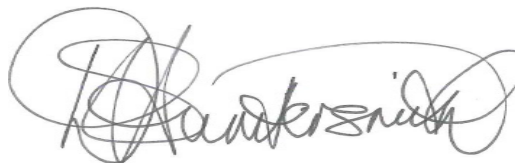


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Malvern East Pty Ltd for an internal review of a decision by a delegate to refuse part of an application for variation to conditions of an existing late night (general) licence for the premises trading as Racecourse Hotel Malvern East located at 895 Dandenong Road, Malvern East

Commission:	Ms Danielle Huntersmith, Chair Mr John Larkins, Deputy Chair Ms Thu-Trang Tran, Commissioner
Appearances:	Ms Rutendo Muchinguri, Counsel for the Applicant (instructed by Ms Alison Elverd, BSP Lawyers) Ms Caitlin McAlister, Counsel Assisting the Commission
Date of Hearing	24 October 2022
Date of Decision:	3 March 2023
Date of Reasons:	3 March 2023
Decision:	The Commission has determined to set aside the decision of the Delegate and, in substitution, vary the licence

Signed:



Danielle Huntersmith, Chair

Background

1. Malvern East Pty Ltd (**Applicant**) holds late night (general) licence no. 31911092 (**Licence**) issued under the *Liquor Control Reform Act 1998 (LCR Act)*,¹ which applies to the premises located at 895 Dandenong Road, Malvern East (**Premises**), trading as Racecourse Hotel Malvern East.
2. The Applicant has held the Licence since 27 November 2013.
3. The Applicant leases the Premises from a registered company known as MN No.2 Pty Ltd. The Applicant's sole director is Mr Matthew Nikakis, who is also the sole director of MN No.2 Pty Ltd. Ms Paige Griffin is approved as the nominee of the Applicant on the Licence.
4. The Licence permits the supply of liquor on the Premises for consumption on and off the Premises.
5. The Premises consists of a ground floor area with a bistro,² sports bar, lounge area, and gaming room,³ as well as a first-floor space with a function room that can cater for up to 150 guests. There is a front stairwell between the ground floor and the first floor. Toilet facilities are located in the sports bar/gaming area, the bistro, and the first-floor function space.
6. The Premises has a main front entrance/egress from Dandenong Road as well as an entrance/egress from Waverley Road. A courtyard is also located at the front of the Premises which is closed to patrons after 1am in accordance with the planning permit issued to the Applicant from the City of Stonnington (**Council**).
7. The Premises has a maximum patron capacity of 803 persons as specified on the Licence.
8. The trading hours for consumption on the Premises are:

Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12 noon and 1am the following day
Monday to Wednesday	Between 7am and 1am the following morning

¹ All references to legislation are references to the *Liquor Control Reform Act 1998* unless stated otherwise.

² 90 seats are available in the bistro.

³ 40 electronic gaming machines are located in the gaming room. A smokers' area also adjoins the gaming room which the Commission notes is for smoking purposes only as per condition 6 of the planning permit issued by the City of Stonnington Council, dated 21 June 2022.

Thursday to Saturday

Between 7am and 3am the following morning
except for the morning of Good Friday

9. On 17 January 2022, the Applicant applied to the Victorian Gambling and Casino Control Commission (**VGCCC**) to vary the trading hours for consumption on the Premises to:

Sunday

Between 10am and 1am the following morning

Good Friday and ANZAC Day

Between 12 noon and 1am the following day

On any other day

Between 7am and 3am the following morning
except for the morning of Good Friday

In addition, the Applicant submitted that it was amenable to a potential limit on the patron capacity of the Premises to 200 patrons after 1am on Monday to Wednesday. All other conditions of the Licence were to remain unchanged (**Application**).⁴

10. The reason for the Application was in response to customer feedback and for more consistency in trading hours, particularly for customers that wish to view international sports until 3am the following morning on Monday to Saturday so that they do not have to leave the Premises and find somewhere else to watch the end of the game. The Applicant also wants the Premises to be more competitive with other similar types of venues.
11. The Applicant also sought to update the red-line plan of the Premises to correct the internal layout of the Premises but not changing the overall licensed area. For example, what is shown on the original plan as the bistro is now the sports bar, and what is shown on the original plan as the first-floor lounge is now the function room.
12. In accordance with section 33(3), a copy of the Application was served on Victoria Police (**Victoria Police**) and the Council. Victoria Police and the Council advised the VGCCC that they did not object to the grant of the Application.
13. An authorised delegate of the VGCCC (**Delegate**) assessed the Application and determined that it was necessary to consider the decision-making guidelines titled “Applications for liquor licences to trade after 1.00 am” dated 23 June 2021 (**Current Guidelines**)⁵, when deciding to grant or refuse the extension to the trading hours at the Premises.

