



DECISION AND REASONS FOR DECISION

In the matter of applications for internal review under section 153 of the *Liquor Control Reform Act 1998* by parties affected by a decision to grant an on-premises licence to The Stolen Gem Pty Ltd, for the premises trading as The Stolen Gem at Level 8, 388 Bourke Street, Melbourne.

Commission:

Ms Helen Versey, Deputy Chair

Ms Danielle Huntersmith, Commissioner

Mr Des Powell AM, Commissioner

Appearances:

Ms Wendy Tinkler, Applicant

Mr Michael Slater, Applicant

Mr Eric Zhang, Objector

Mr Matthew Newman, Director of the Licensee

Mr Lee Konstantinidis as Counsel Assisting the Commission

Date of hearing:

18 May 2021

Date of decision:

30 June 2021

Date of reasons:

30 June 2021

Decision:

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

Signed:

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

Helen Versey

Deputy Chair



REASONS FOR DECISION

BACKGROUND

The Original Application

1. On 27 May 2020, The Stolen Gem Pty Ltd (the **Licensee**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for an on-premises licence (the **Original Application**) for the business proposing to trade as 'The Stolen Gem', situated at Level 8, 388 Bourke Street, Melbourne (the **Premises**).
2. The director of the Licensee is Matthew Newman (the **Director**).
3. The Licensee has operated renewable limited licence no. 36153411 (the **Renewable Licence**) since before making the Original Application. The Renewable Licence permits the Licensee to supply liquor at different locations, for consumption at pre-booked functions only. Prior to making the Original Application, the Licensee operated the Renewable Licence at the Premises for pre-booked functions numbering at approximately 40 per year.
4. The Premises currently operates as a rooftop bar which the Director describes as seeking to provide an upmarket, boutique and pricier offering to a demographic he described as mature. The Premises has planning permission to accommodate 100 patrons, however seating will generally be available for 30 patrons. The Licensee intends to provide food at the Premises at times depending on demand, though this will be limited to small plates and snack-type meals.
5. The Original Application sought to supply liquor for consumption on the licensed premises during the following hours:

ANZAC Day	Between 12 noon and 11pm
All remaining public holidays	Between 10:30am and 12 midnight
Sundays	Between 10:30am and 12 midnight
Monday to Thursday	Between 9am and 12 midnight
Friday and Saturday	Between 9am and 1am the following day
6. The Original Application included the following information:
 - (a) a completed application form for an on-premises licence dated, 20 May 2020;
 - (b) a liquor licensing questionnaire, dated 20 May 2020;
 - (c) a completed declaration of the Licensee's right to occupy the premises, dated 20 May 2020;



- (d) an Australian Securities & Investments Commission (**ASIC**) Current Company Extract for the Licensee, as at 22 May 2020;
 - (e) evidence that the Director completed 'new entrant first step' and 'responsible service of alcohol' training;
 - (f) evidence that the Licensee had displayed a public notice of the Original Application between 31 May 2020 and 28 June 2020;
 - (g) a redline plan of the Premises; and
 - (h) a venue management plan, addressing the use of the Premises as a function space, place of assembly and public bar.
7. On 27 May 2020, a copy of the Original Application was served on the Chief Commissioner of Victoria Police (**Victoria Police**) in accordance with section 33(1) of the LCR Act. On 23 June 2020, Victoria Police informed the Commission that it did not object to the grant of the Original Application.
 8. On 27 May 2020, a copy of the Original Application was also served on the City of Melbourne (the **Council**) in accordance with section 33(2) of the LCR Act. On 1 June 2020, the Council informed the Commission that it did not object to the Original Application, and that the planning scheme did not require the grant of a permit for the use of land as a place of assembly within the Capital City Zone.
 9. In response to displaying the public notice of the Original Application, as referred to in paragraph 6(f) above, 15 objections were made and received by the Commission, on grounds of amenity, from tenants of other floors of the building in which the Premises is located (the **Objections**). The Objections raised concerns regarding negative amenity impacts in relation to noise, personal safety, vandalism, intoxicated patrons, the limited space in the elevator and lack of security within the building.
 10. After considering the Objections, the Commission's delegate (the **Delegate**) determined to grant the Original Application (the **Original Decision**) for an on-premises licence (the **Licence**). The Delegate was not satisfied that the concerns raised within the Objections would detract from or be detrimental to the amenity of the area in which the Premises were situated. Accordingly, the Delegate determined to grant the Licence on 1 February 2021, with a condition limiting the maximum number of permitted patrons to 100 and with the authorised trading hours sought by the Original Application, as referred to in paragraph 4 above.



