



DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by the ALA Group Pty Ltd for an internal review of a decision to refuse an application for the variation of a licence for the premises known as Club Aeri, located at 1st and 2nd Floor, 193-195 Little Bourke Street, Melbourne

Commission:

Ms Helen Versey, Deputy Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Des Powell AM, Commissioner

Appearances:

Mr Martin Towey, Counsel for the Applicant

Leading Senior Constable Col McColl on behalf of Victoria Police

Ms Caitlin McAlister, Counsel Assisting the Commission

Date of Hearing:

19 February 2020

Date of Decision:

12 May 2020

Date of Reasons:

12 May 2020

Decision:

The Commission has determined to affirm the decision of the Delegate and refuse the application for variation of the licence

Signed:

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

Helen Versey

Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. On 15 July 2019, the ALA Group Pty Ltd (**the Applicant**) applied under the *Liquor Control Reform Act 1998* (**the LCR Act**)¹ for the variation of its Late Night (general) Licence #31921005 (**the Original Application**) for the premises known as Club Aeri, located at 1st and 2nd Floor, 193-195 Little Bourke Street, Melbourne (**the Premises**).
2. The reason for the Original Application was to allow the Applicant to extend the Premises' final trading hour for an additional two hours on any day except for ANZAC Day. The Applicant submitted that new karaoke bars in the local area were offering longer trading hours, and if the Commission were to extend the Premises' final trading hour, it would be more competitive.²
3. The Applicant leases the Premises and has operated its business there since September 2015.³
4. The Premises contain two floors with one entry/exit from Little Bourke Street in China Town.⁴ Each floor has a maximum capacity of 90 patrons with an overall maximum capacity for the venue of 180 patrons.
5. The trading hours proposed by the Applicant were:

ANZAC Day – Closed between 3am and 4pm (the same day)

On any other day – Open between 4pm and 6am (the following morning).

6. In accordance with section 33(1), a delegate of the Commission provided a copy of the Original Application to the Chief Commissioner of Police on 15 July 2019. The Chief Commissioner of Police and the licensing inspector⁵ (together, **Victoria Police**) informed the Delegate on 13 August 2019 that they objected to the Original Application on the ground that granting the Original Application would detract from or be detrimental to the amenity of the area in which the Premises are situated due to the likelihood of increased smoking, incidents of violence, drunkenness and property damage (together, **the Victoria Police Objection**).

¹ All references to legislation are references to the LCR Act.

² The current trading hours at the Premises are 'On any day between 4pm and 3am the following day'.

³ Economic and Social Benefit Report, p3.

⁴ The first floor of the Premises comprises:

- a) a karaoke lounge and stage;
- b) a bar area;
- c) storage space;
- d) toilets; and
- e) an office.

The second floor of the Premises comprises:

- a) karaoke private rooms;
- b) a bar area; and
- c) toilets.

⁵ Section 3 defines "licensing inspector" as a person appointed as a licensing inspector under section 172.



7. In accordance with section 33(2), a copy of the Original Application was served on the City of Melbourne (**the Council**) on 15 July 2019. The Council stated on 1 August 2019 that it did not object to the Commission granting the application.
8. On 4 September 2019, LGS Legal, on behalf of the Applicant, stated that the Applicant would accept a final trading hour that is one hour less than initially proposed, namely:

ANZAC Day – Closed between 3am and 4pm (the same day)

On any other day – Open between 4pm and 5am (the following morning).

9. Further, LGS Legal submitted on 20 September 2019 that the Applicant would accept the following condition being imposed on the licence:

Bottles of spirits purchased by patrons must be locked away (in a lockable area) in individual karaoke rooms, and these bottles must only be accessed by an RSA trained person to serve the liquor to patrons. After service to patrons, bottles (containing liquor) must be returned to the aforementioned lockable area by the RSA trained person and locked away.