⁴ Applicant’s amended submissions, 10 March 2022.

⁵ See paragraphs 34 and 35 of these reasons for further information on the Ministerial Guidelines.

14. On 6 April 2022, the Delegate granted part of the Application in relation to an extension of the final trading hour to 1am on Sunday and the updated redline plan, however the Delegate refused the part of Application regarding an extension of the final trading hour to 3am on Monday to Wednesday on the basis that it did not meet the requirements of the Current Guidelines (**Original Decision**). In summary, the Delegate stated in her reasons for decision:
 - (a) the Licence provides a maximum patron capacity of 803. The venue management plan in place addresses a maximum patron capacity of 803 (as opposed to how the Applicant would reduce the patron capacity down to the proposed 200 patrons after 1am); and
 - (b) by reason of clause A(2) of the Current Guidelines, the VGCCC cannot vary a licence to allow for supply of liquor after 1am where the patron capacity of a venue for the entire trading hours of a day exceeds 200 and where the venue management plan in place is not in the form required (i.e. it does not address how the Applicant would reduce the patron capacity down to the proposed 200 patrons after 1am).

Application for Internal Review

15. On 4 May 2022, the Applicant applied to the VGCCC for an internal review of the Original Decision (**Review Application**).
16. In the Review Application, the Applicant stated that the patron capacity will not exceed 200 after 1am and, in combination, it ought to be able to enjoy the same final trading hour of 3am on Monday to Wednesday as it already does on Thursday to Saturday despite the maximum patron capacity stipulated on the Licence being 803. The Applicant also asserted that it meets the requirements of the Current Guidelines in any event.
17. On 1 July 2022, the Victorian Liquor Commission (**Commission**) was established under the LCR Act as the liquor regulator in Victoria. Accompanying legislative changes transferred to the Commission the necessary functions and powers to consider and determine current applications made to the VGCCC.

Legislation and the Commission's task

The Commission's internal review power

18. Division 2 of Part 9 governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
19. 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.⁶
20. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
 - (a) grant the Original Application, and if so, whether to do so subject to conditions;⁷
or
 - (b) refuse to grant the Original Application.⁸

Determination of an uncontested application

21. Under the LCR Act, an application for variation of a licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

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).
22. The Application is uncontested, as no objections were 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).

⁶ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

⁷ Sections 44, 49 and 157.

⁸ Sections 44 and 157.

23. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including 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.*⁹

24. 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.¹⁰ Pursuant to section 3A(2) and (3), a list of non-exhaustive factors that may be taken into account in determining whether a proposed grant, variation or relocation would detract from or be detrimental to the amenity of the area include:

“... ”

(d) *the possibility of nuisance or vandalism;*

(e) *the harmony and coherence of the environment; and*

(f) *any other prescribed matters.”*

25. Pursuant to section 3AA, the LCR Act further provides that for the purposes of that Act:

“... evidence of any of the following factors, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to, that premises, are taken to constitute evidence of detracting from, or detriment to, the amenity of the area in which the licensed premises is situated—

(a) *violent behaviour;*

(b) *drunkenness;*

(c) *vandalism;*

(d) *using profane, indecent or obscene language;*

(e) *using threatening, abusive or insulting language;*

(f) *behaving in a riotous, indecent, offensive or insulting manner;*

(g) *disorderly behaviour;*

(h) *causing nuisance;*

(i) *noise disturbance to occupiers of other premises;*

(j) *obstructing a footpath, street or road;*

(k) *littering.”*

26. The LCR Act does not define the meaning of the term “*misuse or abuse of alcohol*”, nor specify factors that constitute evidence of that which would be “*conducive to or encourage the misuse or abuse of alcohol*”.

⁹ Section 44(2)(b).

¹⁰ Section 3A(1).

Exercising the internal review power

27. Section 172U(3)(b) requires the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1) and provide that:

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;

(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.

