



**DECISION AND REASONS FOR DECISION**

In the matter of an application by Ms Katherine McIntosh under section 153 of the *Liquor Control Reform Act 1998* for internal review of a decision to grant a renewable limited licence for the premises trading as Merry Mary, located at 29 Martin Road, Marysville

**Commission:** Ms Deirdre O'Donnell, Deputy Chair  
Ms Danielle Huntersmith, Commissioner  
Mr Andrew Scott, Commissioner

**Date of Hearing:** 15 September 2020

**Date of Decision:** 2 December 2020

**Date of Reasons:** 2 December 2020

**Appearances:** Ms Katherine McIntosh, Applicant  
Mr Cristinel Paraschiv, Licensee  
Ms Caitlin McAlister, Counsel Assisting the Commission

**Decision:** The Commission has determined to vary the decision of the Delegate and grant a renewable limited licence subject to the conditions outlined in Appendix A.

**Signed:**   
**Deirdre O'Donnell**  
Deputy Chair

## REASONS FOR DECISION

### BACKGROUND

1. On 17 February 2020, Mr Cristinel Paraschiv applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for the grant of a renewable limited licence (the **Original Application**) at the premises trading as Merry Mary, located at 29 Martin Road, Marysville (the **Premises**).
2. Since 2010, the site of the Premises has been owned by Mr Paraschiv where it operates its business of Bed & Breakfast accommodation. The building on the Premises contains eight suites, three of which contain two bedrooms (making eleven rooms in total), as well as upper and lower decking used as common areas.
3. Mr Paraschiv sought the renewable limited licence so that he could supply liquor to customers to be consumed in the internal dining area of the Premises as well as in the common areas including the external upper and lower decking of the Premises between the hours of:
  - (a) 10 am to 1 am (the following day) on weekends and public holidays;
  - (b) 10 am and 11 pm on weekdays; and
  - (c) 12 noon and 11 pm on ANZAC Day.
4. In addition, Mr Paraschiv sought the renewable limited licence to be able to supply liquor to customers from the minibars located within the eight self-contained suites on the Premises at any time on any day.
5. Included with the Original Application was a plan of the proposed licensed area (the **Red Line Plan**), which incorporates the entire Premises. Also included with the Original Application were certificates of completion by Mr Paraschiv in relation to New Entrant Training and a Responsible Service of Alcohol (**RSA**) program. Mr Paraschiv also provided a declaration of the right to occupy the Premises, a questionnaire completed by him, and evidence of his freehold ownership of the Premises.
6. In accordance with section 33 of the *Liquor Control Reform Act 1998* (**LCR Act**),<sup>1</sup> a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector (together, **Victoria Police**), and the Murrindindi Shire Council (the **Council**) on 17 February 2020.
7. In March 2020, the Commission received 12 objections (the **Residents' Objections**) to the Original Application, pursuant to section 38, from occupants and owners of residential properties

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



in the local area of the Premises (the **Resident Objectors**). The Residents' Objections were based on concerns regarding potential detriment to the amenity of the area in which the Premises are located, particularly from potential increase in noise at late hours, as well as from a possible increase in traffic and anti-social behaviour.

8. On 26 February 2020, Victoria Police indicated that it did not object to the grant of the Original Application.
9. On 2 April 2020, the Council indicated it objected to the grant of the Original Application on the basis that it would detract from or be detrimental to the amenity of the area in which the premises to which the Original Application relates are situated. Specifically, the Council raised concerns over the number of people that could be in attendance, the hours that liquor could be supplied and the location of the Premises being in a residential area (the **Council Objection**).
10. In response to the Residents' Objections and the Council Objection, Mr Paraschiv submitted in writing (in summary) that:
  - (a) he would be on the Premises whenever customers were on the Premises;
  - (b) smoking and music will be prohibited on level 1 of the outdoor area to minimise the risk of any noise emanating from the Premises;
  - (c) the building on the Premises already includes a double layer of plaster, double glaze, and high-grade installation batts in the ceiling to minimise the risk of any noise emanating from the Premises;
  - (d) he has introduced a "quiet policy" between 11 pm and 8 am (the following morning) which customers must agree to upon booking in; and
  - (e) traffic and parking issues are not likely to be impacted by the grant of this Original Application.
11. On 8 May 2020, the delegate granted the Original Application (the **Original Decision**). In summary, he was of the view that:
  - (a) there has been no evidence submitted that shows the Premises has caused any amenity issues since commencement of operation;
  - (b) Mr Paraschiv has addressed in his submissions the way he intends to manage the liquor licence and potential amenity concerns, such as noise and liquor consumption;
  - (c) parking, traffic, and suitability of the location of the Premises would have been considered during the town planning process;