11. In granting the Original Application, the Delegate did not place a condition on the Licence to reflect the *ordinary trading hours* for an on-premises licence, as set out in section 3(1) of the LCR Act.

The Review Applications

12. The following applications for internal review of the Original Decision were received under section 153 of the LCR Act (the **Review Applications**):
 - (a) an application from Wendy Tinkler, dated 22 February 2021;
 - (b) an application from Imogen Johnston, dated 24 January 2021;
 - (c) an application from Alison Scott, dated 25 February 2021;
 - (d) an application from Reg Porter, dated 25 February 2021;
 - (e) an application from Anne Gilby, dated 26 February 2020;
 - (f) an application from Stephanie McDonald, dated 28 February 2021;
 - (g) an application from Alison Baker, dated 28 February 2021;
 - (h) an application from Louise Gleeson, dated 27 February 2021;
 - (i) an application from Carolyn Morris, dated 28 February 2021;
 - (j) an application from Michael Slater, dated 28 February 2021;
 - (k) an application from Catherine Buckley, dated 28 February 2021; and
 - (l) an application from Jacqui McKinnon, undated.
13. Several of the makers of the Review Applications (the **Review Applicants**) requested that the Commission stay the Original Decision pending the determination of the Review Applications. On 4 March 2021, the Commission determined not to stay the Original Decision.
14. In some instances the Review Applicants made further submissions opposing the grant of the Licence. These were that:
 - (a) the operation of the Premises would have an adverse effect on the business and reputation of tenants of the building;
 - (b) businesses operated outside of ordinary business hours, contributing to concerns regarding the ingress and egress of patrons and a lack of adequate ventilation within the building;
 - (c) the reason why the Premises operated without incident on previous occasions was that functions occurred approximately once per three weeks, and tenants of the building had



responded to this with flexibility. It was submitted that if the Licence were operated for seven days per week, tenants would be unable to deal with this by reorganising their schedules;

- (d) the reason why no formal complaints had been made regarding the operation of the Premises was that tenants of the building had elected to report complaints to the manager of the Premises in order to avoid antagonism; and
- (e) the operation of the Premises as a public bar was inconsistent with the desire of tenants to be alcohol-free.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

15. Division 2 of Part 9 of the LCR Act governs internal review applications. The Original Application was an application under section 27 for the grant of a licence and section 152 of the LCR Act provides that the decision to grant the Original Application is a reviewable decision. As persons who objected to the Original Application, each of the Review Applicants is eligible to apply for the review of the Original Decision under section 152.
16. The Review Applications were made under section 153 of the LCR Act, within 28 days of the Original Decision, by eligible persons.
17. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:
 - (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.¹
18. Under the LCR Act, an application for an on-premises licence may be contested or uncontested. Section 3(1) provides that a contested application is:

“an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the

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



period set out in that Division for those objections (or that period as extended under section 174) ...²

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

Exercising the internal review power

21. Section 9 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines issued by the Minister under section 5 of the VCGLR Act.⁵
22. The objects of the LCR Act are set out in section 4(1):

The objects of this Act are—

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

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

³ LCR Act, sections 44, 49 and 157.

⁴ LCR Act, section 44 and 157.

⁵ VCGLR Act, sections 9(3) and (4).



- (c) *to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and*
- (d) *to regulate licensed premises that provide sexually explicit entertainment.*

23. Section 4(2) of the LCR Act provides further that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.⁶

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

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

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

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

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

- (a) the granting of the application would detract from or be detrimental to the amenity of the area in which the Premises to which the application relates are situated; or
- (b) the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

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

⁷ LCR Act, section 157(2).

⁸ LCR Act, section 157(3).

⁹ LCR Act, section 44(4)(a).



Conduct of an inquiry

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

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

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

...

