

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by House Bar Pty Ltd for an internal review of a decision by a delegate under section 47 to refuse a joint application by House Bar Pty Ltd and Golden Valley (Vic) Pty Ltd under section 32 for the transfer of late night (on-premises) licence 31820974 from the freehold owner of the premises, Golden Valley (Vic) Pty Ltd, to House Bar Pty Ltd for the premises trading as Big Mouth, located at 201 Barkly Street, St Kilda

- Commission:** Ms Danielle Huntersmith, Chair
Ms Susan Timbs, Commissioner
Mr Steven Brnovic, Commissioner
- Appearances:** Mr Peter Caillard, Counsel for the Applicant, instructed by G&M Lawyers
Acting Senior Sergeant Walter Soto on behalf of Victoria Police
Ms Lydia Taylor-Moss, Counsel Assisting the Commission
- Date of Hearing:** 31 May 2023
- Date of Decision:** 18 July 2023
- Date of Reasons:** 18 July 2023
- Decision:** The Commission has determined to set aside the decision of the Delegate and, in substitution, grant the application for a transfer of the licence subject to the conditions set out in Appendix A.
- Signed:**



Danielle Huntersmith, Chair

Background

Original Application

1. On 8 June 2022, the Commission¹ received an application under section 32 of the *Liquor Control Reform Act 1998 (LCR Act)*² to transfer existing late night (on-premises) licence no. 31820974 (**Licence**) for the premises located at 201 Barkly Street, St Kilda (**Premises**) trading as Big Mouth (**Original Application**).
2. Pursuant to section 32(1)(a), the Original Application is a joint application by Golden Valley (Vic) Pty Ltd as owner of the Premises and House Bar Pty Ltd as the proposed transferee. For convenience, these reasons refer to Golden Valley (Vic) Pty Ltd as the **Landlord** and House Bar Pty Ltd as the **Applicant**.
3. The Applicant leases the Premises where it proposes to trade as House Bar. The Premises consists of two floors. The ground floor will include live acoustic music with food such as pizza, paninis and pastries. The first floor will predominantly be a live music area.
4. The Licence allows for an overall maximum of 200 patrons to be on the Premises, comprising a maximum of 50 patrons on the ground floor and 150 patrons on the first floor.
5. The Licence specifies the following trading hours:

Sunday	Between 10am and 3am the following morning
Good Friday and ANZAC Day	Between 12 noon and 1am the following morning
On any other day	Between 7am and 3am the following morning
6. In addition, the Licence includes approval for a footpath/external area during the following hours:

Sunday	Between 10am and 1am the following morning
Good Friday and ANZAC Day	Between 12 noon and 11pm the following morning
On any other day	Between 7am and 1am the following morning

¹ The regulator of liquor in the State of Victoria prior to 1 January 2022 was the Victorian Commission for Gambling and Liquor Regulation. Between 1 January 2022 and 30 June 2022, the regulator was the Victorian Gambling and Casino Control Commission. Since 1 July 2022, the regulator has been the Victorian Liquor Commission. For convenience, these reasons refer to the regulator from time to time as the **Commission**.

² All references to legislation are references to the LCR Act unless stated otherwise.

7. The Licence also contains conditions relating to CCTV and crowd controllers when live or recorded amplified music other than background music is provided.
8. The Applicant first applied for the transfer of the Licence on 25 January 2021 (**First Transfer Application**). The sole director at that time was Mr Alfredo Malabello and Ms Teresa Follacchio was the sole shareholder. The First Transfer Application was refused in part because the Applicant failed to declare Ms Follacchio as an associate.³
9. The current director of the Applicant is Mr Domenico Follacchio. Ms Follacchio was the Applicant's sole shareholder at the time of lodging the Original Application. She transferred her shares to Mr Follacchio on 5 June 2023.
10. In relation to the Original Application, the declarations of associates lodged by the Applicant and Mr Follacchio (which were both signed by Mr Follacchio) stated that they both had no associates to declare. (It is not in dispute that Ms Follacchio was an associate of the Applicant.)
11. The questionnaire and declarations of associates signed by Mr Follacchio answered 'yes' to the following questions (**Acknowledgements**):
 - (a) *"I understand that it is a criminal offence to request another person to complete this [questionnaire or declaration] on my behalf, or to complete the [questionnaire or declaration] on someone else's behalf";*
 - (b) *"I understand failure to provide requested information (no matter how minor) may be detrimental to the outcome of your application";* and
 - (c) *"I understand it is a criminal offence under Section 118 of the [LCR] Act to provide false or misleading statements".*
12. In accordance with section 33 of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector⁴ (together, **Victoria Police**) on 6 June 2022. An amended copy of the Original Application was served on Victoria Police on 24 June 2022.⁵

³ See [54]–[58] below.

⁴ As to the meaning of "licensing inspector", see LCR Act, section 3.

⁵ In the application form lodged on 8 June 2022, the transferor's consent was completed by the existing licensee, Ocean Deep Pty Ltd. However, as the existing licensee had vacated the Premises and the Landlord was endorsed on the Licence on 4 January 2022, an amended application form was lodged on 20 June 2022 in which the transferor's consent was completed by the Landlord.

13. On 22 July 2022, Victoria Police advised that it objected to the Original Application. The objection was made on the basis that the Applicant was unsuitable to hold a liquor licence because:
 - (a) Ms Follacchio had been found to be unsuitable to hold a liquor licence by the Commission on 15 January 2020 in two previous applications.
 - (b) Mr Follacchio failed to declare an unsuitable associate, namely Ms Follacchio.
 - (c) Mr Follacchio was previously disqualified by the Victorian Civil and Administrative Tribunal (**VCAT**) in June 2010 from holding a liquor licence for five years.