- (d) even if the Original Application was refused, customers are still free to bring and consume their own liquor on the Premises;
  - (e) there has been no evidence submitted that shows that traffic and parking are likely to be detrimentally affected by granting the Original Application as customers and their guests can always attend the Premises in any event;
  - (f) if a liquor licence is issued, Mr Paraschiv would be obliged to have greater control over the responsible service and consumption of liquor on the Premises;
  - (g) by the venue being licensed premises, and Mr Paraschiv being a licensee, he will be accountable for the liquor supplied, patrons' behaviour and noise levels emanating from the Premises;
  - (h) conditions will be imposed on the licence that will ensure the venue is only available for customers and their guests; and
  - (i) Mr Paraschiv deserves the benefit of doubt that he will not operate the Premises unlawfully and will have respect for the local amenity issues.
12. On 29 May 2020, Ms Katherine McIntosh, one of the Resident Objectors (the **Applicant**), applied for an internal review of the Original Decision (the **Review Application**).
  13. In accordance with section 154, the Commission notified the Council, Victoria Police and the remainder of the Resident Objectors of the Review Application on 12 June 2020.
  14. The Council did not initially respond to the notification of the Review Application, despite being further reminded of the Review Application on 17 July 2020.
  15. On 20 July 2020, Victoria Police indicated that it did not object.
  16. The remainder of the Resident Objectors confirmed that they maintained their objection.

## LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION

17. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act, a contested application relevantly includes "*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)*".<sup>2</sup>

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<sup>2</sup> Conversely, an "uncontested application" is defined in section 3(1) as being "*an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174)*".

18. Under section 38, any person may object to the grant of a licence on the ground that the grant would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated.
19. Provision is also made under the LCR Act for notification and consideration of an objection made by the Chief Commissioner of Police, the municipal council in which the premises are situated, and/or the licensing inspector.<sup>3</sup>
20. 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.
21. Under 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.
22. 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 Original Application. In doing so, it must consider all the information, material and evidence before the original decision maker.<sup>4</sup> It may also consider further information, material or evidence as part of making its decision.<sup>5</sup>

#### Conduct of an inquiry

23. 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 I (including section 21A) of the*

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<sup>3</sup> Sections 39 to 41.

<sup>4</sup> Section 157(2).

<sup>5</sup> See section 157(3).



*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.”*

#### Determination of a contested application

24. Where an application is a contested application, pursuant to section 47(1) of the LCR Act:

*“Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.”*

25. Section 47(3) provides that, before granting or refusing a contested application under subsection (1), the Commission:

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

*(b) may make any enquiries the Commission considers appropriate; and*

*(c) must give the applicant and each objector a reasonable opportunity to be heard.”*

26. 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>6</sup>*

27. 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.”<sup>7</sup>*

28. 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*

<sup>6</sup> There are no objects specified in the VCGLR Act itself.

<sup>7</sup> 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 is satisfied as to the matters set out in the Decision-Making Guidelines relating to the assessment of the cumulative impact of licensed premises, particularly as granting the Original Application with conditions would result in a new premises with a relatively small capacity and relatively restricted trading hours. The Commission did not consider the Decision-Making Guidelines relating to the grant of licences for the sale of packaged liquor as relevant to this application.



- (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.”*

29. 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.”*

30. 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>8</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>9</sup>

31. Pursuant to sections 47(2) and 44(2) of the LCR Act, the Commission may refuse to grant the Original 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)).

32. 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>10</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

<sup>8</sup> See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

<sup>9</sup> See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

<sup>10</sup> Section 3A(1).

(c) any other prescribed matters.<sup>11</sup>

33. However, the definition of 'amenity' for the purposes of the LCR Act is not limited by the factors in paragraph 32 above.<sup>12</sup>

34. In relation to limited licences such as the licence sought in this instance, section 26(1) prohibits the Commission from granting a limited licence unless it is satisfied that the scale and scope of the supply of liquor under such a licence is limited in nature.

35. Section 44(4) 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.

36. 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."*

37. The Commission considers that while the grounds of refusal outlined in sections 47(2) and 44(2) are relevant considerations, the ultimate determination of a contested application is to be made pursuant to sections 47(1) and 157(1) at the discretion of the Commission with reference to the objects of the LCR Act.

