commissioner of Victoria Police (**Victoria Police**) in accordance with section 33(1) of the LCR Act. On 20 March 2020, Victoria Police informed the Commission that it did not object to the grant of the Original Application.
7. On 21 February 2020, a copy of the Original Application was also served on the Council in accordance with section 33(2) of the LCR Act. On 10 March 2020, the Council informed the Commission that it had received and was in the process of assessing a planning application for the Premises which was inconsistent with the proposed red line and trading hours sought by the Original Application. However, the Council did not object to the grant of the Original Application on grounds of amenity.
8. In response to displaying the public notice of the Original Application, as referred to in paragraph 5(m) above, 20 objections were received on grounds of amenity from residents of Yarrambat (**the Objections**). The Objections cited a number of matters which generally addressed the lack of compatibility of Original Application with the local planning scheme (**the Scheme**). The Objections also claimed that granting the Original Application would detract from the amenity of the area, citing increased noise, inappropriate proposed trading hours, disruptive effects on native wildlife and increased traffic as examples of how this would occur.
9. After considering the Objections, the Commission's delegate (**the Delegate**) determined to grant the Original Application (**the Original Decision**) for an on-premises licence no. 32357102 (**the Licence**), noting that the matters raised in the Objections could be mitigated through the imposition of conditions on the Licence.
10. The Delegate also stated in its reasons that the amenity impacts of granting the Original Application could be minimised through the imposition of conditions. Accordingly, the Delegate



determined to impose conditions on the Licence, making the effectiveness of the Licence conditional on the Council's approval of the planning application, and limiting the hours of operation of the Licence to the following:

- (a) Good Friday & ANZAC Day between 12 noon and 11pm; and
- (b) On any other day between 10am and 11pm.

11. While the Applicant had applied to the Council for a planning permit to use the Premises as a restaurant, this planning application had not been determined when the Original Decision was made.

The Review Applications

12. Within 28 days of the Delegate publishing its reasons for decision, the following applications for the internal review of the Original Decision were received under section 153 of the LCR Act (**the Review Applications**):

- (a) an application from George and Gwendelene Barratt, dated 19 May 2020;
- (b) an application from Peter and Cathy Wearne, dated 22 May 2020;
- (c) an application from Carolyn and Michael Dyer, dated 22 May 2020; and
- (d) an application from Helen Stray, dated 22 May 2020.

13. The makers of the Review Applications (**the Review Applicants**) had submitted objections in relation to the Original Application, and the bases of the Objections referred to in paragraph 8 above were also raised with respect to the Review Applications. In summary, the Review Applications were made on grounds that the grant of the Licence would be detrimental to the amenity of the area in which the Premises is situated, due to:

- (a) noise likely to be emitted as a result of granting the Review Application, including noise caused by patrons, increased traffic, rubbish collection and music;
- (b) acoustic characteristics of the area surrounding the Premises, and in particular, the ease with which noise travels in the area surrounding the Premises;
- (c) potential impacts to the privacy of nearby residents caused by patrons of the Premises having a line of sight to the affected land;
- (d) poor accessibility to the Premises via narrow roads with poor visibility, representing a hazard to road users and wildlife;
- (e) an absence of nearby public transport options;



- (f) the possibility of an increased incidence of antisocial and drunken behaviour, including nuisance, violent or abusive language, littering and vandalism; and
- (g) the character of the areas as a semi-rural 'Green Wedge' and the detrimental effect on local fauna and flora caused by increased traffic flow.

14. On 24 August 2020, the Licensee provided the Commission with a copy of the Council's Notice of Decision dated 21 August 2020 with respect to the Licensee's application for a planning permit to operate a licensed restaurant on the Premises. This was circulated to the parties to the Review Application. In granting the planning application, the Council imposed a condition limiting the trading hours of the Premises to the hours below (**the Trading Hours**):

Sunday	8am to 10pm
Good Friday & ANZAC Day	12 noon to 10pm
Wednesday to Saturday	12 noon to 10pm

LEGISLATION 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 Application was an application under section 27 for the grant of a licence and section 152 of the LCR Act provides that the decision to grant the Original Application is a reviewable decision. As persons who objected to the Original Application, each of the Review Applicants is eligible to apply for the review of the Original Decision under section 152.
16. The Review Applications were made under section 153 of the LCR Act, within 28 days of the Original Decision, by eligible persons.
17. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
- (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.¹

¹ Sections 4(2) and 157(2) to (5) of the LCR Act and section 25(3) of the VCGLR Act further prescribe how the Commission is to undertake internal reviews.



