



**DECISION AND REASONS FOR DECISION**

In the matter of an application by One Door Down Pty Ltd under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to refuse to vary the category of licence from an on-premises licence to a late night (on premises) licence in respect to the premises trading as the Ugly Duckling Wine Bar, situated at 238 Swan Street, Cremorne.

**Commission:** Mr Ross Kennedy, Chair  
Mr Des Powell AM, Commissioner  
Dr Dina McMillan, Commissioner

**Date of Hearing:** 11 April 2017  
**Date of Decision:** 18 May 2017  
**Date of Reasons:** 18 May 2017

**Appearances:** Mr Daniel Vidinovski in person for the Applicant  
  
Mr Lewis Whittington as Counsel Assisting the Commission

**Decision:** The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application to vary the category of licence subject to the condition set out in paragraph 60 of these reasons.

**Signed:**

A handwritten signature in black ink, appearing to read 'Kennedy', written over a light blue horizontal line.

Ross Kennedy

**Chair**



## REASONS FOR DECISION

### BACKGROUND

1. One Door Down Pty Ltd (**the Applicant**) holds an on-premises licence no. 32326559 (**the Licence**) under the *Liquor Control Reform Act 1998* (**the Act**) applying to premises located at 238 Swan Street, Cremorne, trading as 'the Ugly Duckling Wine Bar' (**the Premises**).
2. The Licence permits the supply of liquor on the Premises for consumption on the Premises on Monday to Friday between 3 pm and 1 am the following morning, on Saturday and Sunday between 12 pm and 1 am the following morning, and on Good Friday and ANZAC Day between 12 pm and 11 pm. As the Licence allows for supply outside ordinary trading hours for an on-premises licence, the Licence is already subject to the mandatory condition relating to undue detriment.<sup>1</sup>
3. On 30 November 2016, the Applicant lodged a variation application to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to vary the category of licence from an on-premises licence to a late night (on premises) licence. This was in order to extend the trading hours for the supply of liquor for consumption on the Premises until 3am on Friday and Saturday evenings (i.e., until 3 am on Saturday and Sunday mornings) (**the Application**).
4. The Application included:
  - (a) the current licence no. 32326559;
  - (b) the late night licence supplementary forms kit (including the venue submission form, the economic and social benefits form and the venue management plan);
  - (c) a letter from Big Picture Urban Rural (a town planner acting on behalf of the Applicant) to the Yarra City Council (**the Council**) dated 10 March 2016 in relation to the proposed increase of trading hours to 3 am;
  - (d) a letter from KZB Building Surveying Services dated 18 December 2014 in relation to the calculation of the area and number of people able to be accommodated for the Premises;
  - (e) a letter from Council dated 5 September 2016 enclosing an endorsed copy of the amended permit no. PLN14/0783 (including an endorsed noise and amenity action plan dated May 2016) (**the Amended Planning Permit**); and
  - (f) a letter from the Council dated 21 November 2016 (discussed below).

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<sup>1</sup> LCR Act, section 17(1).



5. Pursuant to section 33 of the Act, a copy of the application was served on the Chief Commissioner of Police (**Victoria Police**) and the Yarra City Council (**Council**). Victoria Police advised the Commission on 4 January 2017 that it did not object to the Application.
6. On 20 December 2016, the Council advised the Commission that it did not object to the Application. The Council had previously supplied a letter to the Applicant dated 21 November 2016, addressing whether Council supported the Application and expressing no initial concern.

### **DECISION OF THE DELEGATE**

7. On 9 February 2017, an authorised delegate of the Commission (**the Delegate**) refused the Application. In the reasons for decision (**the Delegate's Reasons**), the Delegate considered the decision-making guidelines issued by the Minister for Liquor and Gaming Regulation on 20 July 2015 (**the Guidelines**) which apply to applications to vary licences to allow for the supply of liquor after 1am in affected municipalities.<sup>2</sup>

### **The criteria in the Guidelines**

8. Paragraph A of Guidelines sets out that:
  - A. It is the policy of the Victorian Government that no new liquor licence shall be granted, or existing liquor licence varied, by the Commission to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities, except where the Commission is satisfied that:
    - (1) the premises is, or will be, used as:
      - (a) an accommodation hotel, being a hotel whose primary purpose is providing accommodation and where the supply of alcohol is ancillary to that purpose;
      - (b) a venue that regularly provides live music entertainment; or
      - (c) a venue that supplies liquor for consumption on the premises provided that food is available at the venue at all times when liquor can be supplied; and
    - (2) the applicant can satisfy the Commission that:
      - (a) the application is supported by the council or the municipality in which the premises is, or will be, located;
      - (b) it has in place, or will put in place, a Venue Management Plan in the form required by the Commission;
      - (c) the economic and social benefit of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and the community amenity; and

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<sup>2</sup> The affected municipalities are the municipalities of Melbourne (including the area known as Docklands), Stonnington, Yarra and Port Phillip.