10. On 3 October 2019, Victoria Police stated that if the Delegate granted the Original Application they would seek to have imposed on the licence the condition as proposed by LGS Legal in paragraph 9 above. That said, Victoria Police confirmed that they maintained their objection.
11. On 23 October 2019, the Delegate refused the Original Application on the basis that he did not consider that the Applicant satisfied the Freeze Guidelines (**the Original Decision**) given:
 - a) the Applicant did not offer food of a sufficient nature that was prepared or cooked on the Premises;
 - b) the Applicant's assessment of economic and social benefits as submitted to the Commission contained omissions in information and, in any event, did not satisfactorily demonstrate that the benefits of granting the application outweighed the impact on alcohol misuse or abuse and community amenity as required by the Freeze Guidelines; and
 - c) like (b) above, the number of licensed premises incident reports (**LPIRs**) submitted by Victoria Police indicated that the Premises already have an issue with anti-social behaviour during current trading hours. Accordingly, granting the application would be likely to have a detrimental impact on amenity, and be likely to cause an unacceptable level of risk in regard to harm.
12. On 30 October 2019, the Applicant made an application for internal review of the Original Decision (**the Review Application**).
13. In accordance with section 154, the Commission notified Victoria Police and the Council of the



Review Application on 8 November 2019.

14. On 15 November 2019, Victoria Police confirmed that they maintained their objection on the ground of detracting from, and detriment to, the amenity of the area.
15. The Council confirmed on 22 November 2019 that it did not object to the Review Application.

LEGISLATION AND THE COMMISSION'S TASK

The Commission's internal review power

16. Division 2 of Part 9 of the LCR Act governs internal review applications. Under section 152, the Decision is a reviewable decision, and the Applicant is eligible to apply for review of that decision. The Review Application was made under section 153.
17. Pursuant to section 157(1), the specific task of the Commission with respect to the Review Application is to make a fresh decision that:
 - a) affirms or varies the reviewable decision; or
 - b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁶
18. Under the LCR Act, an application for the variation of a licence may be contested or uncontested. Section 3(1) defines a "contested application" as:

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) ...
19. As Victoria Police object to the Review Application, the matter before the Commission on review is therefore contested.
20. The Commission on review stands in the shoes of the original decision maker (in this case, the Delegate) and, in respect of a contested application, must either:
 - a) grant the application (and may do so subject to conditions);⁷ or
 - b) refuse to grant the application.⁸

Exercising the internal review power

21. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR)*

⁶ Sections 157(2) to (5) of the LCR Act and section 25(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* further prescribe the manner in which the Commission is to undertake internal reviews.

⁷ Sections 47, 49 and 157.

⁸ Sections 47, 44(2), 44(3) and 157.



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.⁹

22. On 29 June 2019, the Minister issued new Freeze Guidelines under section 5 of the VCGLR Act in relation to the grant of liquor licences trading beyond 1am within the municipalities of Melbourne, Stonnington, Yarra and Port Phillip (**2019 Freeze Guidelines**), effective on 1 July 2019.¹⁰
23. The 2019 Freeze Guidelines relevantly provide that the Minister publishes:

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

...

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

24. For an application to vary an existing late night (general) liquor licence, the 2019 Freeze Guidelines relevantly provide:
- A. *It is the policy of the Victorian Government that no new liquor licence or BYO permit shall be granted, or existing liquor licence or BYO permit relocated or 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:*
...
 - b. *a venue that supplies liquor for consumption on the premises provided that food is available at the venue at all times when alcohol can be supplied; and*
 2. *the applicant can satisfy the Commission that:*
 - a. *it has in place, or will put in place, a Venue Management Plan in the form required by the Commission; and*

⁹ Pursuant to section 9(4) of the VCGLR Act, the Commission has had regard to the Decision-Making Guidelines relating to the assessment of the cumulative impact of licensed premises, dated 7 June 2012, and the Decision-Making Guidelines relating to the grant of licences for the sale of packaged liquor, dated 7 June 2012. The Commission does not consider these Decision-Making Guidelines to be applicable to this application.

¹⁰ The Minister first issued the Freeze Guidelines on 16 July 2015 (**2015 Freeze Guidelines**). The 2019 Freeze Guidelines revoke and replace the 2015 Freeze Guidelines and state that they apply to applications made to the Commission after 30 June 2019 and before midnight on 30 June 2021.