14. On 5 August 2022, the Applicant's solicitor of G&M Lawyers, on behalf of the Applicant, submitted the following in response to Victoria Police's objection:
 - (a) There was never a deliberate intention to mislead or deceive the Commission or Victoria Police. It was obvious from the company extract included with the Original Application that Ms Follacchio is an associate. The failure to initially declare Ms Follacchio as an associate lies with G&M Lawyers. G&M Lawyers sought to correct the oversight by submitting a handwritten paper declaration with the assistance of the Commission.
 - (b) Neither Mr nor Ms Follacchio have been found to be unsuitable by any court or VCAT.
 - (c) Mr Follacchio has had broad and extensive experience in the hospitality and liquor licensing industry. He has always been aware of his obligations and requirements under the LCR Act.
 - (d) Past conduct, though relevant, is not decisive. Acts of past conduct or disciplinary action should not undermine Mr Follacchio's application to be approved as nominee of a licence and director of a licensed premises. Mr Follacchio displayed remorse and insight into the matters the subject of the VCAT Proceedings.⁶
 - (e) Mr Follacchio has procured the services of respected and experienced professional consultants in the hospitality industry, such as Mr Bill Horman AM APM and Dr Tony Zalewski JP, for advice and guidance.
 - (f) The Commission granted a liquor licence to Veludo Bar Pty Ltd (**Veludo**), an entity which mirrors the corporate structure of the Applicant (Mr Follacchio as

⁶ As to the VCAT Proceedings, see [20]–[23] below.

director and Ms Follacchio as 100% shareholder). It would be inconsistent for the Commission to refuse to grant the Original Application.

- (g) It was not sustainable to assert that Mr Follacchio's reliance on G&M Lawyers to complete the application form suggests that he did not understand his licensing obligations.
15. On 8 September 2022, Victoria Police advised that it maintained its objection and submitted as follows:
- (a) Mr Follacchio has failed to display a "*broad and extensive experience*" or an awareness of his obligations under the LCR Act in relation to the Original Application by failing to declare an associate, making a false and misleading statement in the application form, allowing another person to complete the application documentation on his behalf, and making numerous false declarations in the lodging of the application.
- (b) Mr Follacchio having someone else fill out the Original Application documentation is not a defence to providing a false and misleading statement or providing insufficient documentation, particularly in circumstances where he appears to have electronically signed that the documentation was correct in eight locations.
- (c) The correct paperwork relating to the declarations of associates of the Applicant and Mr Follacchio was only submitted when directly requested by the Commission, rather than "*with the assistance of the Commission*" as claimed by the Applicant.
- (d) It was misleading for the Applicant to assert that Ms Follacchio is not unsuitable given she has not been found to be unsuitable by a court, VCAT or the Commissioners. That was because a delegate of the Commission found that she was unsuitable in relation to two applications and those findings stand as the final decisions on the record.
- (e) Ms Follacchio was previously not disclosed as an associate in the First Transfer Application. The behaviour displayed in not disclosing her in the Original Application is dishonest and misleading.
16. On 21 September 2022, the Applicant's solicitor responded to Victoria Police's submissions of 8 September 2022. He reiterated that: the error on the application form was the fault of G&M Lawyers; the Applicant sought to correct the oversight by submitting a handwritten paper declaration with the assistance of the Commission; there

was never an intention to mislead or deceive; the Applicant's structure is identical to that of Veludo; and Mr Follacchio is experienced and understands his licensing obligations. The Applicant's solicitor said that it was reasonable for Mr Follacchio to assume that the form had been correctly completed.⁷

17. On 28 November 2022, a delegate of the Commission (**Delegate**) refused to grant the Original Application under section 47 (**Original Decision**). The Delegate was not satisfied that the Applicant is a suitable person to hold a liquor licence for the following reasons:
 - (a) Ms Follacchio has previously been found to be unsuitable by a delegate (and therefore by the Commission).⁸
 - (b) The Applicant failed to declare Ms Follacchio as an associate, despite a previous application for the transfer of the Licence having been refused in part because Ms Follacchio was not declared as an associate.⁹
 - (c) Mr Follacchio has a history of non-compliance with the LCR Act and an order of VCAT.¹⁰
 - (d) Mr Follacchio consented to having the questionnaires and declaration forms signed by another person, despite the forms stating that this was a criminal offence.

Application for Internal Review

18. On 30 November 2022, the Applicant made an application for internal review of the Original Decision (**Review Application**).¹¹
19. On 13 January 2023, Victoria Police confirmed that it maintained its objection to the Review Application.

⁷ The Applicant's solicitor stated that it was reasonable for "Ms Follacchio" to make this assumption. Given the context, the Commission believes this should be a reference to Mr Follacchio.

⁸ See [39]–[52] below.

⁹ See [54]–[58] below.

¹⁰ See [20]–[24] below.

¹¹ In completing the Review Application, the Applicant, in the section headed "Reasons for review application", stated that "[t]he Applicant denies that it is not a suitable [sic] to hold a liquor licence" and that further written submissions in support of the Applicant's position would be provided in due course.

Other licences and applications related to Mr and Ms Follacchio

The Sunset Bar Pty Ltd

20. Between 27 October 1999 and 24 June 2003, Mr Follacchio was the director of another licensee company, The Sunset Bar Pty Ltd (**Sunset Bar**). On 1 July 2003, Ms Follacchio was appointed as director of Sunset Bar. Sunset Bar operated a licensed premises trading as the Tongue & Groove Nightclub.
21. On 21 July 2009, two VCAT proceedings were commenced against Sunset Bar in relation to 22 incidents between 2007 and 2010 (**VCAT Proceedings**).
22. On 11 August 2009, Ms Follacchio (being the director of Sunset Bar) and Mr Follacchio (being a previous director of Sunset Bar and the person in effective control of the Tongue & Groove Nightclub) were joined as respondents to the VCAT Proceedings.
23. On 7 June 2010, the VCAT Proceedings were discontinued against Sunset Bar and Ms and Mr Follacchio pursuant to a consent order (**VCAT Consent Order**). The VCAT Consent Order relevantly provided that:
 - (a) Mr Follacchio must not be on the Tongue & Groove Nightclub premises at any time they are open to the public;
 - (b) Mr Follacchio was disqualified from holding a liquor licence for a period of five years commencing on 9 July 2010;
 - (c) Sunset Bar was fined \$10,000;
 - (d) the Tongue & Groove Nightclub's trading hours were reduced effective 9 July 2010;
 - (e) the licence for the Tongue & Groove Nightclub was to be transferred by 9 January 2011 (or any extended date ordered by VCAT); and
 - (f) Sunset Bar was disqualified from holding a liquor licence for a period of five years commencing on 9 July 2011 (or any extended date ordered by VCAT).¹²
24. On 4 December 2011, Mr Follacchio entered the Tongue & Groove Nightclub premises, in breach of the VCAT Consent Order.
25. On 29 January, 4 March and 11 March 2012, Sunset Bar was issued infringement notices for failing to properly maintain a register of RSA certificates.

¹² See *Inspector Hardeman v The Sunset Bar Pty Ltd* [2010] VCAT 1523, [7].