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

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

“In performing a function or duty the Commission—

(a) except when exercising a power under Division 5 of Part I of the Evidence (Miscellaneous Provisions) Act 1958, is not bound by the rules of evidence but may inform itself in any way it thinks fit;

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

MATERIAL BEFORE THE COMMISSION

29. The Commission on review had before it and considered all the information before the Delegate, which included the materials referred to in subparagraphs 6(a) to 6(h) above.

30. The Commission also received:

(a) written submissions from the Review Applicants, objecting to the Licence and explaining how its grant may detract from the amenity of the area. This information reiterated the materials received in opposition to the Original Application and the submissions at the hearing referred to in paragraphs 33 to 35 below; and

(b) the City of Melbourne’s (the **Council**) *Notice of Decision* dated 26 November 2020, provided to the Commission by the Licensee. This notice indicated that the Council would grant a planning permit to operate the Premises as a public bar, subject to conditions.



THE HEARING

31. A hearing was conducted on 18 May 2021 (the **Hearing**) at which the Director appeared on behalf of the Licensee and gave sworn evidence.
32. Of the Review Applicants, Wendy Tinkler and Michael Slater gave sworn evidence. Eric Zhang, an objector to the Original Application who did not submit a valid application for internal review, also gave evidence at the Hearing with the approval of the Commission.
33. Wendy Tinkler's evidence was that:
 - (a) she operated the Melbourne Centre for Effective Communication on level 3 of the building at 388 Bourke Street (the **Building**) and had been a tenant of that building for 35 years. She explained how she believed that the decision of Delegate did not adequately address the specific features of the Building or fully consider how the amenity of the area might be impacted by granting the Original Application;
 - (b) the Delegate referred to the Director's strong track record of operating licensed premises and she stated that the Director was "easily able to demonstrate his good practice in this industry". Notwithstanding this, she believed that a detraction to the amenity of the area represented by the grant of the Licence could not be mitigated by the Director's good management of the Premises, and that risks of increased sexual activity, vandalism, risk of injury from the use of the stairwell, smokers outside the Building, the possibility of underage persons being in contact with patrons of the Premises and drunkenness were an unavoidable result of a licensed premises operating within a building with a shared entrance and foyer;
 - (c) her experience with the manager of the Licensee had been positive and the manager had been cooperative and responsive when complaints had been reported;
 - (d) the Building was an unsuitable location for a public bar given its age, size and layout;
 - (e) when the Licensee began operating at the Premises, existing tenants expressed their concerns to the landlord, however she could take no action to prevent the Premises from operating because planning approval was not required from the Council and the Premises operated under a renewable limited licence;
 - (f) initially, tenants were able to adapt to the Premises' operation because it only operated on a sporadic basis and up to two times per week (during the Christmas period) at that time. She explained that, at that stage, issues with patrons of the Premises were reported to the manager of the Premises, so complaints had not been made externally;
 - (g) the atmosphere and environment of the Building would change due to the supply of liquor under the Licence;
 - (h) her clients were professional people who came to train in meditation and stress



management, and that a building in which a “pub” was located would be inconsistent with their expectations;

- (i) while the Licensee raised the option of *locking* the lift, forcing it to go directly to level 8 of the Building if selected first, this would not resolve issues around a shared foyer. She stated that her clients may be uncomfortable seeing security guards at the ground floor entrance to the Building, and that security might also interfere with the right of tenants to the unfettered access to their leased areas; and
- (j) the premises from which she operated, often operated between 7am and 11pm on weekdays, in addition to weekends.

34. Michael Slater’s evidence was that:

- (a) he represented the Kenja Melbourne Social and Sporting Cultural Association which had occupied level 5 of the Building for approximately 35 years;
- (b) his clients consisted of individuals rather than organisations, who generally sought a level of excellence in their personal and professional lives;
- (c) the Building was currently perceived by the public as “a very classic, professional workspace which is fundamentally an education hub”, a perception which would shift as a result of granting the Licence, particularly given the limited points of ingress and egress and shared foyer in the Building;
- (d) it was not appropriate or acceptable to expect his clients to share a foyer with patrons of a licensed premises, and sharing the Building with a bar would mean his clients may not feel that they were going to a safe space when entering the Building if a public bar were also located in the Building. This would result in reputational damage to his organisation, which he considered was unable to cohabit the Building with a licensed bar; and
- (e) he referred to the small frontage of the Building and small lift as factors which indicated that patrons of the Premises would be visible when entering and exiting the Premises and believed that queues of the Premises’ patrons waiting to enter the foyer area of the Building would have a detrimental effect on his business.