- b. *the economic and social benefit of granting the licence or permit will outweigh the impact of the licence or permit on alcohol misuse and abuse and community amenity; and*
- c. *the patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons.'*

25. Paragraph B of the 2019 Freeze Guidelines further discuss premises used as a venue that regularly provides live music entertainment. The Commission has previously made a decision and expressed reasons on the basis that karaoke does not constitute live music: *Impact 888 Pty Ltd at Jankara Karaoke premises (Liquor – Internal Review) [2016] VCGLR*. As such, in accordance with that decision, paragraph B of the Guidelines is not relevant in considering this application.
26. The objects of the LCR Act are set out in section 4(1), which provides:

The objects of this Act are—

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—
 - (i) providing adequate controls over the supply and consumption of liquor; and
 - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
 - (iii) restricting the supply of certain other alcoholic products; and
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and
- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and
- (d) to regulate licensed premises that provide sexually explicit entertainment.

27. Section 4(2) 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.¹¹

28. Pursuant to sections 47(2) and 44(2), the Commission may refuse to grant the Review Application on the grounds, inter alia:

- i. that the grant of the application would detract from or be detrimental to the amenity of

¹¹ See further *Kordister Pty Ltd v Direction of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).



- the area in which the Premises to which the application relates are situated (section 44(2)(b)(i)); and
- ii. that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii)).
29. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.¹² Factors that may be taken into account in determining whether a proposed grant would detract from or be detrimental to the amenity of the area include:
- i. the possibility of nuisance or vandalism;
 - ii. the harmony and coherence of the environment; and
 - iii. any other prescribed matters.¹³
30. However, the definition of 'amenity' for the purposes of the LCR Act is not limited by the factors in paragraph 29 above.¹⁴
31. The LCR Act does not define the meaning of the term "*misuse or abuse of alcohol*", nor specify factors that constitute evidence of that which would be "*conducive to or encourage the misuse or abuse of alcohol.*"
32. Where an application is granted, the Commission may impose any condition it thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.¹⁵ Section 16 of the LCR Act provides that it is a condition of every licence and BYO permit (other than a pre-retail, limited and major event licence) 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 (Vic)*.
33. The Commission considers that, while the grounds of refusal set out in section 44(2) are a relevant consideration, the ultimate determination of a contested application is to be made pursuant to sections 47 and 157(1) at the discretion of the Commission, having regard to the objects of the LCR Act.
34. In exercising the internal review power, in accordance with section 57(2), the Commission must consider all the information, material and evidence before the original decision maker. It may also consider further information or evidence.¹⁶

¹² Section 3A(1).

¹³ Section 3A(2).

¹⁴ Section 3A(3).

¹⁵ Section 49.

¹⁶ Sections 157(2) and (3).



Conduct of an inquiry

35. 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.

36. Relevant provisions governing the conduct of an inquiry by the Commission in this matter include:

a) section 33 of the VCGLR Act, which provides, 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:

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

37. The Commission on review had before it, and considered, all the information, material and evidence before the Delegate at first instance, which included:

a) the Original Application including:

- i. the approved plan of the licensed premises, dated 14 July 2000 (**the Red Line Plan**);
- ii. Planning Permit no. TP-2007-229/A;
- iii. statement of display, dated 4 September 2019;
- iv. acoustic review report by Renzo & Tonkin, dated 22 July 2019;
- v. a publication by Sarah Baker, senior lecturer in cultural sociology, entitled, "Classroom karaoke: A social and academic strategy to enhance the first-year experience of youth studies students", dated 31 November 2012;
- vi. offers for silver, gold and platinum packages, including drinks and snacks;
- vii. a proposed Food & Snacks menu;
- viii. the Applicant's ASIC extract;