28. Section 4(2) further provides that:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.¹¹

29. The Commission considers that while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

¹¹ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 323, 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).

30. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.
31. Section 16 of the LCR Act provides that it is a condition of every licence and BYO permit (other than a pre-retail, limited and major event licence) that the use of the licensed premises does not contravene the planning scheme that applies to the licensed premises under the *Planning and Environment Act 1987 (Vic)*.

Conduct of an inquiry

32. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.
33. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any manner it thinks fit and is bound the rules of natural justice.

Ministerial Guidelines

34. On 16 July 2015, the then Minister for Consumer Affairs, Gaming and Liquor Regulation issued guidelines under section 5 of the formerly titled *Victorian Commission for Gambling and Liquor Regulation Act (VCGLR Act)* in relation to the grant of liquor licences trading beyond 1am within the municipalities of Melbourne, Stonnington, Yarra and Port Phillip (**2015 Guidelines**). The 2015 Guidelines were revoked and replaced by guidelines dated 27 June 2019 that applied to applications made after 30 June 2019 and before midnight on 30 June 2021 (**2019 Guidelines**). The 2019 Guidelines were then revoked and replaced by the Current Guidelines.
35. In the affected municipalities (which include the municipality in which the Premises is situate), the Current Guidelines relevantly state that:

“Accommodation and licences allowing consumption on the premises

A It is the policy of the Victorian Government that no new liquor licence or BYO permit shall be granted, or existing liquor licence or BYO permit relocated or varied by the commission to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities, except where the commission is satisfied that:

(1) the premises is, or will be, used as:

- a. *an accommodation hotel, being a hotel whose primary purpose is providing accommodation and where the supply of alcohol is ancillary to that purpose; or*
 - b. *a venue that supplies liquor for consumption on the premises provided that food is available at the venue at all times when alcohol can be supplied; and*
- (2) *the applicant can satisfy the commission that:*

- (a) *it has in place, or will put in place, a venue management plan in the form required by the commission; and*
- (b) *the economic and social benefit of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and the community amenity; and*
- (c) *the patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons."*

..."

36. The Commission considers that the Current Guidelines are a relevant consideration in determining the Review Application and that the Commission must have regard to them.

Material before the Commission

37. The Commission on review had before it, and considered, all the materials received by the Delegate. The Commission also received and considered the following materials:
- (a) Original Decision and Reasons of the Delegate, dated 6 April 2022;
 - (b) Review Application, received 4 May 2022;
 - (c) Applicant's submissions, dated 18 October 2022;
 - (d) witness statement of Mr Matthew Nikakis, dated 18 October 2022;
 - (e) witness statement of Ms Paige Griffin, dated 18 October 2022;
 - (f) Noise and Amenity Action Plan received 18 October 2022;
 - (g) patron counts for the sports bar/gaming area, received 18 October 2022;
 - (h) mark-ups to the Licence of proposed variations, received 24 October 2022;
 - (i) ASIC extract regarding Applicant, received 24 October 2022;
 - (j) ASIC extract for MN No.1 Pty Ltd, received 24 October 2022;
 - (k) evidence presented at the hearing of the Review Application on 24 October 2022;

- (l) Applicant's amended submissions, dated 10 March 2022, and received 2 October 2022;
- (m) confirmation of amended planning permit, dated 22 March 2021, received 24 October 2022;
- (n) proposed "All Day Menu" at the Premises, received 24 October 2022;
- (o) Commission's Compliance Report, dated 27 October 2022 (**Commission's Compliance Report**);
- (p) summary of proposed community contributions, received 4 November 2022;
- (q) amended Noise and Amenity Action Plan, received 4 November 2022;
- (r) corporate flowchart between the Applicant, MN No.1 Pty Ltd, and MN No.2 Pty Ltd, received 4 November 2022; and
- (s) mark-ups to the Licence of proposed variations, received 4 November 2022.

Hearing

- 38. A hearing was held in relation to the Review Application on 24 October 2022 (**Hearing**).
- 39. Mr Matthew Nikakis, sole director of the Applicant, and Ms Paige Griffin, current manager of the Nikakis Hospitality Group¹², former general manager of the Premises, and nominee of the Applicant on the Licence, gave oral evidence in support of the Review Application.
- 40. Ms Rutendo Muchinguri appeared on behalf of the Applicant and made submissions.
- 41. In the Hearing, Mr Nikakis gave evidence to the Commission to the effect that:
 - (a) He attends the Premises one to two times each week.¹³

¹² Nikakis Hospitality Group is not a registered company, and is the collective name given for the Premises, the Rosstown Hotel and Trinity St Kilda.

