



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to grant an application for an on-premises licence to Wheelers Food Truck Park Pty Ltd in respect of the premises known as Wheelers Food Trucks & Bar, located at 23 Synnot Street, Werribee

<b>Commission:</b>	Ms Helen Versey, Deputy Chair Ms Danielle Huntersmith, Commissioner Mr Andrew Scott, Commissioner
<b>Date of Hearing:</b>	21 April 2020
<b>Date of Reasons:</b>	10 July 2020
<b>Appearances:</b>	Mr Dinesh Joshi, Director of Licensee Ms Caitlin McAlister, Counsel Assisting the Commission
<b>Decision:</b>	The Commission has determined to vary the decision of the Delegate and grant an on-premises licence subject to the conditions set out in Appendix One
<b>Signed:</b>	 Helen Versey Deputy Chair



## REASONS FOR DECISION

### BACKGROUND

1. On 7 October 2019, an application was lodged by Wheelers Food Truck Park Pty Ltd (**the Applicant**) with the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for an on-premises licence (**the Licence**) under the *Liquor Control Reform Act 1998* (**the LCR Act**)<sup>1</sup> for the premises known as Wheelers Food Trucks & Bar (**the On-Premises Application**), located at 23 Synnot Street, Werribee (**the Premises**).
2. Since December 2019, the sole director of the Applicant, Mr Dinesh Joshi, has been the owner of the Premises.
3. When making the On-Premises Application, the Applicant's proposed trading hours were:
  - (a) Monday to Thursday between 11am to 11pm;
  - (b) Friday to Sunday between 11am to 1am (the following morning); and
  - (c) Good Friday and ANZAC Day between 12 noon and 11pm.
4. As part of the On-Premises Application, the Applicant submitted an application under section 120 for permanent approval to permit underage persons on licensed premises, dated 2 October 2019 (**Section 120 Approval Application**).
5. In accordance with section 33(1), a delegate of the Commission served a copy of the On-Premises Application on the Licensing Inspector and the Chief Commissioner of Police (together, **Victoria Police**) on 7 October 2019 (as well as the Section 120 Application). On 24 October 2019, Victoria Police informed the Commission that they did object to the grant of the On-Premises Application on the basis that it would be conducive to or encourage the misuse or abuse of alcohol, particularly from the risk of minors being on the Premises whilst not in the company of a responsible adult. The Victoria Police objection also related to concerns regarding detraction from and detriment to the amenity of the area in which the Premises are located, particularly from potential noise disturbance.
6. On the same day, Victoria Police advised that they would withdraw their objection provided that:
  - (a) the Applicant withdrew the Section 120 Approval Application; and

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<sup>1</sup> All references to legislation are references to the LCR Act unless stated otherwise.



- (b) the Applicant agreed that music noise does not exceed background music level, and no music was played after 11pm.
7. In accordance with section 33(2), the delegate also served a copy of the On-Premises Application on the Wyndham City Council (**the Council**) on 7 October 2019. On 8 November 2019, the Council informed the Commission that it would not object to the granting of the On-Premises Application, and noted that the Planning Permit Application had been amended to the effect that the final trading hour was to 11pm on any day (as opposed to 1am on Friday to Sunday).
8. On 24 November 2019, the Applicant provided the Commission with a written submission in support of the On-Premises Application. The Applicant stated that:
- the Section 120 Approval Application will be withdrawn; and
  - only background music will be played until 11pm, with no music played after that time.
9. After receipt of the Applicant's written submission as detailed in paragraph 8 above, Victoria Police did not maintain their objection.
10. On 2 January 2020, the delegate determined to grant the On-Premises Application (**the Original Decision**), subject to the following special conditions in relation to the supply of liquor (**Special Conditions**):
- SPECIAL CONDITIONS*
- *All outdoor activities including the playing of music and operation of the food trucks on the site must cease at 10pm from which time all patrons on the site must be restricted to within the buildings on the land. All doors and bi-fold windows must be closed from 10pm.*
  - *The licensed area which is not an enclosed building must be enclosed by an immovable barrier.*
  - *Liquor may not be removed from the licensed area.*
  - *Liquor supplied may only be served in plastic cups or opened cans.*
  - *The licensee shall not serve more than four (4) drinks of which a maximum of two (2) may be pre-mixed spirits, per customer per time.*
11. On 3 February 2020, the Applicant lodged an application for internal review of the Original Decision. The Review Application stated that the Applicant sought to have the following conditions removed from the Licence:
- 1) The licensed area which is not an enclosed building must be enclosed by an immovable barrier.*