26. On 30 January 2013, a liquidator was appointed to Sunset Bar.
27. On 22 April 2013, a Licensing Inspector applied to VCAT to correct the VCAT Consent Order disqualifying Mr Follacchio from holding a liquor licence, as it referred to section 91 of the LCR Act instead of section 92. Mr and Ms Follacchio opposed the application.
28. On 10 October 2013, VCAT refused to correct the VCAT Consent Order.¹³
29. On 22 July 2015, Sunset Bar's licence was transferred to an unrelated company.
30. On 11 August 2019, Sunset Bar was deregistered. Ms Follacchio remained the sole director of Sunset Bar until this date.

White Bar Pty Ltd

31. Teresa Follacchio was appointed as director of White Bar Pty Ltd (**White Bar**) on 1 August 2005. White Bar operated a licensed premises trading as The George White.
32. On around 10 February 2012 and 4 August 2013, White Bar was issued infringement notices for failing to operate a CCTV surveillance system in accordance with its licence conditions.
33. On 21 September 2012, Teresa Follacchio was issued a written warning from Victoria Police regarding a series of incidents occurring at The George White between January 2011 and September 2012.
34. On around 14 February and 27 September 2015, White Bar was issued infringement notices for failing to properly maintain a register of RSA certificates.
35. On around 19 June 2016, White Bar was issued an infringement notice for having more patrons at its premises than were permitted on its licence.
36. On around 16 December 2016, White Bar was issued an infringement notice for failing to ensure that staff completed RSA refresher courses.
37. On 13 June 2017, White Bar's licence was transferred to an unrelated company.
38. On 25 April 2020, White Bar was deregistered. Ms Follacchio remained the sole director of White Bar until this date.

¹³ *Hardeman v The Sunset Bar Pty Ltd* [2013] VCAT 1730, [92]–[95].

Veludo Bar Pty Ltd and Vodka Temple Pty Ltd

39. On 19 June 2019, Ms Follacchio applied for approval as a director of Veludo and Vodka Temple Pty Ltd (**Vodka Temple**), which each held a late night (on-premises) licence in respect of premises trading as Veludo and Vodka Temple, respectively. At the time of making those applications, the sole director of both companies was Mr Alfredo Malabello and the sole shareholder was Ms Follacchio.
40. On 19 August 2019, Victoria Police objected to the approval of Ms Follacchio as a director of Vodka Temple and, on 23 August 2019, Victoria Police also objected to the approval of Ms Follacchio as a director of Veludo.
41. On 15 January 2020, a delegate refused to approve Ms Follacchio as a director of Veludo and Vodka Temple on the basis that she was unsuitable (**Ms Follacchio Director Decisions**).
42. On 21 January 2020, Veludo and Vodka Temple applied for internal reviews of the Ms Follacchio Director Decisions.
43. On 30 December 2020, Vodka Temple's licence was transferred to an unrelated company.
44. On 26 July 2021, Mr Follacchio was appointed as a director of Veludo. The Commission notes that Mr Follacchio stated at the Hearing that he was surprised that he had been appointed as a director of Veludo at this time (see paragraph 99 below).
45. On 26 August 2021, Mr Follacchio applied for approval as a director and nominee of Veludo.
46. On 15 September 2021, Victoria Police objected to the approval of Mr Follacchio as a director and nominee of Veludo.
47. On 15 October 2021, Mr Follacchio ceased to be a director of Veludo.
48. On 11 November 2021, Victoria Police withdrew its objection to the approval of Mr Follacchio as a director and nominee of Veludo.
49. On 16 November 2021, a delegate of the Commission approved Mr Follacchio as a director and nominee of Veludo. He was appointed as a director of Veludo on the following day.
50. On 29 December 2021, Mr Malabello ceased to be a director of Veludo.

51. By letter dated 27 May 2022, the Commission invited Veludo and Vodka Temple to withdraw their internal review applications regarding the Ms Follacchio Director Decisions, and confirmed that:
- (a) If they withdraw their internal review applications, the Ms Follacchio Director Decisions will stand as final decisions on the record.
 - (b) Veludo and Vodka Temple's decisions to withdraw the internal review applications were not admissions that Ms Follacchio is an unsuitable person.
 - (c) The Commission-on-review has neither undertaken a full consideration of, nor made a formal decision on, Ms Follacchio's suitability as a director of a corporate licensee.
52. On 24 June 2022, Veludo and Vodka Temple confirmed that they consented to the withdrawal of their internal review applications.
53. On 18 January 2023, Veludo was issued an infringement notice for breach of section 108(1)(a)(i) of the LCR Act for failing to ensure adequate crowd controllers were employed.

The Applicant's first transfer application

54. The Applicant was registered as a corporation on 5 October 2020. Mr Malabello was the director and Ms Follacchio was the shareholder.
55. The Applicant claims that it had a right to occupy the Premises from 1 November 2020.
56. On 25 January 2021, the Applicant first applied for the transfer of the Licence (**First Transfer Application**). Ms Follacchio was not declared as an associate.
57. On 4 March 2021, Victoria Police objected to the transfer of the Licence to the Applicant because it was not a suitable person due to:
- *Director Alfredo Malabello who is not a suitable person due his recent involvement as the Director of the licensees Vodka Temple Pty and Veludo Bar Pty Ltd where he failed to exercise sufficient management and control.*
 - *Teresa Follacchio who is 100% shareholder of the Applicant and is not a suitable person due to being found an unsuitable person to hold a liquor licence by the Commission on 15th January 2020 in two previous applications*
58. On 7 July 2021, a delegate of the Commission refused the First Transfer Application for the following reasons:
- (a) Mr Malabello was unsuitable due to a history of poor management practices at Veludo and Vodka Temple.

- (b) Ms Follacchio was unsuitable because she was found to be unsuitable by the Commission in previous applications for approval as a director.
 - (c) Ms Follacchio was not declared as an associate and no satisfactory explanation was provided.
59. On 26 July 2021, Mr Follacchio was appointed as a director of the Applicant.
60. On 15 October 2021, Mr Follacchio ceased to be a director of the Applicant.
61. On 22 November 2021, the Landlord applied to be endorsed on the Licence, which it was on 4 January 2022.
62. On 1 February 2022, Mr Follacchio replaced Mr Malabello as the sole director of the Applicant.

Legislation and the Commission's task

The Commission's internal review power

63. Division 2 of part 9 of the LCR Act 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.
64. 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 Original Decision; or
 - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.¹⁴
65. 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;¹⁵
- or

¹⁴ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

¹⁵ LCR Act, sections 47, 49 and 157.