¹³ Line 5 page 12 of the Hearing transcript.

- (b) A management meeting regarding the operations at the Premises is held each week. He either attends the meeting or receives notes of the meeting, and then follows up matters raised in the meeting with Ms Griffin.¹⁴
- (c) The function room on the first floor is only used as a pre-booked space, and function patrons are told that they are not allowed to come back into the bar area after the function space is closed off at 1am.¹⁵
- (d) The bistro on the ground floor has three exits, one onto Waverley Road, one onto Dandenong Road, and one towards the sports bar via the central foyer. The exit from the bistro to the sports bar is closed off at 11pm with a rope and an alarm system.¹⁶
- (e) The sports bar is very much separate from the bistro area, which is emphasised from joinery built between the two areas.¹⁷
- (f) The Premises rarely would get close to its maximum patron capacity of 803.¹⁸
- (g) The entrance to the Premises from Waverley Road will not be accessible after 1am, and anyone entering the Premises would have to do so via the Dandenong Road entrance.¹⁹
- (h) Security is already rostered on every night.²⁰
- (i) The Noise and Amenity Action Plan provided to the Commission is more robust in content than the one endorsed by the Council under the planning permit.²¹
- (j) Even though the function space can cater for up to 150 guests, the space is usually more comfortable for no more than 100 sit down guests or up to 140 standing up guests.²²
- (k) All the food on the “All Day Menu” is cooked on the Premises, and after the bistro closes, the pre-prepared meals will be available and re-heated for serving.²³

¹⁴ Line 25 page 12 of the Hearing transcript.

¹⁵ Line 5 page 13 of the Hearing transcript.

¹⁶ Line 20 page 13 and line 5 page 14 of the Hearing transcript.

¹⁷ Line 20 page 15 of the Hearing transcript.

¹⁸ Lines 40-45 page 19 of the Hearing transcript.

¹⁹ Line 20 page 20 of the Hearing transcript.

²⁰ Line 20 page 22 of the Hearing transcript.

²¹ Line 20 page 23 of the Hearing transcript.

²² Line 10 page 25 of the Hearing transcript.

²³ Line 25 page 25 of the Hearing transcript.

- (l) Food will be available at all times at the Premises as per the “All Day Menu”.²⁴
- (m) The proposed community contributions, were the Review Application to be granted, would involve giving away more to clubs or schools than is already being done.²⁵

42. In the Hearing, Ms Griffin told the Commissions that:

- (a) She oversees the Premises, the Rosstown Hotel and the Trinity St Kilda, and works with the venue managers and general managers of those venues in respect to day-to-day operations, compliance, recruitment, budgeting, guest experiences, and human resources.²⁶
- (b) She makes the final approval of staffing rosters.²⁷
- (c) For expected peak times at the Premises, there would typically be nine front of house staff, four at the back of the house, a manager, and security staff from 7pm.²⁸
- (d) An additional security guard is always employed for functions with live amplified music.²⁹
- (e) The Premises consist of four distinct areas namely, the function room upstairs, the bistro on the ground floor as well as the sports bar and the gaming room.³⁰
- (f) The bistro closes at 11pm, but earlier in the week it closes at 10pm at the latest. The kitchen closes at 9pm. Customers are informed of the bistro closing time and then given the option to move to the sports bar or leave the Premises. The bistro is then roped off and an alarm is set. Security guards also monitor the movement of guests.³¹
- (g) In the function room, guests are informed that last drinks are served at 12:30am for a 1am finish. Apart from the emergency escape, there is only one way to exit

²⁴ Lines 40-45 page 27 and lines 5-35 page 28 of the Hearing transcript.

²⁵ Line 45 page 28 of the Hearing transcript.

²⁶ Lines 10-45 page 30 of the Hearing transcript.

²⁷ Line 20 page 31 of the Hearing transcript.

²⁸ Lines 20-25 page 32 of the Hearing transcript.

²⁹ Line 35 page 32 of the Hearing transcript.

³⁰ Line 5 page 33 of the Hearing transcript.