- (d) the patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons.

### **Summary of the Delegate's Reasons**

9. The Delegate determined that the Premises would provide food at all times when liquor would be supplied, satisfying the criterion in paragraph A(1)(c) in the Guidelines. Similarly, the Delegate noted that the application was supported by the Council (satisfying paragraph A(2)(a)), had a venue management plan in place (satisfying paragraph A(2)(b)) and the patron capacity of the premises did not exceed 200 persons (satisfying paragraph A(2)(d)).
10. The remaining criterion was paragraph A(2)(c) in the Guidelines, whether the economic and social benefit of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and community amenity. The Applicant made submissions in relation to the economic and social benefit of granting the licence outweighing the impact of the licence on alcohol misuse and abuse and community amenity. The Applicant noted the Premises operated in a professional manner, with active Responsible Service of Alcohol (**RSA**) measures, ensuring that any misuse and abuse of alcohol and impact to amenity would be minimal. To the Applicant, allowing trade to 3 am on the relevant mornings would allow it to earn greater revenue and also increase employment levels at the Premises.
11. However, based on the Delegate's quantitative analysis of the economic and social benefit material submitted by the Applicant, the Delegate refused to grant the Application as the Delegate did not consider that granting the Application would provide a positive economic and social benefit.

### **The Applicant's internal review application**

12. On 21 February 2017, the Applicant applied to the Commission for internal review of the Delegate's decision under to section 153 of the Act (**the Review Application**).

### **LEGISLATION AND THE TASK BEFORE THE COMMISSION**

13. The Review Application is made pursuant to section 153 of the LCR Act. The Original Decision made by the Delegate is a reviewable decision and the Applicant is an eligible person under Division 2 of Part 9 of the LCR Act.
14. 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:
  - (g) that affirms or varies the reviewable decision; or



- (h) that sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.<sup>3</sup>
15. 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 Review Application. In so doing, sections 47(2) and 44(2)(b) of the LCR Act empower the Commission to refuse to grant the Review Application on various grounds including, inter alia:
- (a) that the application has not been made, displayed or advertised in accordance with this Act;
  - (b) that 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
  - (c) that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.
16. Further, in exercising its internal review function, sections 9(3) and 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (the **VCGLR Act**) require the Commission to have regard to:
- (a) the objects of the LCR Act as outlined at section 4 of the LCR Act; and
  - (b) any decision-making guidelines issued by the responsible Minister.<sup>4</sup>
17. 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*
    - (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*

<sup>3</sup> LCR Act ss 157(2)-(5) further prescribe the manner in which the Commission is to undertake internal reviews.

<sup>4</sup> The Commission also considered and was satisfied as to the matters set out in the Decision-Making Guidelines relating to the assessment of the cumulative impact of licensed premises dated 7 June 2012, particularly as granting the Application would result in an increase of four hours trading per week in a premises with a relatively small capacity. The Commission did not consider the Decision-Making Guidelines relating to the grant of licences for the sale of packaged liquor dated 7 June 2012 as relevant to this Application.



- (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.”*

18. 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.”*

19. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing (Kordister)* [2012] VSCA 325 that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions”.<sup>5</sup> 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”.<sup>6</sup>
20. Section 47(3) of the LCR Act permits the Commission to have regard to any matter the Commission considers relevant and to make any enquiries the Commission considers appropriate with respect to the Review Application.