- 2) *Liquor supplied may only be served in plastic cups or opened cans.*
  - 3) *The licensee shall not serve more than four (4) drinks of which a maximum of two (2) may be pre-mixed spirits, per customer per time.*
12. In accordance with section 154, the Commission notified Victoria Police and the Council of the Review Application on 4 February 2020.
13. On 11 February 2020, Victoria Police confirmed that they did not object to the On-Premises Application, the subject of the Review Application.
14. No objection was received by the Council.
15. On 1 April 2020, the Applicant submitted that it also sought to have the following condition removed from the Licence:
- 4) *All outdoor activities including the playing of music and operation of the food trucks on the site must cease at 10pm from which time all patrons on the site must be restricted to within the buildings on the land.*

## **LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION**

16. Under the LCR Act, an application for an on-premises licence may be contested or uncontested. Pursuant to section 3(1), an “uncontested application” is defined 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)”.<sup>2</sup>
17. The Review Application is made pursuant to section 153. The Original Decision is a reviewable decision and the Applicant is an eligible person under Division 2 of Part 9 of the LCR Act.
18. 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.
19. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the On-Premises Application. In doing so, it must

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<sup>2</sup> Conversely, a “contested 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 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)”.



consider all the information, material and evidence before the original decision maker.<sup>3</sup> It may also consider further information, material or evidence as part of making its decision.<sup>4</sup>

Conduct of an inquiry

20. Section 34 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (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. 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 1 (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 1 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.”*

Determination of an uncontested application

21. Where an application is an uncontested application, pursuant to section 44(1) of the LCR Act:

*“Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 has expired (or that period as extended under section 174).”*

22. Section 44(4) of the LCR Act provides that before granting or refusing an uncontested application under subsection (1), the Commission:

*“(a) may have regard to any matter the Commission considers relevant; and*

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<sup>3</sup> Section 157(2).

<sup>4</sup> See section 157(3).



- (b) *may make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.”*

23. Section 9(3) of the VCGLR Act provides that:

*“The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”<sup>5</sup>*

24. Section 9(4) of the VCGLR Act further provides that:

*“The Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5.”*

25. Accordingly, in exercising its discretion to either grant or refuse an uncontested application under section 44(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act.

26. 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*
- (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) 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*

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<sup>5</sup> There are no objects specified in the VCGLR Act itself.



*regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.”*

28. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”.<sup>6</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>7</sup>
29. Pursuant to section 44(2) of the LCR Act, the Commission may refuse to grant the On-Premises Application on the grounds, *inter alia*,
  - (a) that the grant of the application would detract from or be detrimental to the amenity of the area in which the Premises to which the application relates are situated (section 44(2)(b)(i)); and
  - (b) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol (section 44(2)(b)(ii)).
30. 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.<sup>8</sup> 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:
  - (a) the possibility of nuisance or vandalism;
  - (b) the harmony and coherence of the environment; and
  - (c) any other prescribed matters.<sup>9</sup>
31. However, the definition of ‘amenity’ for the purposes of the LCR Act is not limited by the factors in paragraph 30 above.<sup>10</sup>
32. Under section 49 of the LCR Act, the Commission may impose any condition it thinks fit on the grant of an application. Further, the LCR Act provides, *inter alia*, that pursuant to section 16:
  - (1) *Subject to subsection (2), 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.*
  - (2) *Subsection (1) does not apply to a pre-retail licence, a limited licence or a major event licence.”*

<sup>6</sup> See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

<sup>7</sup> See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

<sup>8</sup> Section 3A(1).

<sup>9</sup> Section 3A(2).

<sup>10</sup> Section 3A(3).



33. The Commission also had regard to the decision-making guidelines in relation to cumulative impact dated June 2012<sup>11</sup> when determining this Review Application (**the Guidelines**). The Guidelines set out that “cumulative impact” refers to the impacts that result from a concentration of licensed premises in a defined area and the positive and negative impacts that are associated with a range of outcomes arising from a combination of factors, such as the physical and environmental setting, the mix of premises and their operating conditions.
34. The Guidelines further set out that positive outcomes can include the creation of a local identity or status as an entertainment destination, enhanced vitality of the area, economic benefits, and an increase in consumer choice. Negative outcomes of cumulative impact can include crime, a loss of amenity, and antisocial behaviours. Potential cumulative impacts vary between locations and depend on the number and type of licensed premises, and the capacity of the local area to accommodate the concentration.
35. The Guidelines enable the Commission to assess the contribution of a new licensed premises, or the variation of an existing licensed premises to the cumulative impact of licensed premises in an area.