- ix. the Applicant's Security & Amenity Risk Report prepared by Global Public Safety, dated 30 August 2019, including the Applicant's Draft Security and Patron Management Plan, dated 30 August 2019; and
 - x. the Applicant's Economic and Social Benefit Report prepared by AS Advisory, dated 2 September 2019.
- b) letter from the Council, dated 1 August 2019, confirming no objection to the grant of the Original Application;
 - c) email communication from LGS Legal, dated 5 August 2019, requesting an extension;
 - d) Victoria Police objection report, dated 13 August 2019;
 - e) letter from LGS Legal, dated 20 August 2019, requesting more information from Victoria Police;
 - f) letter from Victoria Police, dated 22 August 2019, enclosing LPIRs and submissions;
 - g) letter from LGS Legal, dated 4 September 2019, attaching letter to AS Advisory and an Economic and Social Benefits form;
 - h) letter from LGS Legal, dated 20 September 2019, enclosing further information in support of the Original Application;
 - i) letter from Victoria Police, dated 3 October 2019, including information regarding two penalty infringement notices (**PINs**) issued in 2019; and
 - j) letter from LGS Legal, dated 10 October 2019, enclosing further information in support of the Original Application.
38. The Commission on review also considered the following materials:
- a) response from Victoria Police, dated 17 January 2020, confirming that there are no further PINs issued by Victoria Police than those that have been previously indicated to the Commission; and
 - b) proposed conditions from LGS Legal, dated 24 February 2020, to attach to the licence, were the Commission to set aside the Original Decision and, in substitution, vary the licence to extend the existing final trading hour.

PUBLIC HEARING

- 39. A public hearing was held in relation to the Review Application on 19 February 2020 (**the Hearing**).
- 40. The Applicant's director, Mr Leon Chan, attended the Hearing. Mr Chan gave oral evidence in support of the Review Application.
- 41. In addition, Dr Tony Zalewski of Global Public Safety gave oral evidence in support of the Review



Application.

42. Mr Martin Towey of LGS Legal represented the Applicant and made submissions.
43. Leading Senior Constable Col McColl appeared on behalf of Victoria Police and made submissions.

Revised licence conditions

44. After the Hearing, LGS Legal proposed revised trading hours on behalf of the Applicant, namely:

ANZAC Day – Closed between 3am and midday (the same day)¹⁷

Monday to Wednesday – Open between 4pm to 4am (the following morning)

Thursday to Sunday and the eve of public holidays – Open between 4pm to 5am (the following morning).

45. Further, LGS Legal submitted on 24 February 2020 that the Applicant would accept the following additional conditions being imposed on the licence¹⁸:

Monday to Thursday – No admissions (or readmissions) after 3am (the following morning)

Thursday to Sunday and the eve of public holidays – No admissions (or readmissions) after 4am (the following morning).¹⁹

The licensee must conduct and supervise all aspects of the management of the licensed premises in accordance with the Security and Patron Management Plan (SPMP) dated 30 August 2019 as amended from time to time. The SPMP must be retained on the licensed premises in the possession of the licensee, nominee, manager or other person in charge and must be available to an authorised member of the Victoria Police or a person authorised in writing by the Commission.

At any time the premises are open for licensed trading, food must be made available for patrons to purchase.

All managers must complete New Entrant Training before they take on a managerial role at the premises.

¹⁷ The Commission notes that this provides for more trading time on ANZAC Day than was initially proposed. See paragraphs 5 and 8 above.

¹⁸ See proposed condition in paragraph 9 above.

¹⁹ The Commission notes that there are two different final admission (or readmission) times proposed on a Thursday.



ISSUES FOR CONSIDERATION

46. In order for the Commission to make its decision on review, the following issues require consideration:
- whether the Commission is satisfied that the relevant requirements of the 2019 Freeze Guidelines are met; and
 - having considered the 2019 Freeze Guidelines, whether the Commission considers it should grant or refuse the Review Application given the grounds for refusal set out in the LCR Act, and the objects of the LCR Act.
47. Each of these issues is discussed in turn.