35. Eric Zhang’s evidence was that:

- (a) he operated on levels 2 and 6 of the Building and ran a language school which tested and scored students on the International English Language Testing System (IELTS);
- (b) his clientele consisted of approximately 90% international students which he believed to be a vulnerable demographic;
- (c) his clientele used the stairs as well as the lift to access levels 2 and 6 of the Building and most of them travelled to the Building by public transport;
- (d) he was concerned that requiring his clients to share an elevator with the Premises’ clients



might lead to conflicts, violence or sexual assaults, though he did not report that any issues had previously arisen;

- (e) he was concerned that amplified music and noises might travel from the Premises through concrete floors and disrupt his students, including during testing procedures. While he indicated that external noises could sometimes be heard, he did not attribute these to the operation of the Premises;
- (f) none of his students had complained to him in the past regarding the behaviour of the Premises' patrons, nor had he or his students ever been able to hear the Premises operating; and
- (g) despite occupying level 6 of the Building, he had not previously heard any noise or felt any vibrations emitted from the Premises in relation to functions which it had held.

36. The Director's evidence was that:

- (a) prior to 2020, the Premises had hosted approximately 40 functions per year under the Renewable Licence;
- (b) his intention was to operate the Premises as a high-end boutique cocktail bar, and as such, he expected to attract an older clientele who were willing to pay a premium. He expected that the Premises would be patronised by middle-aged women in particular, who might sit down and enjoy a drink or two prior to leaving the Premises to dine elsewhere;
- (c) the Licensee had historically operated in a manner which was compliant with the LCR Act and the Renewable Licence, including while operating the Renewable Licence at the Premises. There was nothing to suggest that the Licensee would not continue to comply with the requirements of the LCR Act and the Licence if the Delegate's decision were affirmed;
- (d) he had made enquiries with the landlord and the retailer of the lift system to ascertain that it would be possible to program the lift to arrive at level 8 only if that level were selected first. This was proposed as a measure to mitigate the concerns of the Review Applicants;
- (e) while he was unable to make the stairway completely inaccessible due to it being an emergency exit, his practice had been to block it visually with a flimsy plastic chain while clearly signing that it was an emergency fire exit only. He further proposed to have a 'buzzer' ring when someone opened that door to alert security that patrons were attempting to exit the Premises via the stairwell and prevent them from doing so;
- (f) while there was no signage in the ground floor foyer identifying the location of the Premises, signage could be introduced to ensure that patrons of the Premises did not reach the incorrect floor;
- (g) patrons would not want to use the stairwell due to needing to climb or descend seven



- flights of stairs to enter or exit the Building from the Premises, so it was unlikely that this would create an issue for other tenants of the Building;
- (h) due to operating as a rooftop bar, the patronage of the Premises was seasonal. Even though the Premises included heaters and roofing, the Director did not expect the Premises to be popular during the winter months;
 - (i) food had been provided through catering companies for functions, but if the Licence were granted, the Director intended to fit out a small kitchen and serve small-plate meals;
 - (j) while a formal dress code was not enforced at the Premises, the Licensee would take steps to set a culture around neat attire;
 - (k) there were many sources of noise and vibration for the area including road traffic and construction, and tenants of the Building might erroneously believe that noise emitted from level 5 of the Building had been emitted from level 8;
 - (l) the Premises would only have background music until after 5:30pm;
 - (m) an acoustic report (the **Acoustic Report**) was prepared as part of a planning application with the City of Melbourne, and compliance with the recommendations made by this report was a condition of the Council's *Notice of Decision* to grant a permit authorising the use of the Premises as a bar. Conditions of this report included mandatory compliance with SEPP N-1 and N-2 policies with respect to the emission of noise, and the Licensee was able to monitor all noise through its in-house PA system; and
 - (n) to prevent patrons from forming a queue to enter the Building, security positioned on the ground floor could assist to manage patrons of the Premises and ensure that they went directly to level 8. They could also use two-way radio monitoring to track patrons entering or leaving the Premises to ensure that they did not disturb other tenants of the Building.