#### **MATERIAL BEFORE THE COMMISSION AND PUBLIC HEARING**

36. The Commission on review had before it, and considered, all materials received by the delegate including:
  - (a) the notice of right to occupy premises, dated 9 December 2019;
  - (b) ASIC extracts;
  - (c) the Management Plan for the Premises;
  - (d) the approved plan of the licensed premises, dated 21 January 2020 (**the Red Line Plan**);
  - (e) Planning Permit WYP11812/19 (**the Planning Permit**);
  - (f) the application for Planning Permit WYP11812/19, dated 25 September 2019;
  - (g) a Responsible Service of Alcohol (**RSA**) certificate for Mr Joshi, dated 19 November 2019;
  - (h) a New Entrant Training certificate for Mr Joshi, dated 6 September 2019;
  - (i) a statement of display, dated 9 December 2019;
  - (j) a questionnaire completed by Mr Joshi, dated 2 October 2019;
  - (k) a declaration of associates completed by Mr Joshi, dated 2 October 2019;
  - (l) a bundle of photographs of the Premises; and
  - (m) a cumulative impact assessment for the Premises, prepared by Mr Matt Gorman, Town Planner (**the Cumulative Impact Assessment Report**).
37. The Commission also received and considered the following materials:

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<sup>11</sup> In accordance with section 9(4) of the VCGLR Act.



- (a) the Decision and Reasons for Decision of the delegate, dated 30 January 2020;
  - (b) the Review Application received by the Commission on 3 February 2020;
  - (c) written submissions from the Applicant, dated 1 April 2020 and 7 April 2020; including a business overview; and
  - (d) comparative licences submitted by Mr Joshi on 20 April 2020.
38. On 21 April 2020, the Commission conducted a hearing in relation to the Review Application (**the Hearing**). Mr Joshi, as director, appeared on behalf of the Applicant.
39. After the Hearing, Mr Joshi submitted an updated Management Plan for the Premises (**the updated Management Plan**).<sup>12</sup>

## **DETERMINATION OF THE REVIEW APPLICATION**

40. In determining this Review Application, it is necessary for the Commission to consider whether to affirm, vary or set aside the delegate's decision to grant the Licence. In doing so, the Commission must consider the grounds for refusal set out at paragraph 29 above, the objects of the LCR Act, and the submissions made by the Applicant in relation to removal of the four conditions on the Licence as set out in paragraph 11 and 15 above, were the Commission to vary the delegate's decision.

### Whether the grant would detract from or be detrimental to the amenity of the area

41. The Commission must determine whether the grant of an on-premises licence would detract from or be detrimental to the amenity of the area in which the Premises are located, which may give rise to a ground of refusal under section 44(2)(b)(i).
42. The Commission notes that no objection was made by the Council in relation to the Review Application, and the Applicant has provided evidence of planning authorisation by submitting the Planning Permit.
43. In the Management Plan, Mr Joshi stated that the Applicant would be seeking to attract patrons aged 25 years or above together with families, and intends to focus on food promotions. At the Hearing, Mr Joshi stated that food will be available at all times liquor is available for supply, which is consistent with the Planning Permit. The Planning Permit permits the Applicant to have food trucks operate at the Premises, and the Applicant proposes, as freehold owner of the Premises, to allow up to five food trucks, managed by third parties, to operate at the Premises, under a licence agreement, for the purpose of supplying food.<sup>13</sup> The business of supplying liquor on the Premises will be carried out solely by the Applicant, which will be served from a new internal bar and kitchen

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<sup>12</sup> The Applicant provided to the VCGLR the updated Management Plan on 14 May 2020. This document is referred to in Appendix One as the Operational Management Plan.

<sup>13</sup> The Applicant provided to the VCGLR the proposed template licence agreement on 24 June 2020.



area to be constructed by the Applicant. The Applicant will employ its own bar manager and staff to serve drinks and food from the new bar and kitchen area within the licensed area.