³¹ Line 15-45 page 33 of the Hearing transcript.

from the function room. Guests are informed that they must exit that way, and not come back inside the Premises.³²

- (h) She can't recall a time when the number of patrons in the Premise ever exceeded 200 after 1am.³³
- (i) After 1am, only the sports bar and gaming room are open to the public, and patrons can only enter the Premises from Dandenong Road.³⁴
- (j) In forecasting how much food would be required after 1am, patron counts can help.³⁵

43. On 11 November 2022, the Commissioners visited the Premises with Mr Nikakis and the current general manager of the Premises was present.

Reasons for decision on review

Issues for determination on review

44. In detailing the reasons for its determination of this Review Application, the Commission addresses the issues before it by reference to two general questions:
- (a) first, whether the Commission is satisfied that the relevant requirements of the Current Guidelines are met; and
 - (b) secondly, having regard to the Current Guidelines, whether the Commission considers it should grant or refuse the Review Application given the grounds for refusal set out in the LCR Act, and the objects of the LCR Act.
45. Under the Current Guidelines, the Premises must meet one of the factors listed in paragraph A(1) and, in addition, must satisfy the requirements in paragraph A(2) (see paragraph 35 above). The Applicant submitted that the Premises fits within the Current Guidelines as it is:

³² Line 25-35 page 34 of the Hearing transcript.

³³ Line 30 page 36 of the Hearing transcript.

³⁴ Line 25-40 page 38 and line 45 page 41 of the Hearing transcript.

³⁵ Line 35 page 57 of the Hearing transcript.

- i. a venue that supplies liquor for consumption on the Premises provided that food is available at the venue at all times when alcohol can be supplied;
 - ii. it has in place a venue management plan in the form required by the Commission;
 - iii. the economic and social benefit of granting the Licence will outweigh the impact of the Licence on alcohol misuse and abuse and the community amenity; and
 - iv. the patron capacity of the Premises does not, or will not, exceed 200 persons.
46. The Commission has considered each of these matters below.

Provision of food

47. In support of the Application, the Applicant submitted a further amended Noise and Amenity Action Plan on 4 November 2022 (**Management Plan**), in which it states that the Applicant will offer patrons meals throughout the day and evening until close. The Management Plan all states that an “All Day Menu” providing food will be provided at all times that liquor is to be consumed on the Premises and when the gaming room is operational.
48. The proposed “All Day Menu” submitted by the Applicant includes burritos, assorted focaccias, soup with bread, pizza hamburgers, pies, curries and pasta.
49. Based on the evidence and the Management Plan submitted, the Commission considers that the “All Day Menu” indicates that food of a sufficient level of substance will be available to patrons. The Commission is also satisfied from the evidence at the Hearing and from the Management Plan that the requirement that food is available at the Premises at all times when alcohol can be supplied can be met.

Venue Management Plan

50. As mentioned above following the Commission’s comments at the Hearing, the Applicant submitted the Management Plan to be considered as part of the Review Application. The Management Plan included strategies on dealing with:
- (a) the availability of food for patrons at all times that liquor is to be consumed on the Premises and when the gaming room is operational as discussed above;

- (b) the proposed varied trading hours for consumption on the Premises, were the Commission to grant the Review Application;
 - (c) the amenity of the neighbourhood;
 - (d) complaint management;
 - (e) queuing and patron counts; and
 - (f) security and crowd control arrangements.
51. The Commission notes from the Commission's Compliance Report that no offences have been detected at the Premises since the Licence was transferred to the Applicant on 27 November 2013, and relevantly no offences have been detected between Thursday and Saturday when the Applicant can supply liquor for consumption on the Premises up to 3am the following morning.
52. In the Commission's view, the Applicant has developed and demonstrated a strategic approach in managing the Premises against the risks associated with the operation of the Premises. Moreover, the Commission considers that the Management Plan provided to the Commission after the Hearing addresses issues with respect to the proposed extension of trading hours.
53. Accordingly, the Commission is satisfied from the Management Plan that the Applicant has a sufficiently detailed venue management plan in place for the purposes of paragraph A(2)(a) of the Current Guidelines.