18. Under the LCR Act, an application for an on-premises licence may be contested or uncontested. Pursuant to section 3(1), a contested application is:

“an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the period set out in that Division for those objections (or that period as extended under section 174) ...²

19. As local residents objected to the grant of the Original Application, the Original Application was contested and the Review Applications remain contested by the Review Applicants. Section 47(2) of the LCR Act states that the Commission may refuse to grant a contested application on any of the grounds set out in section 44(2) of the LCR Act.
20. Upon review, the Commission stands in the shoes of the original decision-maker and, in respect of a contested application, must either:
- (a) grant a review application (and may do so subject to conditions);³ or
 - (b) refuse to grant a review application.⁴

Exercising the internal review power

21. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (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.⁵
22. The objects of the LCR Act are set out in section 4(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*
 - (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*

² Conversely, an “uncontested application” is defined in section 3(1) as being “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](#)).”

³ LCR Act, sections 44, 49 and 157.

⁴ LCR Act, section 44 and 157.

⁵ VCGLR Act, sections 9(3) and (4).



- (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.⁶

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

- (a) must consider all the information, material and evidence before the Original Decision maker;⁷
- (b) may consider further information or evidence;⁸ and
- (c) may, in respect of a contested application on review, have regard to any matter the Commission considers relevant, make any enquiries the Commission considers appropriate and must give the applicant and each objector a reasonable opportunity to be heard.⁹

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

26. Under section 47(2) a contested application may be refused on any of the grounds set out in section 44(2). However, these grounds are not exhaustive and the determination of a contested application is to be ultimately made pursuant to sections 47(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

27. Section 44(2)(b) of the LCR Act states that the Commission may refuse to grant the Review Application on various grounds including, amongst others, that:

- (a) the granting 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; or

⁶ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

⁷ LCR Act, section 157(2).

⁸ LCR Act, section 157(3).

⁹ LCR Act, section 44(4)(a).



- (b) the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

Conduct of an inquiry

28. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct an inquiry in any manner it considers appropriate. Relevant provisions governing the conduct of an inquiry by the Commission in this matter include:

- (a) section 33 of the VCGLR Act, which provides that, inter alia:

“(1) The Commission may conduct an inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.

...

(3) When conducting an inquiry for the purposes of performing its functions under section 9(1)(a), (b), (c) or (d) the Commission is taken to be a board appointed by the Governor in Council and Division 5 of Part I (including section 21A) of the Evidence (Miscellaneous Provisions) Act 1958, as in force immediately before the repeal of that Division, applies accordingly.”

- (b) section 25(3) of the VCGLR Act, which provides that:

“In performing a function or duty the Commission—

(a) 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 but may inform itself in any way it thinks fit;

(b) is bound by the rules of natural justice.”

MATERIAL BEFORE THE COMMISSION

29. The Commission on review had before it and considered all the information before the Delegate, which included the materials referred to in subparagraphs 5(a) to 5(m) above.

30. The Commission also received:

- (a) Written submissions from the Review Applicants, objecting to the Licence and explaining how its grant may detract from the amenity of the area. The portion of this information relevant to the determination of the Review Application reiterates the matters raised in paragraph 13 above;
- (b) information from residents of the municipal area who did not object to the Original Application and were therefore not parties to the Review Applications. Where relevant,



this information concerned the same matters as the Objections;

- (c) the Council's Notice of Decision dated 21 August 2020, provided to the Commission by the Licensee's representative on 24 August 2020. This formal notice indicated that the Council had approved the use of the Premises as a restaurant involving the sale and consumption of liquor, subject to 51 conditions addressing matters such as the control of noise, traffic flow and waste management; and
- (d) correspondence and written submissions from the Licensee's representative.

31. On 25 August, the Licensee's representative provided the following information to the Commission:

- (a) a written outline of its oral submissions which would be made at a hearing before the Commission on 26 August 2020 (**the Hearing**);
- (b) an electronic copy of an undated letter which was ostensibly circulated to residents of the area surrounding the Premises; and
- (c) an outline of the evidence to be given at the Hearing by the Directors of the Licensee.

32. On 13 October 2020, in response to a request by the Commission, the Licensee provided the Commission with a management plan which contained the procedures and policies referred to by the Directors at the Hearing.