44. Mr Joshi acknowledged in the Hearing that all conditions of the Planning Permit must be complied with, including the condition that there must not be live or amplified music (other than background music) provided at the Premises at any time, and the condition that food must be available at all times when liquor is available for supply.
45. In issuing the Planning Permit, the Commission notes that the Council also considered the potential amenity noise concern relating to the final hour for the operation of the proposed food trucks and the playing of music in the external area of the Premises. Specifically, the Planning Permit provides:

*All outdoor activities including the playing of music and operation of the food trucks on the site must cease at 10pm from which time all patrons on the site must be restricted to within the buildings on the land.*

46. In written submissions made on 1 April 2020, Mr Joshi stated that it is unnecessary for the Licence to contain a special condition to the same effect as included in the Planning Permit because he will ensure that no service of liquor or food will take place, and no music will be played in the external area of the Premises after 10pm in any event. Further, at the Hearing, Mr Joshi submitted that he doesn't want the Applicant to be in breach of the Licence if a food truck operator continued to operate at the Premises after 10pm, in spite of the Applicant requiring the food truck operators to cease trading at 10pm as set out in the Planning Permit.
47. Irrespective of this condition being part of the Planning Permit, the Commission considers that it is also appropriate to include this condition in the Licence as an added measure to address potential noise amenity impacts for local residents. This means that if a food truck operator continues to trade after 10pm, the Applicant could be found liable for an alleged breach of the Licence.
48. Overall, whilst noting the type of venue as described by Mr Joshi, the Commission expects the conditions in Appendix One to address potential negative amenity impacts, particularly with respect to noise levels, and is satisfied that the grant of an on-premises licence subject to the conditions in Appendix One would not detract from or be detrimental to the amenity of the area.

*Whether granting the application would be conducive to or encourage the misuse or abuse of alcohol*

49. An application may be refused if granting the application would be conducive to or encourage the misuse or abuse of alcohol.<sup>14</sup> Victoria Police did not raise any concerns in this regard after the Applicant withdrew the Section 120 Approval Application. The Commission is also aware that the Review Application is uncontested, and there is no evidence before the Commission to indicate

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<sup>14</sup> Section s 44(2)(b)(ii).



that alcohol related anti-social behaviour was a concern in the area where the Premises are situated.

50. When submitting the updated Management Plan, Mr Joshi informed the Commission that were an on-premises licence to be granted, the Applicant would comply with the updated Management Plan.<sup>15</sup> This updated Management Plan addressed a variety of matters in relation to the operation of the Premises, including the Applicant ensuring that measures will be in place to address surveillance of the Premises during all trading hours, as well as prevention of harm to patrons in the context of the movement of any food truck in and out of the Premises. At the Hearing, Mr Joshi also gave evidence that the internal bar area where liquor will be stored will be locked at all times outside the permitted trading hours under the Licence.
51. The Commission is satisfied from the Applicant's updated Management Plan (compliance with which will be a condition of the Licence) that suitable procedures and controls have been proposed by the Applicant to ensure the responsible sale of alcohol and reduction of risk associated with the supply of alcohol. Further, Mr Joshi has already completed an approved RSA program, and he made it clear to the Commission that all staff members involved in the supply of liquor would complete an RSA program as required under the LCR Act.
52. The Commission also considers that the Applicant's service of food at the Premises and the supply of liquor being ancillary to the Applicant's focus on food promotions and the operation of food trucks, assists in the responsible service of alcohol and should minimise any risks associated with excessive alcohol consumption and abuse or misuse of alcohol.
53. While the Commission is satisfied so far that granting an on-premises licence would not be conducive to encourage the misuse or abuse of alcohol, the Commission must also consider the submissions made by the Applicant in relation to removal of the conditions on the Licence as set out in paragraph 11 and 15 above, were the Commission to vary the delegate's decision.
54. First, the Commission notes that the Applicant submits that the following condition imposed in the Original Decision should not be imposed on review:  
*The licensed area which is not an enclosed building must be enclosed by an immovable barrier.*
55. As part of the Review Application, Mr Joshi submitted that this condition would prohibit food trucks from moving in and out of the Premises. He suggested that the condition be varied to allow for a moveable barrier.
56. The Commission notes that the Applicant is already required under the Planning Permit to construct a barrier along the boundary between the licensed area and the carpark to limit pedestrian access

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<sup>15</sup> See footnote 12 above.



to the Premises to a single-entry point. At the Hearing, Mr Joshi confirmed that no liquor would be supplied on the Premises until this barrier was put in place as required under the Planning Permit.