#### **MATERIAL BEFORE THE COMMISSION**

21. The Commission on review had before it, and considered, all of the information, material and evidence before the Delegate, including:
- (a) the Application, including all the materials listed in paragraph 4 above;
  - (b) a submission from the Applicant received on 5 April 2017;
  - (c) an email from an Acting Senior Sergeant of Victoria Police dated 17 March 2017, advising Victoria Police’s position in relation to the Review Application was unchanged;
  - (d) an email from the Council dated 30 March 2017, advising that the Council maintained its position (i.e. no objection) to the Review Application; and
  - (e) an email from the director of the Applicant dated 19 January 2017 attaching a Statement of Display.
22. The Commission also had before it a statement of reasons prepared by the Delegate, dated 9 February 2017.

<sup>5</sup> See *Kordister* [2012] VSCA 325 [19] per Warren CJ and Osborn JA; [188] per Tate JA.

<sup>6</sup> See *Kordister* [2012] VSCA 325 [188] per Tate JA.



23. The Commission also received a Pre-Hearing Inspection and Compliance Report prepared by Commission officers and dated 31 March 2017 (**Pre-Hearing Report**), a copy of which was served on the Applicant.

### **PUBLIC HEARING**

24. The Review Application was heard at a public hearing on 11 April 2017 (**the Hearing**). Mr Vidinovski, a director of the Applicant, appeared for the Applicant at the Hearing.
25. Mr Vidinovski, a director of the Applicant, appeared for the Applicant at the Hearing, giving evidence and making oral submissions.

### **ISSUES FOR CONSIDERATION**

26. As the Application is for an on-premises (late night) licence in the City of Yarra to trade after 1 am, the Commission must have regard to whether the Application is made in accordance with the criteria listed in the Guidelines.
27. Having considered this, the Commission must decide whether the Review Application should be granted or refused, having regard to the objects of the LCR Act.
28. The Applicant's submissions and evidence are first addressed, followed by the Commission's determination on the issues.

### **APPLICANT'S SUBMISSIONS**

29. The Applicant submitted that the Premises was a premium, table service cocktail and wine bar, which has no live or loud music. The Premises has a boutique offering, not encouraging excessive drinking or catering to large groups. The Premises has what it terms a bespoke cocktail list, with cocktails priced between approximately \$20 and \$30, which the Applicant submits does not encourage high volume drinking in a short space of time. It offers food throughout the night, marketing itself as a late night snacks and drink venue. The Applicant marketed the Premises as a mature place for people to enjoy their friends' company in an intimate space, and works closely with restaurants in the area for patrons to either come for a pre-dinner drink or post-dinner drink.<sup>7</sup> Mr Vidinovski estimated the average age of the patrons attending the Premises to be 27 to 37. Last year, having only traded for approximately 6 months, the Premises was shortlisted for the Cocktail Bar of the Year (State Awards) by Bartender Magazine.
30. The Applicant noted that the Council had approved and supported its application for a 3 am licence on the relevant days, and had endorsed the Amended Planning Permit accordingly. The

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<sup>7</sup> Mr Vidinovski estimated that quite a high proportion of its patrons come via restaurants in the area: Transcript of the Hearing, p-12.



Premises was also one of the first to receive planning approval for late night trading in the City of Yarra. This had involved a thorough review of the Premises' business, site and location. The Applicant also noted that Victoria Police did not object to the Application, and also, after visiting the Premises, had not sought any conditions on the late night licence.

31. In relation to the social and economic benefit outweighing the impact on alcohol misuse and community amenity were the Application to be granted,<sup>8</sup> the Applicant submitted that its business is very different to the large-scale, pub offerings in the area and was not high-risk in relation to the service and consumption of alcohol. Regarding economic benefits, were the Application to be granted, the Applicant submitted that the Premises would employ four staff from 1 am to 3 am on the relevant days, totalling 16 additional employee hours, and the Premises would also be more profitable, allowing it to spend money on the Premises and other business opportunities. The Applicant suggested that there would be a social and related economic benefit of tourists coming to the area, attracted by the Premises' boutique cocktail offering. The Applicant also submitted that positive economic impacts would include greater supply contracts, greater patron expenditure on taxi and public transport use and complementary expenditure in restaurants in the area.
32. In relation to the social factors, the Applicant saw a social benefit in being able to offer patrons (including late diners) who came to the venue after midnight on the relevant days a different option than others in the area, where they could come for food and a drink in a 'nice intimate venue'.<sup>9</sup> The Applicant also argued that granting the Application would alleviate any bottlenecks in accessing taxis and public transport, as approximately one-third of licensed venues in the area currently closed at 1 am.<sup>10</sup> The Applicant suggested this would cause less congestion in the few venues that were open, and ensure that patrons were safe inside such venues without being stuck on the streets. In relation to patron dispersal, the Application noted the extensive public transport in the area, including the proximate East Richmond and Richmond stations, which both currently operate a night train service throughout the evening and early morning, as well as night-rider buses and taxis.
33. The Applicant also submitted that granting the Application would allow for a more gradual dispersal of patrons from the Premises. In this respect, granting the Application would allow patrons to leave when ready without quickly finishing last drinks. Mr Vidinovski noted that on occasions, the Premises had to require up to 50 patrons to leave after its licensed hours ceased at 1 am.