33. On 11 November 2020, submissions were provided to the Commission in response to its request that the Licensee provide additional detail explaining how it proposed to receive and manage complaints regarding amenity.

Public Hearing

34. Due to COVID-19 restrictions, the Hearing was conducted remotely on 26 August 2020. The Directors of the Licensee and the Review Applicants gave evidence at the Hearing.

35. The Review Applicants elaborated upon their written material provided in the course of the Original and Review Applications:

- (a) Mr Barratt stated that it was not possible for the Licensee to control noise from patrons arriving at or leaving the Premises.

He was concerned about the impact of the Premises upon wildlife in the area and did not believe that the Directors shared the values of the residents to the area;

- (b) Ms Stray objected to the Licence, and while she was aware that the planning decision prevented the Premises from operating as a 'function centre' within the meaning of the Scheme, she expressed concern that the Premises infringe upon her privacy. She stated that the views offered by the Premises overlooked her property and that she had a clear line of sight from her house to the proposed restaurant area.



She also stated that the formal 'pubic notice' requirements for the display of the Original Application had not been met, however she also indicated that there had been locally organised opposition to the Original Application by way of a circulating notice and an internet group, though was not certain of the latter;

- (c) Ms Tartaglia gave evidence that she generally woke up at 5am to prepare for her workday and that the Premises operating in the evenings would disrupt her sleep, as well as the environment generally.

Her concerns were not mitigated by the conditions set out in the Council's planning decision and she did not believe that the Commission could impose any condition on the Licence which would sufficiently mitigate her concerns regarding noise.

She stated that she would not have taken up residence in the area with her husband had she known that the Licensee would seek to operate a restaurant.

She indicated that she chose to live in the area because of its quiet and rural character.

Ms Tartaglia also expressed concerns regarding privacy and stated that there was a direct line of sight from the shed on the Premises and her bedroom window.

- 36. The Directors also gave evidence. In her evidence, Ms Missailidis stated that:
 - (a) the main activity to be conducted on the Premises would be the preparation and service of food, however the land would also be used to grow and harvest seasonal organic produce. She stated that the Premises contained a number of olive trees and approximately 30 citrus trees, and that the produce from these trees would be used in the preparation of food served in the restaurant;
 - (b) she had spoken to members of Victoria Police regarding the suitability of the Premises as a licensed restaurant and her proposal was supported;
 - (c) the area outlined as an 'outdoor area' in the red line plan submitted with the Original Application would, in fact, be enclosed. Glass would separate that area from the outside area. She gave evidence that windows would be fixed shut and doors would be closed when not used to access or leave the licensed area, creating a sound barrier;
 - (d) strict policies regarding the responsible service of alcohol would be implemented and staff would closely monitor adherence with these;
 - (e) the Directors were experienced in managing and working in licensed restaurants;
 - (f) the Directors did not expect to utilise the maximum capacity of 150 patrons, even though they applied for this capacity;
 - (g) the noise created by patrons leaving the car park and entering the licensed area of the Premises or vice versa would be minimal, and as such, would not detrimentally affect the amenity of the area; and



- (h) the Licensee no longer intended to host live or recorded amplified music at the Premises.
37. In his evidence, Mr Missailidis stated that:
- (a) he believed that use of the Premises as a ‘function centre’ contrary to the planning scheme would only occur if the number of patrons for an event exceeded 100, and that the Licensee was otherwise entitled to host events including birthday celebrations, if attended by 100 patrons or less;
 - (b) the Premises would serve wine and beer with a limited and boutique range of spirits; and
 - (c) the Directors intended to operate the Premises as a restaurant even if the Licence was not granted.

ISSUES FOR DETERMINATION

Amenity

38. As referred to in paragraph 8, the Objections consisted of 20 individual submissions from residents, objecting to the Original Application on grounds that granting the Licence would be detrimental to the amenity of the area in which the Premises is situated.
39. Of those who objected the Original Application, three applications were made seeking to review the Original Decision (the **Review Applications**). Generally, the matters relevant to amenity which were raised in the objections to the Original Application and in relation to the Review Applications are:
- (a) potential noise impacts;
 - (b) potential privacy impacts;
 - (c) increased local traffic; and
 - (d) other matters primarily relevant to the planning application before the Council, such as possible disruption to native fauna.
40. Amenity is defined as “the quality that the area has of being pleasant and agreeable”¹⁰ and subsection 3A(2) of the LCR Act prescribes the following factors which may be taken into account in determining whether granting a licence would be detrimental to the amenity of an area:
- (d) *the possibility of nuisance or vandalism;*

¹⁰ LCR Act, s.3A.