57. To ensure that the food trucks can move in and out of the Premises, the Commission considers that imposing a condition on the Licence that refers to “a barrier” (rather than “an immoveable barrier”) is more appropriate as set out in Appendix One.<sup>16</sup>
58. The Commission also notes that the Applicant submits that the following condition imposed in the Original Decision should not be imposed on review:

*Liquor supplied may only be served in plastic cups or opened cans.*

59. In the Review Application, Mr Joshi submitted that this condition is unnecessary as there will always be staff available to clear glasses from the tables located on the Premises. Further, at the Hearing, Mr Joshi submitted that the Applicant will ensure that no drinks are removed from the Premises as required under the LCR Act.
60. Having considered the Applicant’s business overview as submitted by Mr Joshi on 7 April 2020, and given that the Licence only authorises supply of liquor for consumption in the licensed area, the Commission considers this condition to be unnecessary and therefore does not impose this condition on the Licence as set out in Appendix One.
61. Further, the Commission has removed the condition that “*liquor may not be removed from the licensed area*” as this only duplicates what is already required under the LCR Act.
62. The Commission also notes that the Applicant submits that the following condition imposed in the Original Decision should not be imposed on review:

*The licensee shall not serve more than four (4) drinks of which a maximum of two (2) may be pre-mixed spirits, per customer per time.*

63. In the Review Application, Mr Joshi submitted that this condition is not only impractical for the Applicant to enforce, but detrimental to the business as it limits patrons’ level of choice. He submitted that all staff serving liquor would have RSA training, and will ensure that no patrons are served that show signs of intoxication.
64. At the Hearing, Mr Joshi acknowledged that he had actually misread this condition, and there would indeed be no limitation of patron’s level of choice arising from this condition.
65. Overall, having considered the updated Management Plan and the Applicant’s written submissions, the Commission considers that this condition is not required in this instance, and therefore does not impose this condition on the Licence as set out in Appendix One.
66. Subject to all conditions in Appendix One, the Commission is satisfied that granting an on-premises licence would not be conducive to or encourage the misuse or abuse of alcohol. The Commission is also of the view that the positions adopted by both the Council and Victoria Police are indicative

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<sup>16</sup> This is also consistent with the language contained in the Planning Permit.



that granting the Licence the subject of the Review Application is unlikely to contribute to alcohol-related harm.

**Whether to exercise discretion to grant the licence having regard to the objects of the LCR Act**

67. Although the Commission is satisfied that no grounds for refusal exist under section 44(2) of the LCR Act, the Commission must still exercise its discretion whether or not to grant an on-premises licence. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, as well as with regard to the objects of the LCR Act, particularly harm minimisation, which is the primary object.
68. With the imposition of the conditions in Appendix One, the Commission is satisfied that adequate controls will exist over the supply and consumption of liquor at the Premises and that any harm should be minimised. Accordingly, the Commission considers that the grant of an on-premises licence in this instance would not be contrary to the object of the LCR Act concerning harm minimisation.
69. Further, the Commission also considers that granting the licence would facilitate the development of a diversity of licensed facilities reflecting community expectations in furtherance of the object of the LCR Act outlined in section 4(1)(b).
70. The Commission has also had regard to the Guidelines when determining this Review Application.<sup>17</sup> The Commission considers that granting the On-Premises Application will not negatively affect the cumulative impact of licensed premises in the area of the Premises. This is particularly the case given that the writer of the Cumulative Impact Assessment Report, raised no concern in terms of cumulative impact in relation to where the Premises are located.

**DECISION ON REVIEW**

71. Based on all of the matters set out above, the Commission on review has decided to vary the Original Decision by granting the Applicant's application for an on-premises licence subject to the conditions set out in Appendix One.

***The preceding 71 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.***

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<sup>17</sup> In accordance with section 9(4) of the VCGLR Act.



## **Appendix One – Conditions for on-premises licence 32355655**

### 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 to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

The licensee 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.

### MAXIMUM CAPACITIES

No more than 150 patrons at any one time.

### SUPPLY OF LIQUOR

All outdoor activities including the playing of music and operation of the food trucks on the site must cease at 10pm from which time all patrons on the site must be restricted to within the buildings on the land. All doors and bi-fold windows must be closed from 10pm.

The licensed area is the area marked on the plan as approved by the Victorian Commission for Gambling and Liquor Regulation (VCGLR).

The boundary between the licensed area and the carpark must be separated by a barrier.

All staff involved in the service of liquor in the licensed area must have completed a 'Responsible Service of Alcohol' (RSA) training program within the previous three years. The Licensee must ensure evidence of completion of the RSA training program (certificates) is available for inspection at the request of Victoria Police or the gambling and liquor inspectors of the VCGLR.

The licensee must make food available at all times when liquor is available for supply.

### STORAGE OF LIQUOR

The area on the licensed premises used to store liquor must be locked at all times outside the permitted trading hours under this licence.

### MANAGEMENT PLAN

The licensee must adhere to the Operational Management Plan provided to the VCGLR in addition to the conditions stated above.

### TRADING HOURS

Monday to Sunday	Between 11am and 11pm
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ANZAC Day and Good Friday	Between 12 noon and 11pm
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End of conditions