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

38. The Commission had before it and considered all of the material received by the delegate.

39. The Commission also had before it and considered additional information and evidence including:

- (a) the decision and reasons for decision for the Original Application;
- (b) the Review Application;
- (c) submissions from the Applicant and all the Residents' Objections;
- (d) submissions from Mr Paraschiv;
- (e) response from Victoria Police maintaining no objection; and

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<sup>11</sup> Section 3A(2).

<sup>12</sup> Section 3A(3).

(f) information and submissions received from the Applicant, the Council and the Licensee after the Hearing.

40. On 22 July 2020, Deputy Chair O'Donnell conducted a site visit of the Premises, during which a number of photographs were taken of the Premises and the surrounding area. These photographs were provided to the other Commissioners for relevant context.

## **PUBLIC HEARING**

41. The Review Application was heard on 16 September 2020 (the **Hearing**), by videoconference due to the COVID-19 pandemic restrictions on indoor gatherings. Both the Applicant and Mr Paraschiv gave evidence before the Commission and made further submissions.
42. None of the remainder of the Resident Objectors chose to give evidence at the Hearing.
43. After the Hearing, the Council provided further submissions regarding the planning permit relevant to the Premises. The Council submitted that the planning permit only authorised the Licensee to supply liquor to residents at the Premises, and would require a further planning assessment if the Licensee wanted to supply liquor to guests of residents. The Council also submitted that, in the event a limited licence was granted for the external areas, the Commission consider reducing the trading hours for those areas given the close proximity of the residential development in the vicinity of the Premises.
44. In response to submissions from the Council, Mr Paraschiv provided the Commission with further proposed measures to address amenity issues. Those measures relevantly included:
- (a) restricting use of the upper deck of the Premises between 11 am and 5 pm in winter, and 11 am and 8 pm in summer; and
  - (b) restricting use of the lower deck of the Premises between 11 am to 10 pm Sunday to Thursday, between 11 am to 11 pm Friday and Saturday, and between 11 am to 1 am (the following morning) on public holidays such as Christmas and New Year's Eve.

## **REASONS FOR DECISION ON REVIEW**

### **Issues for determination on review**

45. In making its decision on review, the Commission must determine the following issues:
- (a) whether the nature of the supply of liquor as proposed by Mr Paraschiv is sufficiently limited in scale and scope as required by section 26;

- (b) whether the grant of a renewable limited licence would detract from or be detrimental to the amenity of the area in which the Premises are located;<sup>13</sup>
- (c) whether the grant of a renewable limited licence would be conducive to or encourage the misuse or abuse of alcohol;<sup>14</sup> and
- (d) whether a renewable limited licence should be granted or refused, having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.<sup>15</sup>

Each of these issues are discussed in turn.

*Whether the proposed supply of liquor is limited in scale and scope*

- 46. Pursuant to section 26(1), the Commission may only grant a renewable limited licence if the scale and scope of the supply of liquor is limited in nature.
- 47. At the Hearing, Mr Paraschiv gave evidence that he intended to be able to supply a range of liquor to his residents, including but not limited to beer, wine, champagne and locally produced gin. In isolation, the Commission considers that there is no proposed sufficient limitation on the type or range of liquor that may be supplied under the limited licence.
- 48. The Commission accepts from Mr Paraschiv's evidence that his proposed business model is for the supply of liquor to be secondary to his main business of Bed & Breakfast accommodation, and there is no evidence to suggest that his business would extend its operation to one more like a pub or bar.
- 49. The Licensee sought permission to supply liquor to both residents of the Premises, and their guests. Mr Paraschiv gave evidence that he expected that guests would be often limited to no more than two guests per room booking. While accepting this would be a reasonable limitation on the number of guests at the Premises, the Commission notes the submission from the Council that the current planning permit does not authorise the supply of liquor to guests of residents. In the circumstances, the Commission considers it appropriate to limit the supply of liquor under the limited licence to residents only, consistent with the planning permit. In the Commission's view, this restriction would result in a significant and important limitation on the scale and scope of supply of liquor under the licence for the purposes of section 26 of the LCR Act.
- 50. The Commission notes the trading hours as imposed by the delegate in the Original Decision, and also that it has considered all of the evidence provided at the Hearing and all of the

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<sup>13</sup> Sections 44(2)(b)(i) and 47(2).