- (e) *the harmony and coherence of the environment;*
- (f) *any other prescribed matters.*

41. Subsection 3A(3) states that the Commission is not limited to considering the prescribed factors and it is open to the Commission to consider the matters referred to in subparagraphs 39(b) to 39(d) as relevant to the issue of amenity, even though these are primarily relevant to the determination of the planning application.
42. Under the Nillumbik Planning Scheme (**the Scheme**), the use of the Premises as a 'function centre' is prohibited. A function centre is defined under the Scheme as:

"Land used, by arrangement, to cater for conferences, private functions, and in which food and drink may be served. It may include entertainment and dancing."
43. At the time of the Hearing, the Premises had been approved to operate as a restaurant under the Scheme. Under the Scheme, the definition of restaurant is:

"land used to prepare and sell food and drink, for consumption on the premises", which may include "entertainment and dancing" and "the supply of liquor."
44. The LCR Act requires that the licensee comply with the Scheme as a condition of the Licence. Specifically, subsection 16(1) of the LCR Act provides that:

... it is a condition of every licence and BYO permit that the use of the licensed premises does not contravene the planning scheme that applies to the licensed premises under the Planning and Environment Act 1987.

Noise

45. The possibility of increased noise was raised by the Objections in relation to:
 - (a) noise caused by patrons entering and leaving the Premises;
 - (b) noise caused by patrons and music inside the internal area of the Premises; and
 - (c) noise caused by traffic to and from the Premises.
46. Condition 14 in the Council's decision to grant the planning permit requires the Licensee to implement a plan regarding the orderly arrival and departure of patrons from the Premises. The venue management plan provided by the Licensee and referred to in paragraph 32 also outlines how the Licensee will manage patrons entering and leaving the Premises.
47. The Scheme prohibits the use of the Premises as a 'function centre' and the conditions of the Council's decision prohibit live music. The Council's decision requires that an acoustic assessment be approved and that acoustic controls be implemented prior to the operation of the



Premises as a restaurant. The venue management plan also states that there shall be no live music on the Premises.

48. Additionally, clause 53 of the Scheme sets out a number of mandatory conditions relating to amenity with which the Licensee must comply when operating a restaurant and these are reflected in the Council's decision to issue a permit. These conditions address the matters referred to in paragraph 39 above and satisfy the Commission that the impact of granting the Licence will not be detrimental to the amenity of the area.
49. The Commission also considers that the trading hours of the Premises are limited by the 51 conditions endorsed on the Council's decision to grant a planning permit and that the Trading Hours do not permit the Premises to trade later than 10pm on any day. The Commission considers it appropriate to impose consistent trading hours on the Licence as appear on the planning permit issued by the Council. However, in the Commission's view, it is appropriate to further limit the hours of supply such that they commence from 10am on Sunday mornings.
50. The Licensee has provided information indicating that a phone number will be made available to the Objectors for the receipt of complaints regarding amenity, and the Licensee has committed to monitor this phone number and take appropriate and immediate action to manage complaints.
51. While there is likely to be some incidence of increased noise, the Commission is satisfied that the character of the Premises, the effective management of the Premises in accordance with the venue management plan, the Trading Hours, the conditions on the planning permit and the complaints management process would mitigate this to an acceptable level. The Commission notes that before the Licensee can operate the Licence, an acoustic report is required by Council.
52. The Licensee supplied a venue management plan to the satisfaction of the Commission and the Council's Notice of Decision is subject to the Council's approval of the Licensee's Premises Management Plan as referred to in that notice.
53. In the Commission's view, imposing conditions on the Licence requiring all audio material to be located in the internal area of the Premises and prohibiting music from being played above background levels would provide it with confidence that the amenity of the area will not be detrimentally affected by the operation of the Licence to an extent which justifies refusing to grant a licence.
54. Having accepted Mr Missailidis' evidence referred to in subparagraph 37(c), the Commission notes that the Directors intend to operate the Premises as a restaurant, regardless of whether a



liquor licence is granted. Therefore, the task before the Commission is limited to considering whether the availability of liquor at the Premises will affect amenity, rather than considering the effects of the operation of the restaurant generally.