Economic and social benefits

54. Pursuant to paragraph A(2)(b) of the Current Guidelines, the Applicant is required to satisfy the Commission that the economic and social benefit of varying the Licence will outweigh the impact of the varied licence on the alcohol misuse and abuse and the community amenity.
55. The Applicant, in response to paragraph A(2)(b) of the Current Guidelines, submitted as part of the Application a proforma "*Economic and Social benefits form*" with attached submissions, in which it stated:
- (a) the positive social and economic impacts of the proposed variation to the Licence will outweigh any potential negative impacts associated with alcohol misuse;

- (b) the economic benefits of the proposed variation include:
- i. increased employment opportunities and longer shift options;
 - ii. increased expenditure on food and drink;
 - iii. increased consumption of food and drink within the Premises resulting in increased contracts with food and beverage suppliers;
 - iv. increased gaming revenue; and
 - v. increased turnover with the potential for the Applicant to make community contributions in the sum of \$10,000 per annum in cash and in-kind contributions per annum (including vouchers).
- (c) it is not expected that there would be any alcohol-related health or safety issues as a result of the proposed variation;
- (d) the Management Plan provides adequate measures to ensure orderly patron behaviour, and compliance with the Current Guidelines;
- (e) the proposed variation will not result in detrimental amenity outcomes; and
- (f) the proposed variation will improve the existing entertainment offering of the Premises as a social venue for the increasing number of residents in the local area, including large apartment buildings within close proximity.
56. In the Hearing, Mr Nikakis confirmed that the community contributions as mentioned in the “*Economic and Social benefits form*” would be in addition to the current amount that the Applicant contributes.³⁶
57. On 4 November 2022, the Applicant submitted a list of organisations to receive donations from the Applicant in the total sum of \$10,000 in cash (indexed to CPI) on an ongoing basis (in addition to food and beverage vouchers), were the proposed variation to the Licence granted. The Applicant submitted that it would engage with each of those listed organisations and other organisations with whom it comes into contact with and provide cash donations in accordance with that engagement.
58. Overall, it is the Applicant’s submission that the economic and social benefit of varying the Licence as proposed will outweigh the impact of any potential negative impacts

³⁶ Lines 45 page 28 and lines 5-20 page 29 of the Hearing transcript.

associated with alcohol misuse and amenity, thereby satisfying paragraph A(2)(b) of the Current Guidelines.

59. The Commission accepts the Applicant's evidence in that the proposed variation is likely to generate increased employment opportunities, particularly through longer shift hours for existing and/or new staff, including security staff. Additionally, the Commission accepts that some economic benefits arise from increased supply contracts with the Applicant's suppliers and the economic benefit accruing to the Licensee by virtue of increased revenue at the Premises. The Commission has also had regard to the proposed additional community contributions as set out in paragraphs 56 and 57 above.
60. Further, the Commission is satisfied that the social benefits of the proposed variation include improving the existing entertainment offering of the Premises as a social venue for the increasing number of residents in the local area, including large apartment buildings within close proximity.
61. Accordingly, the Commission considers that there are moderate economic and social benefits associated with the proposed variation.
62. While the Commission considers that, generally, the provision of liquor at later times at night has the potential to increase risks of misuse and abuse of alcohol and negatively impact community amenity, the Commission considers that the Applicant has measures in place to effectively minimise any harms that may arise from the proposed variation as evidenced from the Commission's Compliance Report. This demonstrates that the Applicant has maintained a venue with no offences detected (even between Thursday and Saturday when the Applicant can supply liquor for consumption on the Premises up to 3am the following morning). The Commission has also had regard to the Management Plan as submitted by the Applicant after the Hearing as well the Applicant's "All Day Menu" for the Premises as discussed above.
63. Moreover, the Commission has considered the fact that Victoria Police and the Council did not object to the proposed variation and that the increase in trading hours would only be from 1am to 3am.

64. Overall, the Commission considers that the economic and social benefits of the proposed variation to the Licence will outweigh any potential negative impact on alcohol misuse and abuse and community amenity.

Patron capacity

65. As indicated above, the final requirement of the Current Guidelines as provided in paragraph A(2)(c) is that the premises in question must not have a maximum patron capacity that exceeds 200 persons.
66. The Commission notes that the Premises currently has an overall maximum patron capacity of 803 persons as specified on the Licence.
67. In submissions made in support of the Application, the Applicant initially stated that it proposed no change to the maximum patron capacity and later informed the Delegate that it was amenable to a potential limit on the patron capacity of the Premises to 200 patrons after 1am on Monday to Wednesday.³⁷
68. As part of the Review Application, the Applicant submitted mark-ups to the Licence confirming a proposed variation to the maximum patron capacity to 200 after 1am on Monday to Wednesday.
69. In response to the Commission's enquiries in the Hearing about how the Applicant would operationalise capacity, the Applicant submitted the Management Plan, in which it stated:
- (a) Management staff of the Premises will maintain a running count of the number of patrons within the Premises at any one time through the use of a manually operated counting device at the doorway to the Premises, or such other means of measurement as is appropriate. This running count of patrons will ensure that there is no greater than 200 patrons in the Premises after 1am Monday to Wednesday.