- (b) refuse to grant the Original Application.¹⁶

Determination of a contested application

66. Where an application is a contested application, pursuant to section 47(1):

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.

67. Section 47(2) provides that the Commission may refuse to grant a contested application on any of grounds set out in section 44(2) and section 44(3) applies accordingly.

68. Pursuant to section 44(2), the Commission may refuse to grant the Application on certain grounds, including that:

- (a) the applicant is not a suitable person to hold or carry on business under the licence (section 44(2)(a)); and
- (b) no director of the applicant has an adequate knowledge of the LCR Act (section 44(2)(b)(iv)).

69. Section 44(3) states that:

Without limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence... a person is not a suitable person to hold, or carry on business under, a licence ... if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—

- (a) *been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or*
- (b) *engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.*

70. The Commission also considers it appropriate to have regard to the suitability of any persons who are associates of an applicant. Section 3AC defines “associate” as follows:

- (1) *For the purposes of this Act, an **associate** of a person (the **first person**) is—*
 - (a) *a person who—*
 - (i) *holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and*
 - (ii) *by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or*

¹⁶ LCR Act, sections 47 and 157.

- (b) *a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or*
 - (c) *if the first person is a natural person, a person who is a relative of the first person, other than a relative—*
 - (i) *who is not, and has never been, involved in any business of the first person involving the sale of liquor; or*
 - (ii) *who will not be involved in the business the first person proposes to conduct as a licensee or permittee.*
- (2) *In this section—*
- relative**, *in relation to a person, means—*
- (a) *the spouse or domestic partner of the person; or*
 - (b) *a parent, son, daughter, brother or sister of the person; or*
 - (c) *a parent, son, daughter, brother or sister of the spouse or domestic partner of the person;*
- relevant financial interest**, *in relation to a business involving the sale of liquor, means—*
- (a) *any share in the capital of the business; or*
 - (b) *any entitlement to receive any income derived from the business; or*
 - (c) *any entitlement to receive any payment as a result of money advanced;*
- relevant power** *means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—*
- (a) *to participate in any directorial, managerial, or executive decision; or*
 - (b) *to elect or appoint any person as a director.*

71. Further, section 3(1) defines “director” to include:

- (a) *any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and*
- (b) *any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.*

72. 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.*

Exercising the internal review power

73. Sections 172D(3) and 172U(3)(b) require 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) as follows:

The objects of this Act are—

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

74. 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.¹⁷

75. Section 3(1) defines “harm” as follows:

harm means *harm arising from the misuse and abuse of alcohol, including—*

- (a) *harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) *family violence; and*
- (c) *anti-social behaviour, including behaviour that causes personal injury or property damage.*

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

- (a) must consider all the information, material and evidence before the original decision maker;¹⁸ and
- (b) may consider further information, material or evidence.¹⁹

77. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application is ultimately to

¹⁷ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [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).

¹⁸ LCR Act, section 157(2).

¹⁹ LCR Act, section 157(3).

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.

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

Conduct of an inquiry

79. As stated above, section 47(3) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate. The Commission must give the applicant and each objector a reasonable opportunity to be heard.
80. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit, and is bound by the rules of natural justice.

Other sections of the LCR Act relevant to this matter

Applications for the transfer of a licence

81. Applications for the transfer of a licence are made under section 32.
82. Section 32(2)(ab) states that an application for transfer must list the names, dates of birth and addresses of the associates of the proposed transferee and, if the proposed transferee is a body corporate, of each director of the proposed transferee.
83. Section 118 relevantly provides that a person must not make a statement that is false or misleading in, or in relation to, an application for the transfer of a licence. The maximum penalty for breach of section 118 is 60 penalty units.

Material before the Commission

84. The Commission on review had before it, and considered, all the materials relied upon by the Delegate. The Commission also received and considered the following materials:
 - (a) Original Decision and Reasons of the Delegate, dated 21 December 2022;
 - (b) Review Application, received on 31 December 2022;
 - (c) copies of the material relied upon by the Licensing Inspector in deciding to object to the Original Application, received from Sergeant Jay Rattigan on 20 March 2023;

- (d) letter of support from Mr Horman dated 26 February 2023;
- (e) letter of support from Dr Zalewski dated 26 February 2023;
- (f) witness statement of Mr Follacchio signed on 16 March 2023;
- (g) witness statement of Ms Follacchio signed on 16 March 2023;
- (h) witness statement of the solicitor involved signed on 16 March 2023;
- (i) evidence presented at the hearing of the Review Application on 31 May 2023;
- (j) Victoria Police's final submissions, received on 6 June 2023; and
- (k) the Applicant's final submissions, received on 13 June 2023.

Hearing

- 85. A hearing was held in relation to the Review Application on 31 May 2023 (**Hearing**).
- 86. Mr Peter Caillard of Counsel appeared on behalf of the Applicant. Mr Follacchio, Ms Follacchio and the solicitor involved gave oral evidence in support of the Review Application.
- 87. Acting Senior Sergeant Walter Soto appeared on behalf of Victoria Police.
- 88. At the commencement of the Hearing, Acting Senior Sergeant Soto informed the Commission that Victoria Police had charged Mr Follacchio with making a false or misleading statement on the Original Application form, in breach of section 118, in relation to his failure to declare Ms Follacchio as an associate. The charge is listed for a contested mention hearing on 1 August 2023.
- 89. After the Hearing, the Commissioners visited the Premises on 9 June 2023 (**View**). It was clear at the View that trading by the Applicant had not yet commenced.

Mr Follacchio's evidence

- 90. Mr Follacchio gave evidence that he had learned from the VCAT Proceedings; for example, he learned that they needed to put better policies and procedures in place. Mr Follacchio said that, because of those learnings, he sought Dr Zalewski's assistance and recommendations for Veludo, including by producing a management plan and introducing several registers, and had also met with Mr Horman and a security firm. He stated that he intends to introduce predominantly the same management plan at the

Premises, and that he would like Mr Zalewski to advise on issues and improvements on a six-monthly or once-a-year basis (to which Mr Zalewski is agreeable).