A. Freeze Guidelines

48. As indicated above, when performing its internal review function, the Commission must have regard to any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.
49. The 2019 Freeze Guidelines represent the current policy of the Victorian Government concerning liquor licences that seek to trade after 1am in the relevant inner Melbourne municipalities, of which City of Melbourne is one, where the Premises is located.
50. The 2019 Freeze Guidelines state the Commission is to have regard to the guidelines when considering whether the grant of an application would detract from, or be detrimental to, the amenity of the area in which the premises to which the application relates are situated, or that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.
51. The Commission finds that the intent of the 2019 Freeze Guidelines is clear: to reduce the incidence of anti-social behaviour in the early hours of the morning arising from irresponsible consumption of alcohol. The 2019 Freeze Guidelines relevantly provide:
- 'The inner Melbourne municipalities attract large numbers of patrons to their entertainment precincts, many of whom will consume alcohol in, or purchase alcohol from, licensed premises. The harms caused by increased access, over-supply and the irresponsible consumption of alcohol include alcohol-fuelled violence and anti-social behaviour. On the evidence available to the Victorian Government, there has been a correlation between anti-social behaviour in the early hours of the morning and the operation of licensed premises that supply liquor after 1.am.'*
52. The general position of the 2019 Freeze Guidelines is that "no new liquor licence shall be granted, or existing liquor licence varied, by the Commission to allow the supply of liquor after 1am" unless



the Commission is satisfied of certain factors. The Applicant bears a persuasive burden of satisfying the Commission that its Review Application complies with the 2019 Freeze Guidelines.

53. In considering whether or not the Commission is satisfied that the relevant requirements of the 2019 Freeze Guidelines are met by the Review Application, the first issue to be addressed is whether the Premises is 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 (paragraph A(1)(a)); or
 - b) 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 (paragraph A(1)(b)).
54. If satisfied that the Premises meets one of these two categories, the Applicant is also required to satisfy the Commission that other factors are in place with respect to the Premises:
- a) the venue has in place a venue management plan (paragraph A(2)(a)); and
 - b) the economic and social benefit of granting the application for variation of the licence to extend the final trading hour will outweigh the impact of the varied licence on alcohol misuse and abuse and community amenity; (paragraph A(2)(b)); and
 - c) the patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons (paragraph A(2)(c)).

Paragraph A(1) factors of the 2019 Freeze Guidelines

Accommodation hotel

55. The Premises is a karaoke bar and does not provide accommodation. Hence, the Premises is not a venue that falls within the scope of paragraph A(1)(a) of the 2019 Freeze Guidelines.

Provision of food

56. At the Hearing, Mr Towey submitted on behalf of the Applicant that, while food was not presently available at all times at the Premises, his client would accept a condition being imposed on the licence for food to be made available for purchase whenever the Premises are open.²⁰

²⁰ Hearing transcript, p59.



57. Mr Chan also gave evidence in the Hearing that he had spoken with other restaurants operating in Chinatown for the purposes of those restaurants taking food orders from the Applicant for service by the Applicant on its customers. He said that if the Commission were to grant the Review Application, the Applicant would store food in its food processing area which could be cooked up straight away, such as fries in an air fryer and other warm finger food. Currently, the Applicant's customers can only purchase nuts, crisps and fruit platters at the Premises which typically accompany drinks.
58. The Commission notes that the 2019 Freeze Guidelines references the term "food" rather than "meals", where the provision of meals is a statutory requirement under the LCR Act for licensees holding restaurant and cafe licences. Although applicants whose applications are captured by the Guidelines are not required to provide meals to meet this requirement, the Commission has previously determined that "food" shall be interpreted to mean food that is of a significant level of substance.²¹ In that decision, the Commission stated that "food" as required by the Guidelines is to be given a narrower definition than that contained in the *Food Act 1984* (Vic), so that packaged snack-like food such as potato chips and other snacks accompanying drinks such as nuts and olives are insufficient for the purposes of the Guidelines. The Commission further stated that the term "food" would encompass food that is prepared/cooked on the premises and is available at all times after 1am during which the licensee is permitted to supply liquor.
59. In the current Review Application, the Commission adopts the same position. The Applicant is not required to serve meals in order to satisfy the provision of food requirement, however the food that is served must be of a sufficient nature.
60. The Commission notes that the Red Line Plan does not depict a kitchen, and there was inadequate information provided to the Commission regarding the current scale of the food processing area within the Premises, or indeed how that area would be changed to enable the Applicant to prepare or cook food of a more sufficient nature than nuts, crisps and fruit platters.
61. The Commission was also not provided with any evidence from the restaurants that Mr Chan had purportedly approached to demonstrate their capability and commitment to provide the Applicant with the food as contained in the Applicant's proposed Food and Snack Menu during the extended trading hours.²²

²¹ *In the matter of the Open Door Pub Co. Pty Ltd for premises known as the Duke of Wellington Hotel* (Deputy Chair Kennedy, Commissioners Powell and O'Donnell), 10 December 2015.