55. Based on the above the Commission is satisfied that any noise resulting from granting a liquor licence will not exceed acceptable levels and that this would not detract from the amenity of the area.

Privacy, increased traffic and other factors relevant to the planning scheme

56. As stated in paragraph 54 above, the Commission's task is to specifically consider the impacts of the supply of liquor at the Premises rather than impacts of the proposed restaurant generally.
57. The privacy of the Objectors is not a factor prescribed by the LCR Act for the Commission's consideration and this is an issue primarily relevant to the Council's assessment of the planning application.
58. The Commission's representative inspected the Premises on 24 September 2020 and provided photographs of the adjoining properties which are visible from the Premises. The Commission has been informed by those photographs which show that the adjoining properties are some distance away and the visibility of these properties is partially obscured by vegetation.
59. Even if the privacy of the Objectors is relevant to whether the Licence would detract from the amenity of the area, the Commission is not satisfied on the information before it that this would detract from amenity to such an extent, as to justify refusing to grant a licence.
60. The Objections stated that granting the Licence would have a detrimental impact upon native fauna. Even if this were relevant to amenity, there is insufficient information before the Commission to suggest that granting the Licence would detract from the amenity of the area in which the Premises is situated due to the possible impact upon native fauna.
61. As referred to in paragraphs 13(g) and 39(c) above, the Objections also cited increased vehicular traffic as a potential impact of the Premises' operation, which would detract from the amenity of the area. The Commission considers that the impacts of increased traffic from granting the Licence (other than from noise which has been addressed above) are likely to be marginal. The Commission has taken into account the patron capacity of the Premises, the accessibility of the Premises by car, the Trading Hours and the nature and layout of the Premises as a restaurant. Having considered these matters, the Commission is not satisfied that traffic levels attributable to the granting of a licence would detract from the amenity of the area.



Misuse and abuse of alcohol

62. The Commission may refuse to grant an application on grounds that it would be conducive to or encourage the misuse or abuse of alcohol.¹¹
63. While granting a liquor licence presents a theoretical possibility that doing so would be conducive to or encourage the misuse or abuse of alcohol, the circumstances of the Review Application do not indicate that the risk justifies the refusal of a licence.
64. The Premises is proposed to operate as a restaurant rather than a venue where the consumption of liquor is the focus. The evidence of Mr Missailidis is that predominantly beer and wine will be supplied with meals, with only a boutique range of spirits available.
65. The Premises may not be used as a function centre under the Scheme and the authorised hours for the supply of liquor are limited by the Trading Hours, to no later than 10pm on any day. The Commission also notes that Victoria Police did not object to the Original Application which was more permissive than the Review Application due to the subsequent imposition of the conditions of the Council's planning decision.
66. Together, these considerations indicate that the low level of risk associated with the misuse and abuse of alcohol does not justify refusing to grant a licence.

Discretion to grant or refuse the licence

67. Having considered all the evidence and submissions made by the Licensee and the parties who provided information and evidence with respect to the Original Application and the Review Application, the Commission has determined to vary the decision of the Delegate.
68. The Licence is varied to include additional conditions relating to the Trading Hours and music which may not be played above background levels.

¹¹ See LCR Act, section 44(2)(b)(ii).



DECISION

69. The Commission has determined to vary the decision of the Delegate, and grant the Licence subject to the conditions at Appendix A.

The preceding sixty-nine (69) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Ms Danielle Huntersmith, Commissioner, and Mr Andrew Scott, Commissioner.



Appendix A

TYPE OF LICENCE

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

AMENITY

The licensee 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.

SPECIAL CONDITIONS

No live or recorded amplified music, other than background level music, is to be played at any time.

No music may be played outside the licensed premises. Any speakers or music equipment must be located in the internal area of the premises.

Signs shall be displayed at all exits as follows;
“Please respect our neighbours and leave quietly”

The licensee shall keep any entrances and exits to the shed and entrances and exits to the annex and any doorways between the shed and the annex closed other than for access and egress.

Glass waste including empty bottles may not be removed from within the licensed premises after 8pm or before 10am on any day.

MAXIMUM CAPACITIES

150 patrons

TRADING HOURS

Good Friday & ANZAC Day	12 noon to 10pm
Sunday	10am to 10pm
Wednesday to Saturday	12 noon to 10pm