91. Mr Follacchio also gave evidence that, in response to the infringement notice issued to Veludo on 18 January 2023, he has changed procedures to require three crowd controllers every night irrespective of expected patron numbers.
92. Mr Follacchio said that initially Ms Follacchio was going to take a more active role in venues while he got more involved in property development, but things changed when her mother became ill. He stated that Ms Follacchio would not have a role in the running or management of the Premises and that they plan to transfer her shares to him. He confirmed that he was prepared to give an undertaking to that effect and also said that he would have no issue with a condition being placed on the Licence that Ms Follacchio not be allowed to be involved in the management and control of the Premises and not be allowed to be there other than as a patron. He said that Ms Follacchio had no involvement in Sunset Bar and does not have any role in Veludo.
93. Mr Follacchio gave the following evidence regarding the failure to declare Ms Follacchio as an associate. Prior to completing the Original Application form, he had meetings with his solicitor about the application. The form was then completed online by his solicitor and emailed to Mr Follacchio. Mr Follacchio went through the questions and answers before it was submitted to the Commission. He noticed that the question as to associates was answered 'no', even though Ms Follacchio was an associate because she held the shares in the Applicant. He telephoned his solicitor, who said *"I'll take care of that"*.²⁰ Mr Follacchio accepted the online form, which he did not believe contained a false statement, because he was acting on his solicitor's legal advice. His solicitor produced a handwritten application the following week which added Ms Follacchio as an associate. Mr Follacchio signed the form, scanned it and emailed it back to his solicitor. At some stage, his solicitor explained to Mr Follacchio that he had had a glitch which prevented him from declaring Ms Follacchio on the online form.
94. When asked about his solicitor's evidence that he spoke to Mr Follacchio while completing the online form to seek instructions as to some answers, Mr Follacchio replied that his evidence as to the way in which the online form was completed was his recollection of events. He conceded that it was possible that he was wrong.

²⁰ Hearing transcript, page 89, line 21 to line 22.

95. Mr Follacchio stated that he understood that declaring associates needed to be done correctly and that failure to declare an associate could result in refusal of an application. He also stated that he understood the importance of being honest under a declaration and that he rated honesty and declarations before the Commission as of the *“utmost importance”*.²¹
96. Mr Follacchio said that he did not believe that answering ‘no’ on the online form was a false statement because, if his solicitor told him it was *“okay”*, he would believe it was *“okay”*.²² He subsequently stated *“Well, on the form — it was a false statement but my solicitor said he would take care of it so I felt it would be immediately rectified”*.²³ He said that there was no intention to mislead the Commission because the ASIC search submitted with the application form would clearly show that Ms Follacchio was the shareholder. He later said that he believed that he did declare her as an associate because, although it was ticked ‘no’ on the box, his solicitor was *“taking care of that”*.²⁴
97. Mr Follacchio stated that the Applicant has been approved for a grant from the Council to pay for entertainment at the Premises for at least the first month of trading.
98. Mr Follacchio said that Veludo is currently open on Fridays and Saturdays and that he is there most weekends with Ms Follacchio. He stated that he is *“very hands on”*²⁵ and keeps an overall eye on things while the manager does her duties and Ms Follacchio listens to music. He said that he intends to start operating the Premises from Thursday to Sunday and would be there as often as he is at Veludo because the two premises are across the road from each other.
99. Mr Follacchio stated that he understood that approval was required before being appointed as a director and that he was surprised that he had been appointed as a director of Veludo between July and October 2021.
100. In relation to Sunset Bar, Mr Follacchio said that there were *“definitely issues, probably not to the extent that was portrayed”* and that they *“accepted responsibility for a lot of things that happened”*.²⁶ He explained that he was present at the Tongue & Groove Nightclub in breach of the VCAT Consent Order because he was escorting patrons there from The George White, which closed earlier than the Tongue & Groove Nightclub. He

²¹ Hearing transcript, page 93, line 26.

²² Hearing transcript, page 102, line 28.

²³ Hearing transcript, page 120, line 25 to line 27.

²⁴ Hearing transcript, page 136, line 43.

²⁵ Hearing transcript, page 122, line 9.

²⁶ Hearing transcript, page 119, line 18 to line 22.

said that he was there as a patron, he left within 10 minutes, it was the only time he entered the Tongue & Groove Nightclub after he agreed to the VCAT Consent Order, and he had learned a lot since that time.

Ms Follacchio's evidence

101. Ms Follacchio gave evidence that she would not have any involvement in the management and operation of the Premises. She said that she would not be involved in any training, hiring or firing of staff, was not a signatory of any bank accounts for the business, would not discuss business operations with Mr Follacchio, and would not offer any assistance. She also said that she had not been involved in the fit-out or the installation of CCTV or lines at the Premises.
102. Ms Follacchio stated that she would have no issue with a condition being placed on the Licence excluding her from having any managerial or consulting role, or from attending the Premises other than as a patron.
103. Ms Follacchio said that, because she was not approved as a director in the First Transfer Application, she felt that it was important to “*step back*”.²⁷ She further said that she is now caring for her mother who is very unwell; as such, she does not have time to be involved in anything else.
104. Ms Follacchio stated that Mr Follacchio is “*very much the one who runs with the business*”²⁸ and that she was the shareholder of the Applicant because that would have been the structure that was set up for the business by her and her husband’s accountant.
105. Ms Follacchio said that she attends Veludo with Mr Follacchio around two or three times a month. She said that, when she is there, she just sits, listens and might have a drink. She also said that, prior to Veludo closing its kitchen around three months ago, they always had a family dinner at Veludo on a Wednesday night. She stated that she does not know how often she will visit the Premises as a patron.
106. Ms Follacchio gave evidence that she had not been involved in the operation of any premises, including The George White and the Tongue & Groove Nightclub even though she was a director. She said that her recollection of events relating to the VCAT Proceedings was vague and, while she recalled that there were some issues at The George White, she could not be specific in terms of what those issues were.

²⁷ Hearing transcript, page 169, line 42.

²⁸ Hearing transcript, page 157, line 18.

The solicitor's evidence

107. The solicitor gave the following evidence in response to questions by the Chair, Ms Danielle Huntersmith, in relation to the failure to declare Ms Follacchio as an associate:

MS HUNTERSMITH: So then — okay. You say despite the fact that you knew what the answer should be and you couldn't, you sent it off to Domenic.

[SOLICITOR]: Yes. Yes.

MS HUNTERSMITH: And then you're saying when Domenic got it, he saw that it said "no".

[SOLICITOR]: Yes. I believe so, yes.

MS HUNTERSMITH: And he said to you, "That's not correct." And did you say — what happened then? Are you going to tell me what happened?

[SOLICITOR]: I told him that I tried to do it, but I — I couldn't do it. And I said, "Well, we will deal with it when it comes from the commission." I didn't, you know — mistakenly, I didn't think that this issue would manifest itself as such a serious problem. It was an error on my behalf. But, you know, I thought it was transparent and it was obvious that Ms Follacchio was an associate, and it wasn't done in any way to — to misrepresent the situation or to deceive the — the commission at all. I was just unable to do it.