²² See paragraph 37(a)(vii) above.



62. The Commission considers that the service of food at the Premises is essential in the responsible service of alcohol in minimising risks associated with excessive alcohol consumption and abuse or misuse of alcohol. This is also stated in the Applicant's Economic and Social Benefit Report.²³
63. Overall, the Commission is not satisfied from the evidence provided that the Applicant has sufficiently demonstrated that the Premises will be used as a venue in which food is available at all times.
64. Accordingly, because the Commission is not satisfied that the Premises meets one of the two categories of the paragraph A(1) factors of the 2019 Freeze Guidelines for the reasons as set out above, it is not required to continue to consider whether the paragraph A(2) factors of the Guidelines are in place with respect to the Premises. However, even if the Commission is wrong in relation to its findings regarding the A(1) factors, the Commission has decided, in any event, to proceed in considering whether the Premises satisfy the paragraph A(2) factors as discussed below.

Paragraph A(2) factors of the 2019 Freeze Guidelines

Patron capacity

65. A requirement of the Guidelines as provided in paragraph (2)(c) is that the premises in question must not have a maximum patron capacity that exceeds 200 persons. The Commission notes that the Premises currently has an overall maximum patron capacity of 180 persons as specified on the licence, which is below the threshold requirement. Accordingly, the Commission finds that this aspect of the Guidelines has been met.

Venue management plan

66. Paragraph (2)(a) of the Guidelines requires an applicant to provide a venue management plan in a form required by the Commission. The Applicant submitted a copy of its Draft Security and Patron Management Plan, dated 30 August 2019, as part of the Original Application.
67. At the Hearing, Mr Chan submitted that a venue management plan was put in place when the Premises started operating, which was later updated in 2018 when the Applicant made a variation application in respect to the music condition on the licence and the Red Line Plan. While Mr Chan gave evidence that he made changes regarding staff training, none of those changes were recorded in the venue management plan. Dr Zalewski submitted in his report

²³ Economic and Social Benefit Report, p8.



that, in his opinion, the existing venue management plan would no longer be suitable for the proposed extended trading hours.²⁴

68. The Commission notes that the Applicant did not submit the existing venue management plan as part of the Original Application or Review Application, only the Draft Security and Patron Management Plan.
69. Mr Chan said that if the Commission were to grant the Review Application, the Applicant would implement all of Dr Zalewski's recommendations as contained in the Draft Security and Patron Management Plan.
70. Apart from Mr Chan, the Commission understands that the other venue manager for the Premises is Mr Raymond Chau. He did not attend the Hearing nor provide the Commission with any evidence about implementation of the Draft Security and Patron Management Plan. It is unclear to the Commission as to how much consultation has occurred with Mr Chau regarding this plan, or his level of awareness of it. Dr Zalewski does not appear to have spoken with him.²⁵
71. There is no evidence before the Commission that demonstrates that the Applicant has undertaken any recommendations in the Draft Security and Patron Management Plan, including ones that could have been implemented irrespective of whether the Review Application was granted, such as Mr Chau completing New Entrant training. In the Hearing, Mr Chan confirmed that this aspect was still outstanding.²⁶
72. While LGS Legal submitted after the Hearing that the Applicant would accept a condition on the licence to the effect that the management of the Premises would be in accordance with the Draft Security and Patron Management Plan, it unclear how this would be implemented immediately given that there appears to have been no strategy put in place between the Applicant and its staff for an immediate transition. At the Hearing, Mr Chan submitted that nothing has been discussed with staff at this stage because it would only confuse them, were the Commission not to grant the Review Application.²⁷
73. The Commission notes that since the Draft Security and Patron Management Plan was submitted and, in any event, after the Hearing, the Applicant proposed the following licence condition:

Monday to Thursday – No admissions (or readmissions) after 3am (the following day)

²⁴ Security and Amenity Risk Report, 30 August 2019, p5.