³⁷ Applicant's amended submissions, 10 March 2022.

- (b) A minimum of one security guard will be on duty from 7pm until close every day. and an additional security guard will be on duty as required, particularly when there are functions and/or live entertainment.
 - (c) Between 10pm and 11pm, patrons in the bistro on the ground floor will be asked to move into the sports bar on the ground floor and functions in the function room on the first floor must cease by 1am.
 - (d) Last drinks for functions will be called no less than 30 minutes prior to the end of the function, following which staff will request that patrons arrange their departure from the Premises.
 - (e) Function patrons will depart the function room and the Premises via the front stairwell and will not be permitted to re-enter the Premises. This policy will be communicated to customers booking functions through written terms and conditions when the function is booked.
 - (f) When the bistro adjoining the sports bar closes if the number of patrons in the bistro moving into the sports bar would result in a patron number exceeding the 200 patron cap, then patrons in the bistro will be requested to exit the Premises by staff via the alternative exits, and the doors separating patron access to the bistro and from the gaming lounge and sports bar will be closed off.
70. Overall, the Commission is satisfied that the capacity of the Premises will not exceed 200 patrons after 1am, and that there is no reason to find that the requirements of Paragraph A2(c) of the Current Guidelines have not been met. It is noted, however, that the amendments contained in the Management Plan, which was submitted after the Hearing, are a key aspect to acceptance by the Commission of the Licensee's ability to reduce numbers to 200 patrons from 1am. Moreover, the Commission notes from the site visit and the updated red-line plan that the function room is on the first floor and separate from the ground floor of the Premises. Furthermore, there is a front stairwell for function patrons to exit the Premises from the function room to outside without going into the gaming area or sports bar, and patrons can then be refused any re-entry as per the amended Management Plan submitted after the Hearing. The Commission also notes from the Management Plan that the function room will not continue to operate after 1am, and that the bistro is physically closed off from 11pm as well as the front courtyard being closed off from 1am. Moreover, the Commission notes that there will only be one entrance/egress for the Premises from 1am, and that

patrons will only be able to access the sports bar area and gaming area after 1am. Overall, the Commission is satisfied that these venue and patron capacity management arrangements can be monitored and supervised in accordance with the Management Plan, and that compliance can be conditioned on the Licence.

Finding as to whether the relevant requirements of the Current Guidelines are met

71. Based on the above analysis, the Commission finds that the Applicant has satisfied the Commission on internal review that the proposed variation complies with the Current Guidelines.

Whether the proposed variation should be granted having regard to the objects of the LCR Act

72. In all of the circumstances, having regard to all of the material before it and the objects of the LCR Act, the Commission is satisfied that it is appropriate to exercise its discretion to grant the Review Application and vary the Licence as proposed by the Applicant. Furthermore, there appears to be no grounds under section 44(2) which would justify refusal of the proposed variation.

Decision on review

73. The Commission has therefore determined to set aside the decision of the Delegate and, in substitution, vary the Licence to permit the supply and consumption of liquor on the Premises between the following trading hours:

Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12 noon and 1am the following day
On any other day	Between 7am and 3am the following morning except for the morning of Good Friday

74. Pursuant to section 49, the Commission also imposes the following additional conditions on the Licence:

MANAGEMENT PLAN

The licensee must adhere to the Noise and Amenity Action Plan provided to the Commission on 4 November 2022 in addition to the other conditions stated on the licence.

MAXIMUM CAPACITIES

803 patrons except for Monday – Wednesday after 1am the following morning, when no more than 200 patrons are permitted on the licensed premises.

FOOD

Food must be available at all times when liquor is supplied on the licensed premises.

The licensed area is the area marked on the updated plan as provided to the Commission.

The preceding 74 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Mr John Larkins (Deputy Chair) and Ms Thu-Trang Tran (Commissioner).