<sup>14</sup> Sections 44(2)(b)(ii) and 47(2).

<sup>15</sup> The Commission notes in determining this matter, it has also considered each of the grounds set out in section 44(2).

submissions provided both at and after the Hearing. Having considered the matter (and as set out further below), the Commission considers it appropriate for liquor trading hours to be restricted as set out in Appendix A. That said, the Commission refers to section 19 of the LCR Act that would still allow liquor to be consumed on the Premises during the 30 minutes following the final trading hour. The Commission also notes that the Licensee can apply for a temporary licence for any particular event that seeks to supply liquor beyond the hours set out in Appendix A.

51. Subject to the conditions set out in Appendix A, the Commission considers that the nature of the proposed supply of liquor would be sufficiently limited in scale and scope, and would therefore satisfy the requirements in section 26.

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

52. The Commission must also determine whether the grant of the licence would detract from or be detrimental to the amenity of the area in which the Premises are located, which may give rise to a ground of refusal under sections 47(2) and 44(2).
53. Historically, “noise levels” was one of the factors listed in section 3A(2) of the LCR Act that the Commission may take into account when determining whether a grant of a licence would detract from or be detrimental to the amenity of an area. Since that time, an amendment to the LCR Act<sup>16</sup> removed “noise levels” as a factor (along with reference to parking facilities and traffic movement). However it is noted that the Minister’s second reading speech<sup>17</sup> and explanatory memorandum<sup>18</sup> in relation to this matter indicated that the removal of the factors from section 3A(2) is not intended to limit the Commission’s ability to grant a licence that has conditions relating to parking, traffic or noise levels as it sees fit on the basis of its consideration of amenity, and further, the rationale in removing these was to reduce duplication between the planning and liquor processes.<sup>19</sup>
54. The Commission notes that Mr Paraschiv is not required to provide evidence of planning authorisation to the Commission, as the licence sought is a limited licence.<sup>20</sup> In instances such as this, the Commission considers it appropriate to assess concerns regarding noise-related amenity so it can be satisfied that amenity of the area would not be negatively impacted upon by the grant of the application. Having said that, if noise issues had been (or were to be) considered by the Council as a part of the planning process, the Commission would have necessarily placed less

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<sup>16</sup> Section 29 of the *Liquor and Gambling Legislation Amendment Act 2018*

<sup>17</sup> Victoria Legislative Assembly, Parliamentary Debates, 28 March 2018 (**Second Reading Speech**) (Ms Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation) at 927.

<sup>18</sup> Explanatory Memorandum, Liquor and Gambling Legislation Amendment Bill 2018, published 27 March 2018 (**Explanatory Memorandum**).

<sup>19</sup> Explanatory Memorandum at clause 29, Second Reading Speech at 928.

<sup>20</sup> Section 16(2).

weight on noise amenity concerns to reduce any possible duplication between the liquor and planning processes.

55. The Commission notes that the Applicant and the remainder of the Resident Objectors raised amenity concerns, particularly regarding a potential increase in noise levels emanating from the Premises especially at late hours. The Commission accepts the evidence of the Resident Objectors that the tranquillity offered by residing in Marysville is an important part of the amenity of the area surrounding the Premises, and that granting a licence for the supply of liquor at the Premises has the potential to impact on that amenity. This is particularly the case with regard to noise generated by residents and guests while socialising on the external areas of the Premises.
56. While the Commission has considered the evidence of the Licensee regarding the processes to deal with noise impacts from the Premises, the Commission has taken into account the submissions of the Resident Objectors and the Council and has determined to reduce the trading hours as sought by the Licensee in the Review Application. In particular, the Commission has determined that it would be appropriate to not grant permission to supply liquor to residents on the upper deck at any time, and to limit the available trading hours for supply of liquor on the lower deck as set out in Appendix A, in order to mitigate the risk of unreasonable noise impacting the amenity of the area.
57. In this regard, the Commission expects that there will be a complaints process implemented by the Licensee in order to respond to any amenity concerns by its residential neighbours in a receptive, timely and efficient manner. In the Commission's experience, concerns such as those raised by the Resident Objectors in this matter are best managed through a harmonious and respectful relationship between the Licensee and those residents impacted by the granting of a liquor licence in such a setting.
58. Finally, the Commission considers it would be appropriate to impose a condition that restricts any music played at the Premises to no higher than background music level at any given time and to ensure that there are no speakers located on the outside areas. While some noise will likely emanate from the operation of the Premises, the Commission considers that the amount of noise will not, on balance, be detrimental to the amenity of the area if the licence were to be granted.
59. Consequently, the Commission is satisfied that the grant of a renewable limited licence subject to the conditions in Appendix A would not detract from or be detrimental to the amenity of the area. The conditions in Appendix A are expected to address potential negative amenity impacts, particularly with respect to noise levels, whilst noting the type of venue Mr Paraschiv has described.