ISSUES FOR DETERMINATION

Amenity

- 37. As referred to in paragraph 9, the Objections consisted of 15 submissions from tenants of the Building, objecting to the grant of the Original Application on grounds of amenity.
- 38. Of those who objected the Original Application, 12 applications were made to review the Original Decision. Generally, the matters relevant to amenity which were raised in the objections to the Original Application and in relation to the Review Applications were the possibility of:
 - (a) antisocial and drunken behaviour;



- (b) increased noise;
 - (c) increased foot-traffic within the Building; and
 - (d) a shift in the character of the Building from a professional education hub.
39. Amenity is defined as “the quality that the area has of being pleasant and agreeable”¹⁰ and subsection 3A(2) of the LCR Act prescribes the following factors which may be taken into account in determining whether granting a licence would be detrimental to the amenity of an area:
- (d) *the possibility of nuisance or vandalism;*
 - (e) *the harmony and coherence of the environment;*
 - (f) *any other prescribed matters.*
40. Subsection 3A(3) states that the Commission is not limited to considering the prescribed factors and it is open to the Commission to consider additional matters as relevant to amenity.

Noise

41. The possibility of increased noise was raised by the Objections in relation to:
- (a) patrons entering and leaving the Premises; and
 - (b) amplified music inside the internal area of the Premises.
42. At the time of the Hearing, a *Notice of Decision* had been issued by the City of Melbourne, to permit the Premises to operate as a bar. One of the conditions of this decision was that the Acoustic Report referred to in paragraph 36(m) be prepared by a suitably qualified acoustic consultant, with the conditions of that report to form part of the planning permit.
43. The Notice of Decision also provided that empty bottles must be deposited quietly so as not to cause disturbance to adjoining and nearby residents and occupants. It also required a sign to be attached to a wall in a prominent position adjacent to the Premises’ entry and exit points to advise patrons to leave the premises in a quiet and orderly fashion.
44. The Acoustic Report set limits for the control of noise and was a condition of the grant of a planning permit. The Commission is confident that the conditions of this expert report would include adequate controls on noise to limit noise emitted from the Premises to acceptable levels under the SEPP N1 and SEPP N2 policies and the Melbourne and Victorian Local Planning Provisions.

¹⁰ LCR Act, s.3A.



45. It is also noted from the evidence of Mr Zhang referred to in subparagraphs 35(f) and 35(g) that, despite operating on level 6 of the Building and being the closest objector to the Premises in that sense, neither he nor his clients reported hearing noise emitted from the Premises or feeling vibrations associated with the operation of the Premises.
46. The Commission further notes that no formal complaints were made by other Review Applicants with respect to noise emitted by the Premises while it operated under the Renewable Licence.
47. Considering the above, there is no evidence to indicate that the grant of the Licence would be detrimental to the amenity of the area with respect to noise.

Antisocial Behaviour

48. The Commission is not satisfied that granting the Licence would result in an increased incidence of violent, sexual, threatening or otherwise antisocial behaviour.
49. The tenor of the submissions made by the Review Applicants was that, as an inevitable result of granting the Licence, many of the patrons of the Premises would be intoxicated or drunk. It was further submitted that patrons of the Premises would target other tenants of, or visitors to the Building, with antisocial behaviour.
50. It is clear to the Commission that these objections have failed to consider the effects of strong management, mitigation strategies, responsible service of alcohol and the intended character of the Premises. In particular, Ms Tinkler did not question the Licensee's ability to manage licensed premises, but stated that no measures would be sufficient to mitigate the impact upon businesses sharing the Building with the Licensee.
51. Contrary to the submissions of the Review Applicants in objecting to the grant of the Licence, the Commission considers that the Director's intention to provide an upmarket or boutique offering, his good history of operating licensed premises, responsiveness in addressing concerns raised by the Review Applicants, evidence that appropriate policies are in place with respect to the supply of liquor at the Premises and the lack of incidents while the Premises operated under the Renewable Licence together suggest that the likelihood of intoxicated or drunken patrons of the Premises will be low, as would the possibility of related antisocial behaviour.

Patrons entering or leaving the Premises

52. The Objections and the submissions made with respect to the Review Applications stated that there would be a negative impact to amenity as a result of patrons entering or leaving through



the ground floor foyer and accessing the Premises through either the shared elevator or stairwell.