MS HUNTERSMITH: So you're saying that you advised your client to submit it with an incorrect, false statement on it, in any event, without alerting the commission to the fact that you've done that.

[SOLICITOR]: I would have to say yes.²⁹

108. The solicitor gave the following additional evidence in relation to the failure to declare Ms Follacchio as an associate:

- (a) The solicitor involved prepared the online form for the Original Application. He sought instructions from Mr Follacchio by telephone in relation to specific questions of which he had no knowledge and input Mr Follacchio's answers into the form. The form was then automatically relayed by email by the Commission to Mr Follacchio to approve and submit the form to the Commission. Mr Follacchio went through the prepared answers together with the solicitor involved to make sure they were correct.
- (b) The solicitor gave evidence that Mr Follacchio questioned the solicitor involved about why Ms Follacchio was not disclosed as an associate. The solicitor said that he could not do it and that they "*will deal with it when it comes from the*

²⁹ Hearing transcript, page 66, line 40 to page 67, line 18.

commission".³⁰ Mr Follacchio acted on the solicitor's advice and submitted the online form.

- (c) Mr Follacchio was worried about not including Ms Follacchio as an associate and there was no attempt to hide the fact that she was an associate. The solicitor involved did not think that the issue would manifest as such a serious problem because it was clear from the ASIC extract submitted with the online form that Ms Follacchio was an associate.
- (d) In completing the declarations of associates, the solicitor involved read the Acknowledgements to Mr Follacchio, including: *"I understand failure to provide requested information (no matter how minor) may be detrimental to the outcome of your application"*. He could not recall whether he explained to Mr Follacchio what the question meant.
- (e) The solicitor involved tried *"several times"*³¹ to declare Ms Follacchio as an associate, but he was not able to tick 'yes' to the box for the declaration of associates due to a *"glitch"*.³² He was not content to submit the form with the question answered 'yes' but he had no other option. He did not attempt to note on the online form that Ms Follacchio was an associate or make any contact with the Commission before the form was submitted. He did not propose to write to the Commission after the online form was submitted, but intended to rectify the issue after the Commission asked him why Ms Follacchio was not declared as an associate.
- (f) The Commission brought the failure to declare Ms Follacchio as an associate to the solicitor's attention in an email the day after the Original Application form was filed (9 June 2022). The Commission provided a paper form to the solicitor involved via email within a week after the Original Application was submitted. He forwarded it to Mr Follacchio for completion, Mr Follacchio returned it to the solicitor and the solicitor submitted it back to the Commission via email on 16 June 2022. One section was not completed at that date and a completed paper form was submitted on 20 June 2022. When the solicitor involved provided the paper form on 16 June 2022, he explained to the Commission that they experienced problems submitting Ms Follacchio as an associate.

³⁰ Hearing transcript, page 67, line 7.

³¹ Hearing transcript, page 28, line 19.

³² Hearing transcript, page 27, line 37.

- (g) The solicitor involved could not explain why he did not reach out to the Commission to clarify that Ms Follacchio was an associate. If it happened again, he would take further steps to ensure that she was declared as an associate. His advice and logic to wait for the Commission to raise the issue was “*flawed*”.³³
- (h) The solicitor involved has used the same online portal to complete liquor applications. This was the first time he had had an issue.
- (i) The solicitor involved did not recall why Ms Follacchio was not declared as an associate in the First Transfer Application. He acknowledged the failure to declare her as an associate in that application was one of the reasons why that application was refused.

109. The solicitor involved stated that Mr Follacchio was appointed as a director of Veludo between July and October 2021 because the solicitor wrongly thought they had the Commission’s consent at that stage.

Parties’ submissions

110. The parties were given an opportunity to provide written submissions following the Hearing.

111. Acting Senior Sergeant Soto submitted as follows on behalf of Victoria Police:

- (a) The failure to declare an associate, and waiting until the Commission contacted the Applicant in the knowledge that a false declaration had been made, is unacceptable and a significant demonstration of the Applicant’s dishonesty in this case.³⁴ The Applicant is unsuitable by failing to declare having an associate and unsuitable by having an unsuitable associate.
- (b) Mr Follacchio made a false statement in the Original Application, in breach of section 118 of the Act. The statement was false based on his knowledge of the declaration of associates being false, irrespective of what he was told by his lawyer, assumed from that moment or otherwise did following the lodgement of the Original Application. Given Mr Follacchio’s evidence at the Hearing, it was open for the Commission to conclude that he could not have reasonably believed that the false matter was in fact true. This is particularly so, given identical circumstances and experiences in previous applications. This situation cannot be

³³ Hearing transcript, page 82, line 18.

³⁴ Acting Senior Sergeant Soto relied upon *Liquor Licensing Victoria v Johnstone* [2003] VCAT 467, [36].

cured by subsequent actions or changes to the Original Application or additional documents lodged even on the day following the making of the Original Application.

- (c) Any evidence surrounding a charge based on dishonest reporting and falsely declaring matters otherwise concealed from the Commission, should impact upon the assessment of good character and therefore on the capabilities of carrying out the duties and obligations of a person to be in management and control of licensed premises, honestly, fairly, and efficiently.³⁵

112. Mr Caillard submitted as follows on behalf of the Applicant:

- (a) Ms Follacchio transferred her shares in the Applicant to Mr Follacchio on 5 June 2023. Mr Follacchio is now the sole shareholder in the Applicant. Accordingly, if the Review Application is granted, Ms Follacchio would not hold any “*relevant financial interest*” within the meaning of section 3AC(2).³⁶
- (b) The Applicant proposes that any approval of the transfer of the Licence include the following conditions:
 - 1. *For a period of three years:*
 - a. *Teresa Follacchio will not participate in any directorial, managerial or executive decision relating to the licenced premises; and*
 - b. *Teresa Follacchio will not enter the licensed premises other than in the capacity as a patron.*
 - 2. *For the avoidance of doubt, after the period of three years, Teresa Follacchio must not engage in any such activity until or unless approval has been given by the Commission (if required).*
 - 3. *The applicant will engage Dr Tony Zalewski of Global Public Safety to:*
 - a. *review security and safety systems at the licensed premises;*
 - b. *implement the recommendations of that review in a timely manner;*
 - c. *conduct a further review after 12 months of the initial review to assess:*
 - i. *whether the recommendations were implemented; and*
 - ii. *if any further measures should be introduced at the premises.*
- (c) In relation to the failure to declare that Ms Follacchio was an associate in the initial online application, the Applicant acknowledges — and has always acknowledged — that this should have been included. It is noted that an ASIC search extract accompanied the online form which clearly shows that

³⁵ Acting Senior Sergeant Soto relied upon *Schmidt v Private Agents Registry* [2001] VCAT 1895.