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<sup>8</sup> The Guidelines, paragraph A(2)(c).

<sup>9</sup> Transcript of the Hearing, p-4.

<sup>10</sup> Big Picture Urban Rural letter to the Council dated 10 March 2016, p.6-7, included as part of the Application.



34. The Applicant submitted that granting the Application would have a negligible effect on the area's amenity and on the misuse and abuse of alcohol. The Applicant noted the Premises' staff are trained to assess all its clientele upon entry for level of intoxication, engage with the patrons at tables and do not serve groups where a member is intoxicated. The Applicant noted that it had no issues of any liquor licence breaches relating to intoxication since opening in 2015. Further, as Premises' entrance faces out to Swan Street, which is not a residential zone, and is 80m away from the nearest residential area,<sup>11</sup> this further limited any impact of noise on amenity. In relation to any vandalism and littering amenity impacts, the Applicant noted that, in accordance with its red line plan, it had a policy of no drinks outside the venue, and, after 1 am, its staff would be communicating with leaving patrons to minimise vandalism, littering and other effects to amenity.
35. Specifically in relation to the other criteria in the Guidelines, the Applicant submitted:
- (a) while the Premises is (and will to 3 am on the relevant days) not an accommodation hotel or a venue regularly providing live music entertainment, it is (and would continue to be) a venue that provides food which is available at all times when supplying liquor for consumption on the Premises.<sup>12</sup> The Applicant detailed the Premises' menu, which would be available to patrons until 3 am on the relevant days were the Application to be granted; and
  - (b) the Application had Council's support,<sup>13</sup> a venue management plan in a form approved by the Commission<sup>14</sup> and the Premises' capacity does and would not exceed 200 persons.<sup>15</sup>

## DECISION AND REASONS FOR DECISION

### Consideration of the Guidelines

#### *The provision of food*

36. Under the Guidelines, the Premises must meet one of the elements listed in paragraph A(1). Relevantly, the Applicant submitted that the Premises is a venue which supplies liquor for consumption on the Premises and that food is available at all times when liquor will be supplied.
37. The Commission considers that the interpretation of the term 'food' under the Guidelines would encompass food which is cooked and/or prepared at the premises in question and is of a sufficient level of substance.<sup>16</sup> The Commission's interpretation of food having a sufficient level

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<sup>11</sup> Ibid, p.2-3.

<sup>12</sup> The Guidelines, paragraph A(1)(a).

<sup>13</sup> The Guidelines, paragraph A(2)(a).

<sup>14</sup> The Guidelines, paragraph A(2)(b).

<sup>15</sup> The Guidelines, paragraph A(2)(d).

<sup>16</sup> See *Open Door Pub Co. Pty Ltd at Duke of Wellington Hotel premises (Liquor-internal review)* [2015] VCGLR 46 (10 December 2015), [51]-[55].



of substance encourages the responsible service and consumption of liquor and has due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.<sup>17</sup> In the Commission's view, 'food' (as described above) must also be available at all times after 1am during which the licensee is permitted to supply liquor.

38. The evidence submitted by the Applicant indicates that food of a sufficient level of substance will be available at all times at the Premises when liquor can be supplied. In the Application itself, the Applicant details the menu available to patrons (and which would be available to patrons were the Application to be granted), with all food prepared behind the bar. The menu includes grilled haloumi, cured salmon gravlax, seared chorizo and cheese and charcuterie boards. The Commission is satisfied in the Premises' menu includes food that is cooked at the Premises and is a sufficient level of substance. Accordingly, the Commission finds that the Premises is a venue which supplies liquor for consumption on the Premises where food is available at all times when liquor can be supplied.