53. Having considered the Licensee's submissions referred to in subparagraphs 36(d), 36(e), 36(g) and 36(n) above, the Commission is satisfied that measures could be implemented by the Licensee to prevent its patrons from using the common stairwell, in the unlikely event that they might otherwise wish to ascend or descend seven flights of stairs or loiter in the stairway.
54. The Commission acknowledges that granting the Licence may result in more frequent use of the only elevator within the Building by the Premises' tenants and their visitors, and this may inconvenience other businesses within the Building and their clients.
55. The Commission notes that other tenants would similarly be affected by increased use of the elevator if the Premises were operated as any other type of business which hosted clients. The Licensee is unable to have more than 100 patrons on the Premises, and as such, the Commission does not consider it unreasonable that the Licensee's patrons might share the elevator with the patrons of other businesses.
56. In reaching this view, the Commission has considered the Licensee's evidence that the number of patrons at the Premises will, in most cases, be less than 100, and considers it likely that their arrival and departure at the Building would be staggered.
57. Some of the Review Applicants have suggested that they would be required to share a lift with drunken patrons of the Premises were the Delegate's decision affirmed. The Commission does not consider this to be a likely occurrence for the reasons discussed in paragraphs 50 and 51 above. If any patrons were showing signs of intoxication, the Licensee would take steps to ensure that they were exiting rather than entering the Premises, and this could be achieved by locking the lift and through the appropriate use of crowd controllers, which would prevent comingling of the Premises' patrons and other persons within the elevator for patrons so removed.
58. Having regard to the matters discussed in paragraphs 37 to 57 the Commission considers that granting the Licence is unlikely to adversely impact upon the amenity of the Building and surrounding area, and does not consider this to be a ground upon which to refuse to grant the Licence.



Misuse and abuse of alcohol

59. The Commission may refuse to grant an application on grounds that it would be conducive to or encourage the misuse or abuse of alcohol.¹¹
60. The Commission's view is that the circumstances of the Review Application do not indicate that the risk associated with the misuse or abuse of alcohol justifies the refusal to grant a licence.
61. The Licensee proposes to operate as a high-end or boutique bar where a "middle-aged" clientele is able to enjoy an upmarket, albeit more expensive offering. The Commission does not consider this to be the kind of environment where patrons are likely to consume liquor to an excessive degree.
62. The Commission notes that while some food will be available at the Premises, this will not be the primary offering. The Licensee has submitted that seating will only be available for approximately 30% of patrons. While these factors aren't generally protective against the possible misuse and abuse of alcohol, considering the Licensee's submissions regarding the type of premises which it will operate and its target clientele, the Commission considers the risk associated with the possible misuse and abuse of alcohol to be low.

Discretion to grant or refuse the licence

63. Having considered all the evidence and submissions made by the Licensee, the parties whom objected to the Original Application and the Review Applicants, the Commission has determined to vary the decision of the Delegate.
64. The Commission notes that while a number of review applications were received from tenants of the Building, some tenants chose not to object to the Original Application.
65. As noted in paragraph 11 above, a condition was not placed on the Licence to limit the trading hours on a Good Friday to the ordinary trading hours defined at section 3(1) of the LCR Act for an on-premises licence. Therefore, the Commission considers it appropriate to vary the decision of the Delegate to impose such a condition.

¹¹ See LCR Act, section 44(2)(b)(ii).



DECISION

66. The Commission has determined to vary the decision of the Delegate, subject to the conditions set out in Appendix A below.

The preceding sixty-three (66) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, Ms Danielle Huntersmith, Commissioner, and Mr Des Powell AM, Commissioner.



Appendix A

TYPE OF LICENCE

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

AMENITY

The licensee shall 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 shall ensure that the level of noise emitted from the licensed premises shall 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.

MAXIMUM CAPACITIES

100 patrons

SPECIAL CONDITON

The venue management plan shall be retained on the licensed premises and made available for inspection by Victoria Police or a person authorised by the Victorian Commission for Gambling and Liquor Regulation. The terms of the venue management plan are conditions of this licence as if expressed herein full.

TRADING HOURS

Good Friday and ANZAC Day Between 12 noon and 11pm

Sunday and all remaining public holidays Between 10.30am and 12 midnight

Monday to Thursday Between 9am and 12 midnight

Friday and Saturday Between 9am and 1am the following day