²⁵ Hearing transcript, p12.

²⁶ Hearing transcript, p53.

²⁷ Hearing Transcript, p31.



Thursday to Sunday and the eve of public holidays – No admissions (or readmissions) after 4am (the following day).

74. Considering this condition was not considered in the Draft Security and Patron Management Plan, it is unclear how the Applicant would be in a position to put sufficient measures in place to implement it. In addition, the Commission notes that while Dr Zalewski submitted in the Hearing that he considered 'lock-outs' work very well if managed appropriately, he agreed that there were major risks from 'lock-outs' when managing patrons who went outside to smoke because they then wanted to come back in.²⁸
75. Overall, the Commission considers that the Draft Security and Patron Management Plan does not sufficiently address the conditions as proposed by the Applicant to attach to the licence, were the Commission to grant the Review Application, particularly those conditions as submitted by the Applicant after the Hearing. The Commission was also not provided with adequate information or detail to conclude that the Applicant is in a position to be sufficiently ready to implement the Draft Security and Patron Management Plan, were the Commission to grant the Review Application.

Economic and social benefits

76. In the Original Decision, the Delegate found that the economic and social benefits of approving the Original Application did not outweigh the negative impacts on the misuse and abuse of alcohol and community amenity, therefore failing to meet the requirement as set out in paragraph (2)(b) of the Guidelines.
77. In its materials provided to the Delegate, the Applicant estimated that an extension of the final trading hour to 6am would result in projected additional revenue of \$2,880 per week from alcohol drink sales, \$200 from non-alcoholic drink sales, and \$250 per week from finger food sales made on the Premises. An estimated additional employee expense of \$1,320 per week was also projected to occur as a result of the additional hours worked by employees after 1am, which are subject to high penalty rates.²⁹
78. At the Hearing, Mr Chan submitted that he estimated there would be a minimum of 24 new employees as a result of the extended hours of trade, were the Review Application to be granted. He said that most of the Applicant's employees are students and typically paid at casual employment rates.³⁰

²⁸ Hearing Transcript, p20-22.

²⁹ Economic and Social Benefit Report, p7-9.

³⁰ Hearing transcript, p53-54.



79. The Commission considers there to be uncertainty from the Applicant's evidence surrounding the projected additional revenue, particularly given that evidence was not based on the Applicant's revised licence conditions submitted after the Hearing.³¹ The Commission can also not be satisfied from the evidence before it that the Applicant can necessarily guarantee an additional 24 new employees as indicated by Mr Chan in the Hearing, were the Review Application to be granted.
80. Having regard to the Applicant's revised proposed conditions, the Commission has inadequate information or detail before it as to the economic impact from granting the Review Application. None of this specific detail accompanied the Applicant's revised proposed conditions as a means of assisting the Commission in satisfying itself of a likely minimum economic impact. In light of the Applicant's revised licence conditions, it is unclear to the Commission as to whether the projected economic impact would indeed have any positive impact.
81. In relation to the social impacts of approving the Original Application, the Applicant informed the Delegate that the extended trading hours would provide an opportunity for people who finish late night work and are looking for a venue to relax and unwind.³² Further, the increase in trading hours would in fact benefit patrons as there would be a more gradual coming and going of patrons.³³
82. In support of their objection, Victoria Police raised amenity concerns particularly regarding a likely increase in:
- a) smoking;
 - b) incidents of violence;
 - c) drunkenness; and
 - d) property damage.
83. At the Hearing, Dr Zalewski submitted that while he considered the Premises to be of low risk as to negative impacts on the misuse and abuse of alcohol and community amenity because of the karaoke offered, if the Premises were poorly managed, the level of risk would quickly change to high risk and a problematic venue.³⁴
84. When asked about Victoria Police's concern as to a likely increase in smoking in the Premises, Dr Zalewski said that he considered this to be a major risk because patrons have not taken notice of the 'no smoking' signs, and if patrons want to smoke, they will know that they have to

³¹ See paragraphs 44-45 above.