³⁶ See [70] above.

Ms Follacchio was a shareholder and a paper version of the form was submitted within days of the online application which declared her association. These factors are material but the Applicant accepts that they do not change the fact that the initial online form did not disclose her association.

- (d) This is not a situation where there was any intention to deceive or mislead the Commission. Based on legal advice sought and received, Mr Follacchio did not know that the omitted matter was material and believed it could be addressed by his solicitor, who had previously been unable to include the information due to a “glitch”. This is a complete defence to the section 118 charge.
- (e) A person is innocent until proven guilty, even in relation to summary offences. Further, the summary charge, if proven, does not necessarily preclude a person from being associated with the holder of a licence. Even in the (very) unlikely event that 60 penalty units was imposed for a contravention of section 118, the circumstances surrounding the contravention should not result in Mr Follacchio being found not to be suitable to be an associate. In any event, were the charges to be proven or an adverse finding made, the Commission could revisit the suitability of Mr Follacchio at that time.
- (f) Mr Follacchio’s disqualification in June 2010 should not result in a finding that Mr Follacchio is unsuitable because: the period of disqualification ended several years ago; Mr Follacchio was subsequently approved to be an associate of licensed premises; and Mr Follacchio has demonstrated that he has the expertise and commitment to properly manage licensed premises.

Observations at the View

113. At the View, the Commission observed that the ingress and egress from the ground floor to the first floor was by internal stairs. The Commission observed that the stairs were steep and also that the stairs currently opened to the middle of the first floor, with a dearth of barriers.

Reasons for decision on review

Issues for determination on review

114. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse the Original Application that is the subject of the Review Application, the Commission must determine the following key issues:

- (a) whether the Applicant is suitable to hold a liquor licence,³⁷ and
- (b) whether the transfer of the Licence should be granted or refused, having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.³⁸

Whether the Applicant is suitable to hold a licence

115. An application may be refused if the applicant is not suitable to hold a licence.³⁹ An applicant may be found to be not suitable because an associate or a director is not suitable.

Is Ms Follacchio an associate?

116. As noted above, Ms Follacchio was 100% shareholder in the Applicant at the time the Original Application was lodged on 8 June 2022 and at the date of the Hearing on 31 May 2023. She transferred her shares to Mr Follacchio on 5 June 2023.

117. Both the Applicant and Victoria Police were of the view that Ms Follacchio had been an associate of the Applicant by virtue of her financial interest as a shareholder. Mr Caillard submitted on behalf of the Applicant after the Hearing that, having transferred her shares, Ms Follacchio no longer holds any relevant financial interest. Mr Caillard further submitted that Ms Follacchio would have no involvement in the management or operation of the Premises.

118. As stated above, section 3AC defines who is an associate of a person.

119. In considering section 3AC and the submissions from Victoria Police and from Mr Caillard, the Commission is satisfied that Ms Follacchio held a relevant financial interest in the Applicant — and was accordingly an associate of the Applicant under

³⁷ LCR Act, sections 44(2)(a) and 47(2).

³⁸ The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

³⁹ LCR Act, sections 44(2)(a).

section 3AC(1)(a) — while she held shares in the Applicant. However, having transferred her shares, the Commission considers that Ms Follacchio is no longer an associate of the Applicant under section 3AC(1)(a).

120. The Commission accepts Ms and Mr Follacchio's evidence that Ms Follacchio will not be involved in the business that Mr Follacchio, as sole director of the Applicant, proposes to conduct at the Premises as a licensee. That evidence includes the fact that Ms Follacchio has transferred her shares in the Applicant to Mr Follacchio. Consequently, although Ms Follacchio is a relative of Mr Follacchio (namely, his spouse), the Commission is satisfied that Ms Follacchio is not currently an associate of the Applicant under section 3AC(1)(c).
121. Given Ms Follacchio is not currently an associate of the Applicant, the question of her suitability to hold a licence does not arise.

Is Mr Follacchio a suitable person to hold a licence?

122. Section 32(2)(ab) of the LCR required that the Original Application list the names, dates of birth and addresses of the associates of the Applicant and its director, Mr Follacchio. Further, section 118 prohibited Mr Follacchio from making a statement that was false or misleading in, or in relation to, the Original Application.
123. The following evidence in response to questions by the Chair, Ms Huntersmith, highlights the relevant evidence given by the solicitor at the Hearing:

MS HUNTERSMITH: So then — okay. You say despite the fact that you knew what the answer should be and you couldn't, you sent it off to Domenic.

[SOLICITOR]: Yes. Yes.

MS HUNTERSMITH: And then you're saying when Domenic got it, he saw that it said "no".

[SOLICITOR]: Yes. I believe so, yes.

MS HUNTERSMITH: And he said to you, "That's not correct." And did you say — what happened then? Are you going to tell me what happened?

[SOLICITOR]: I told him that I tried to do it, but I — I couldn't do it. And I said, "Well, we will deal with it when it comes from the commission." I didn't, you know — mistakenly, I didn't think that this issue would manifest itself as such a serious problem. It was an error on my behalf. But, you know, I thought it was transparent and it was obvious that Ms Follacchio was an associate, and it wasn't done in any way to — to misrepresent the situation or to deceive the — the commission at all. I was just unable to do it.

MS HUNTERSMITH: So you're saying that you advised your client to submit it with an incorrect, false statement on it, in any event, without alerting the commission to the fact that you've done that.