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

60. An application may be refused if granting the application would be conducive to or encourage the misuse or abuse of alcohol.<sup>21</sup> Victoria Police did not raise any concerns in this regard. Mr Paraschiv informed the Commission that were the licence to be affirmed on internal review, his management of the Premises would address a variety of matters in relation to the operation of the Premises, including signage, noise levels, and storage of liquor.
61. Overall, the Commission is satisfied that Mr Paraschiv would have suitable procedures and controls in place to ensure the responsible sale of alcohol and reduction of risk associated with the supply of alcohol. The Commission notes that Mr Paraschiv has already completed an approved RSA program.
62. The Commission further considers that Mr Paraschiv's service of food at the Premises and the supply of liquor being ancillary to the operation of the Premises as Bed & Breakfast accommodation, assists in the responsible service of alcohol and should minimise any risks associated with excessive alcohol consumption and abuse or misuse of alcohol. Additionally, the Commission notes from Mr Paraschiv's evidence that the liquor storage area on the Premises shall be locked at all times outside the permitted trading hours under the licence.
63. Subject to the conditions in Appendix A, the Commission is satisfied that granting the renewable limited licence would not be conducive to or encourage the misuse or abuse of alcohol.

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

64. Although the Commission is satisfied that the Review Application meets the requirements of section 26 and that no grounds for refusal exist under section 47(2) and 44(2) of the LCR Act, the Commission must still exercise its discretion whether or not to grant a limited 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.
65. With the imposition of the conditions in Appendix A, 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 a licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.

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<sup>21</sup> Section s 44(2)(b)(ii).

66. Finally, 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 outlined in section 4(1)(b).

#### **DECISION ON REVIEW**

67. Based on all of the matters set out above, the Commission on review has decided to set aside the delegate's decision and, in substitution, grant a renewable limited licence for the Premises subject to the conditions set out in Appendix A.

*The preceding 67 paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Ms Danielle Huntersmith, Commissioner, and Mr Andrew Scott, Commissioner.*

## Appendix A

### TYPE OF LICENCE

This licence is a renewable limited licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours and in the manner specified below.

### AMENITY

The licensee will 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 by this licence.

The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise level for entertainment noise as specified in the State Environment Protection Policy (Control of Music Notice from Public Premises) No. N-2.

### SUPPLY OF LIQUOR

The supply of liquor is to be restricted to residents of the licensed premises.

The licensee must not supply liquor to guests of residents of the licensed premises.

Notwithstanding the conditions on the supply of liquor, guests of a resident may consume liquor which has been supplied to a resident by the Licensee from the minibar located in that resident's suite.

Liquor supplied from the minibar may only be consumed in the residents' suites.

The licensee must not supply liquor on the upper deck.

Except for the trading hours specified below for consumption on the lower deck, liquor must not be consumed in the outdoor common areas.

### NOISE

No live or recorded amplified music other than background music may be provided at any time.

The licensee or his agent must be on the property when there are residents or their guests in attendance on the premises during the trading hours specified below.

No speakers for any sound system are to be located in the outdoor areas.

After 10 pm in the internal dining area, the licensee must ensure the windows and doors of the dining area are kept closed.

TRADING HOURS FOR CONSUMPTION IN THE INTERNAL DINING AREA

ANZAC Day	Between 12 noon and 11 pm.
New Year's Eve	Between 10 am and 1 am the following morning.
Sunday to Thursday	Between 10 am and 10 pm.
Friday and Saturday	Between 10 am and 11 pm.

TRADING HOURS FOR CONSUMPTION ON THE LOWER DECK

ANZAC Day	Between 12 pm and 8 pm.
New Year's Eve	Between 11 am and 1 am the following morning.
October to April	Between 11 am and 8 pm.
May to September	Between 11 am and 5 pm.

TRADING HOURS FOR CONSUMPTION FROM THE MINIBARS IN THE RESIDENTS' SUITES

On any day	At any time.
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