#### *The Council's support*

39. The Guidelines requires that the Applicant satisfy the Commission that the Application is 'supported' by the council of the Municipality in which the premises is located.<sup>18</sup>
40. The Commission notes that the Council letter dated 21 November 2016 is in a form that the Council has previously advised the Commission represents support of an application.
41. Accordingly, the Commission considers that the Applicant has satisfied it that the Council supports the Application.

#### *Venue Management Plan*

42. Paragraph A(2)(b) of the Guidelines requires the Applicant satisfy the Commission that it has in place a Venue Management Plan in the form required by the Commission.<sup>19</sup> In October 2015, the Commission released its Liquor Licence Fact Sheet – Management Plan<sup>20</sup> which lists what factors a Venue Management Plan should address.
43. The Commission also finds the Applicant has satisfied it that it has a Venue Management Plan in the form required by the Commission. The Commission notes that Mr Vidinovski had the fact sheet<sup>21</sup> before him when preparing the Premises' management plan. The Commission is impressed by the rigorous and thorough level of detail in the management plan, particularly in relation to not serving intoxicated patrons and addressing the use of illicit substances. The

<sup>17</sup> LCR Act, section 4(2).

<sup>18</sup> The Guidelines, paragraph A(2)(a).

<sup>19</sup> The Guidelines, paragraph A(2)(b).

<sup>20</sup> Available at [https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor\\_licensing\\_fact\\_sheet\\_-\\_Management\\_plan.pdf](https://www.vcglr.vic.gov.au/sites/default/files/uploadLiquor_licensing_fact_sheet_-_Management_plan.pdf)



Commission also accepts Mr Vidinovski's evidence that the Applicant's staff receive Venue Management Plan training and notes that the plan forms part of all staff induction packs, with staff required to sign off on it to indicate their understanding of the plan.

44. However, one item that the Commission notes the Venue Management Plan does not address is evacuation procedures but the Commission considers it likely that the Applicant will amend the plan accordingly. That said, in the Commission's view, the Applicant has developed and demonstrated a strategic approach in managing the Premises against the risks associated with the operation of the Premises and has addressed issues with respect to the proposed extension of trading hours.
45. Accordingly, the Commission is satisfied that the Applicant has in place an appropriate Venue Management Plan which complies with the Commission's requirements.

*Patron capacity does not exceed 200 patrons*

46. The Commission notes that Guidelines state that the Applicant must satisfy the Commission that the "patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons".<sup>22</sup>
47. The Applicant has also satisfied the Commission that the patron capacity, which would not change were the Application to be granted, does not exceed 200 persons.<sup>23</sup> The Commission notes that, in line with the letter from KZB Building Surveying Services dated 18 December 2014 in relation to the calculation of the area and number of people able to be accommodated for the Premises, the maximum capacity of the Premises is 76 patrons. The Commission is satisfied that the capacity of the Premises does not and will not exceed 200 patrons after 1am.

***Economic and Social Impact vs alcohol misuse and abuse and community amenity***

48. Under the Guidelines, the Applicant is required to satisfy the Commission that the economic and social benefit of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and community amenity.<sup>24</sup>
49. The Commission carefully considered the economic and social benefits associated with the Application (including employment opportunities, tourism and any improvements to community amenity) and whether or not those benefits outweighed any identified impacts stemming from potential alcohol misuse and abuse and potential negative community amenity impacts (such as antisocial behaviour, drunkenness, noise levels, litter and rubbish, vandalism and reductions in the harmony and coherence of the environment).

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<sup>21</sup> Liquor Licence Fact Sheet – Management Plan dated October 2015. See footnote 23 above.

<sup>22</sup> The Guidelines, paragraph A(2)(d).

<sup>23</sup> The Guidelines, paragraph A(2)(d).