[SOLICITOR]: I would have to say yes.⁴⁰

124. On all the evidence, the Commission is satisfied that Mr Follacchio was sufficiently concerned about the failure to declare Ms Follacchio as an associate on the online form that he sought legal advice prior to the form being lodged. As confirmed by evidence under oath from Mr Follacchio and the solicitor involved, the solicitor provided legal advice that Mr Follacchio should submit the online form knowing that it contained false information, and that the solicitor would rectify it after the Commission raised the issue with him.
125. The Commission expects strict compliance with its application requirements. It is extremely disappointing that a lawyer, who owes duties to their client to act in their best interests, would advise a client to knowingly submit a form containing false information, and then wait until the Commission contacts them to take any steps to rectify it or alert the Commission to the issue, especially in circumstances where the client was concerned to ensure that the application form was completed accurately, and where the client was relying on the knowledge and experience of the lawyer.
126. Ultimately, the Commission expects that all applicants for licences will provide correct and truthful information and that they bear the responsibility for doing so. Mr Follacchio is no exception. In these particular circumstances, however, the Commission accepts Mr Follacchio's evidence that he contacted his solicitor when he received the completed form for signature and raised his genuine concern that it contained an incorrect answer regarding associates. Given the solicitor's confirmatory evidence under oath that he had advised Mr Follacchio to lodge the form despite Mr Follacchio having raised these concerns (and despite the solicitor's acknowledgement that the form contained a false answer), the Commission is satisfied that Mr Follacchio acted at all times on legal advice and believed that his lawyer would rectify the matter on his behalf. Accordingly, the Commission finds that, in the circumstances, the submission by Mr Follacchio of a false answer does not, of itself, mean that Mr Follacchio is unsuitable to hold a licence.
127. The material before the Commission demonstrates that Mr Follacchio has a history of non-compliance with the LCR Act.
128. The Commission notes that most of the incidents occurred many years ago and the Commission is persuaded that Mr Follacchio has learnt from his past mistakes and has

⁴⁰ Hearing transcript, page 66, line 40 to page 67, line 18.

put in place harm minimisation measures in his venues. He has engaged an expert for initial and ongoing assistance in this regard.

129. The Commission notes that Mr Follacchio intends to continue to engage an expert on an ongoing basis for advice with respect to operations under any licence he operates, including for the Premises.
130. The Commission notes that Veludo did receive an infringement notice recently, on 18 January 2023 while Mr Follacchio has been a director. Mr Follacchio gave evidence that this was when he did not have sufficient security guards on site and he now ensures that there are three security guards at all times at this venue regardless of whether the patronage at the time requires it.
131. In all the circumstances, the Commission is satisfied that Mr Follacchio is currently suitable to hold a licence.

Is the Applicant a suitable person to hold a licence?

132. For the reasons set out above, the Commission has found that the Applicant does not have any unsuitable director or associate. Consequently, it considers the Applicant to be a suitable person to hold a licence under the LCR Act.

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

133. Although the Commission is satisfied that no grounds for refusal exist under section 47(2) and 44(2) of the LCR Act, the Commission must also consider if it should exercise its discretion to grant the transfer of the 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.
134. Provided that Mr Follacchio, as sole director of the Applicant, conducts the Premises in accordance with the recommendations of Mr Zalewski (or another suitably experienced consultant), the Commission is satisfied that risks of harm can be appropriately minimised and compliance with the LCR Act maintained. In the circumstances, the Commission accepts Mr Caillard's submissions on behalf of the Applicant that it is appropriate that a condition be placed on the Licence requiring the engagement of an external advisor. Consistently with Mr Follacchio's evidence, the condition placed on the Licence will require the ongoing engagement of the external advisor to develop a specific

venue management plan for the Premises and to have continued engagement on a six-monthly basis.⁴¹

135. The Commission considers that any venue management plan for the Premises should include requirements to ensure safe ingress and egress by the internal stairs, taking account of the steep nature of, and positioning of the first floor access point to, these stairs.
136. Having regard to all the circumstances, including Mr Caillard's submissions, the Commission also considers that it is appropriate that a condition be placed on the Licence preventing Ms Follacchio from having any involvement directly or indirectly in the business of the Applicant. The Commission does not consider it necessary in this matter to specify on the Licence that Ms Follacchio will not enter the Premises other than in the capacity as a patron.
137. With the imposition of these conditions as set out 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 the transfer of the Licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.

Decision on review

138. The Commission is satisfied that the Review Application meets all legislative requirements set out above. Accordingly, based on the reasons set out above, the Commission is satisfied that granting the transfer of the licence the subject of the Review Application is appropriate in the circumstances.
139. The Commission has therefore determined to set aside the Original Decision and grant the transfer of the licence the subject of the Review Application subject to the conditions set out in Appendix A.

The preceding 139 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Ms Susan Timbs (Commissioner) and Mr Steven Brnovic (Commissioner).

⁴¹ See [90] above.

Appendix A

Type of licence

This licence is a late night (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.

When live or recorded amplified music other than background music is provided:

- The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment/dance floor areas. The surveillance recording system must operate from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Victorian Liquor Commission, or otherwise retained for at least one month. The position of the cameras will be to the satisfaction of the Licensing Inspector.
- Signs, as described below, are to be displayed in all areas subject to camera surveillance. Such signs shall read:
“For the safety and security of patrons and staff this area is under electronic surveillance”.
- Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving at and departing from the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.

Management plan

The licensee will engage Dr Tony Zalewski of Global Public Safety (or another suitably experienced consultant) to produce a venue management plan. Without limiting the scope of the venue management plan, the venue management plan must include procedures to ensure safe ingress and egress using the internal stairs to the first floor.

The supply of liquor on the licensed premises must not commence until the licensee has lodged with the Commission the venue management plan for the licensed premises prepared by Dr Tony Zalewski of Global Public Safety (or another suitably experienced consultant).

The applicant will engage Dr Tony Zalewski of Global Public Safety (or another suitably experienced consultant) biannually to assess the licensee's compliance with the venue

management plan and any additional recommendations made as at that date, and to make any recommendations for the amendment of the venue management plan (**Ongoing Review**).

The licensee must lodge with the Commission any venue management plan amended in accordance with the Ongoing Review.

The licensee must keep a copy of the venue management plan (as amended in accordance with the Ongoing Review) on the premises and must make it available for inspection when requested by an authorised person.

To the extent that a matter is not already dealt with on this licence, the licensee must comply with the venue management plan as provided by the licensee to the Commission from time to time.

Special conditions

Teresa Follacchio is not to have any involvement directly or indirectly in the business of the licensee conducted at the premises.

Maximum capacities

Ground Floor (50 patrons) First Floor (150 patrons) Overall Maximum (200 patrons).

Trading hours

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

Approvals/consents

Section 9(1)(b)/9A(1)(b)/11A(3)(b) Footpath/External area. The licensee is authorised to supply liquor on premises, other than the licensed premises, authorised by the Victorian Liquor Commission and shown on the approved plan during the hours specified below for consumption on those premises.

Sunday	Between 10am and 1am the following morning
Good Friday and Anzac Day	Between 12 noon and 11pm
On any other day	Between 7am and 1am the following morning