³² Economic and Social Benefit Report, p10.

³³ Economic and Social Benefit Report, p10.

³⁴ Hearing Transcript, p3 and 5.



leave the venue. He indicated that this could create greater anti-social behavioural problems outside because patrons will have to leave the Premises altogether when they might want to return inside.³⁵ This is obviously relevant in considering other amenity concerns as raised by Victoria Police, such as a potential increase in incidents of violence and property damage.

85. As stated above, Victoria Police enclosed LPIRs and PINs as part of their submissions in objecting to the Original Application.³⁶ Amongst this information included incidents of smoking inside the Premises, with the last smoking incident recorded in April 2019. It appears that Mr Chau was venue manager on the Premises at the time of some of these incidents. Information regarding the Applicant's non-compliance history stretches back to commencement of the business in 2015, including incidents where the Applicant was operating at the Premises outside trading hours.³⁷ In the Hearing, Mr Chan gave evidence that Mr Chau, as venue manager, had permitted the Premises to remain trading liquor after 3am, in spite of the licence conditions, because he thought it would benefit the Applicant's business. Mr Chan stated that he had since spoken with Mr Chau regarding the Applicant's obligation to comply with the licence conditions, and now has regular meetings with him.³⁸ The Commission notes that it has not received, or heard, any evidence from Mr Chau regarding the incidents of non-compliance when he was venue manager on the Premises, nor as to the subsequent measures purportedly put in place to ensure such incidents of non-compliance do not arise in the future.
86. For the reasons as referred to and relied upon in paragraphs 67 to 75 above, the Commission is not persuaded that granting the Review Application would not have a negative impact on the misuse and abuse of alcohol and community amenity.
87. Overall, the Commission is not satisfied that the Applicant has sufficiently demonstrated that the economic and social benefits in granting the Review Application outweigh the potential negative impacts on the misuse and abuse of alcohol and community amenity.

B. Whether the application should be granted having regard to the objects of the LCR Act

88. Although the Commission is not satisfied that the 2019 Freeze Guidelines are met, the Commission must still exercise its discretion whether or not to grant the Review Application. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, such as sections 44(2)(b)(i) and 44(2)(b)(ii), as well as the objects of the LCR Act,

³⁵ Hearing Transcript, p19-22.

³⁶ See paragraph 37(f) and (i) above.

³⁷ Last PIN issued by Victoria Police for operating outside trading hours was in Feb 2018.

³⁸ Hearing Transcript, pp38-39, 47-48.



particularly harm minimisation, which is the primary object.³⁹

89. For the reasons discussed above, the Commission is not satisfied that there is sufficient evidence to demonstrate that a grant of the Review Application would not detract from or be detrimental to the amenity of the area. Similarly, the Commission is not satisfied in the circumstances that there has been adequate information provided to demonstrate that granting the Review Application would not be conducive to or encourage the misuse or abuse of alcohol. Further, considering the matters discussed above, the Commission is not satisfied from the materials provided that, were the Review Application to be granted, adequate controls will exist over the supply of liquor and that any harm would necessarily be minimised. Accordingly, the Commission considers that granting the Review Application would, on balance, be contrary to the object of the LCR Act concerning harm minimisation.
90. In addition, the Commission considers that granting the Review Application would not necessarily facilitate the development of a diversity of licensed facilities to reflect community expectations in furtherance of the object outlined in section 4(1)(b). At the Hearing, Dr Zalewski stated that he did not consider the Premises to be particularly different to what he had seen in other karaoke bars.⁴⁰ Similarly, Mr Chan said that the Premises were similar to those of other Asian karaoke bars in the Melbourne Central Business District.⁴¹

DECISION

91. Having regard to all matters outlined above, the Commission has determined to affirm the Original Decision by refusing the Review Application.

The preceding 91 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey (Deputy Chair), Ms Deirdre O'Donnell (Deputy Chair), and Mr Des Powell AM (Commissioner).

³⁹ See paragraphs 26-31 above.

⁴⁰ Hearing transcript, p16.

⁴¹ Hearing transcript, p55.