*Economic and Social Impact*

50. The Commission accepts the evidence of the Applicant, that the application is likely to generate increased employment opportunities. In particular, Mr Vidinovski noted that the additional hours would allow opportunities for longer shifts for current staff and opportunities for new staff members. During additional hours on Saturday and Sunday mornings, the Premises would employ four staff members, totalling to an additional 16 employee hours per week, which is a reasonable estimate.
51. The Commission accepts that were the Application to be granted, some economic benefits will arise from increased supply contracts with the Applicant's suppliers, as well as to operators of private and public transport facilities after 1 am. Moreover, the Commission accepts the Applicant's argument that allowing the Application will allow the business to earn additional income to be more profitable, thus allowing the Applicant to put additional funds into the Premises. However, the Commission does not accept that granting the Application will necessarily result in greater expenditure by patrons at restaurants in the area, as the Commission doubts that more patrons would dine at other restaurants simply because the Premises could trade to 3 am instead of 1 am on the relevant evenings. All up, the Commission considers these factors represent a positive economic impact.
52. In relation to social benefits, the Commission accepts that granting the Application will mean that after 1 am on the relevant evenings, patrons have a greater choice of venues, and in particular an intimate space in which to enjoy each other's company. The Commission also accepts that granting the Application may alleviate any bottlenecks caused by other licensed venues in the area closing at 1 am and would allow for more gradual dispersal of patrons from the Premises. The Commission also accepts that tourists may be attracted to the area by the Premises' boutique cocktail offering but the Commission gives this factor no weight, as it considers it unlikely that tourists will be more attracted were the Premises allowed to supply liquor until 3 am on the relevant days. All up, the Commission gives these positive social impacts marginal weight.
53. Accordingly, the Commission considers that there are economic and social benefits associated with granting the Application.

*Misuse and abuse of alcohol and community amenity*

54. The Commission considers that, generally, the provision of liquor at later times at night has the potential to increase risks of misuse and abuse of alcohol and negatively impact community

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<sup>24</sup> The Guidelines, paragraph A(2)(c).



amenity.<sup>25</sup> However, the Commission considers that, due to the type of venue and operational model (as reflected in the Venue Management Plan), the Applicant is in fact putting in place measures to effectively reduce any harms that may arise from the Application. In particular, the Commission notes that only providing for table service at the Premises allows the Premises to actively monitor and assess patrons' intoxication. Further, the Commission's Pre-Hearing Report demonstrates that the Licensee has maintained the Premises with no complaints or compliance related issues, giving the Commission comfort that there have been minimal amenity concerns with the current trade to 1 am on the relevant days. Instead, the Commission is of the view that this small Premises (given its patron capacity) with a boutique offering presents a lower risk of adverse impacts.

55. The Commission also notes the noise and amenity action plan dated May 2016 attached to the Amended Planning Permit, and is satisfied that the noise generated from the Premises will be minor, including conversation, noise from small appliances and background music played at a low level, and bins not to be emptied after certain hours. Further, the impact of the noise on amenity is likely to be minimal at most, due to the entrance of the Premises facing Swan Street and the closest residences being approximately 80m from the Premises. Further, the Commission is also satisfied that the noise and amenity action plan, as well as the Premises' practice of not allowing drinks outside the Premises and its staff communicating the need to respect amenity to patrons upon leaving, reduces any other amenity impact, such as vandalism and littering.
56. In consideration of the above issues, the Commission considers that any adverse impact of the Licence on alcohol misuse and abuse and community amenity to be unlikely.

### *Conclusion*

57. The Commission is satisfied that the economic and social benefit of granting the Application would outweigh the impact of the Licence on alcohol misuse and abuse and community amenity.

### **CONCLUSION**

58. Based on the above analysis, the Commission has had regard to the Guidelines and considers that the Applicant has satisfied the Commission that its Application substantially complies with the Guidelines. Furthermore, there appears to be no grounds under section 44(2) of the Act which would justify the refusal of the application.
59. After considering all the material before it, having regard to the objects of the LCR Act, and with

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<sup>25</sup> The Commission notes that the New Guidelines state that "on the evidence available to the Victorian Government, there is a correlation between anti-social behaviour in the early hours of the morning and the



due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol, and taking into account all considerations necessary, the Commission has determined to set aside the Delegate's decision and to grant the Application to vary the category of licence from an on-premises licence to a late night (on premises) licence.

60. The Commission imposes the following condition relating to trading hours on the licence:

TRADING HOURS

Monday to Thursday	Between 3 pm and 1 am the following morning.
Friday	Between 3 pm and 3 am the following morning.
Saturday	Between 12 pm and 3 am the following morning.
Sunday	Between 12 pm and 1 am the following morning.
ANZAC Day and Good Friday	Between 12 pm and 11 pm.

***The preceding sixty (60) paragraphs is a true copy of the Reasons for Decision of Mr Ross Kennedy (Chair), Mr Des Powell AM (Commissioner) and Dr Dina McMillan (Commissioner).***