


# Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Baba Levantine Trading Company Pty Ltd for an internal review of a decision by a delegate under section 47 to refuse an application made under section 9A for a restaurant and cafe licence for the premises trading as The Beast Burgers, located at 231 Swanston Street, Melbourne

<b>Commission:</b>	Ms Danielle Huntersmith, Chair Ms Susan Timbs, Commissioner Mr Steven Brnovic, Commissioner
<b>Appearances:</b>	Mr Dermot Connors, Counsel for the Applicant, instructed by Mr Martin Towey of LGS Legal Sergeant Jay Rattigan on behalf of Victoria Police Ms Lydia Taylor-Moss, Counsel Assisting the Commission
<b>Date of Hearing:</b>	<b>27 March 2023</b>
<b>Date of Decision:</b>	<b>18 July 2023</b>
<b>Date of Reasons:</b>	<b>18 July 2023</b>
<b>Decision:</b>	The Commission has determined to affirm the decision of the Delegate and refuse the application
<b>Signed:</b>	

**Danielle Huntersmith, Chair**

## Background

### Original Application

1. On 4 August 2022, Baba Levantine Trading Company Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**)<sup>1</sup> under section 9A of the *Liquor Control Reform Act 1998* (**LCR Act**)<sup>2</sup> for a restaurant and cafe licence for the premises located at 231 Swanston Street, Melbourne (**CBD Premises**) trading as The Beast Burgers (**Original Application**).
2. Mr Maslyn Salt is the sole director of the Applicant.
3. The Applicant operates another licensed premises in Brunswick East, trading as The B.East Burgers (**Brunswick East Premises**). The Applicant holds an on-premises licence in respect of the Brunswick East Premises (**Brunswick East Licence**). The Brunswick East Licence includes approval for off-site catering in the following terms (**Brunswick East Catering Approval**):  
  
*Section 9(1)(b)/9A(1)(b) Off Site Catering. The licensee is authorised to supply liquor in the course of catering for social receptions or social functions on premises other than the licensed premises during the hours specified under "Trading Hours" for consumption on those premises.*
4. The Applicant leases the CBD Premises (the subject of this application) where it has been operating a high-end burger restaurant since December 2020 where customers can eat in, take away or order home delivery.<sup>3</sup>
5. When the Applicant commenced trading at the CBD Premises, it offered beer, wine, basic spirits and cocktails for sale under a temporary limited licence (**TLL**) which was valid between 7 December 2020 and 7 February 2021. After the TLL expired, the Applicant continued to offer liquor for sale at the CBD Premises. The expired TLL was displayed on the wall of the CBD Premises on 26 March 2021 (as observed by Victoria Police officers, see paragraph 62 below). At some point after this date, the expired TLL was removed and the Brunswick East Licence was displayed on the wall of the CBD Premises. On 23 June 2022, the Applicant asserted to Victoria Police officers who

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<sup>1</sup> 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. From 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**.

<sup>2</sup> All references to legislation are references to the LCR Act unless stated otherwise.

<sup>3</sup> The food includes burgers and snacks/sides (such as fries).

visited the CBD Premises that it was supplying liquor pursuant to the Brunswick East Catering Approval.

6. The Applicant ceased offering liquor for sale at the CBD Premises on 3 September 2022. The Applicant's supply of liquor at the CBD Premises is discussed in detail below.
7. In the Original Application for a restaurant and cafe licence, the Applicant sought to supply liquor to customers to consume with their food on the CBD Premises or for takeaway/home delivery with a meal.<sup>4</sup> The Original Application was made on 4 August 2022, and it is relevant to note (as detailed below) that the Applicant had previously made a substantially identical application for a restaurant and cafe licence for the CBD Premises, on 21 January 2021, which was withdrawn by the Applicant on 6 April 2021 (see more detail of the Previous Restaurant and Cafe Application at paragraphs 24–26 below).
8. The CBD Premises includes an internal dining area, kerbside dining area, rear kitchen area, and toilet facilities inside.
9. The overall size of the dining area of the CBD Premises is 75.8 square metres.<sup>5</sup>
10. Based on a building surveyor's report dated 31 March 2021, up to 81 patrons can be accommodated in the internal dining area, and another 19 patrons can be accommodated in the kerbside dining area.<sup>6</sup> The Applicant initially sought a maximum patron capacity of 100 patrons in accordance with the building surveyor's report. The Applicant amended its proposed maximum patron capacity on 9 December 2022 to 70 patrons with internal seating for 54 patrons.<sup>7</sup>
11. In the Original Application, the Applicant initially sought trading hours for the supply of liquor of between 7 am and 1 am the following morning on any day. The Applicant later revised its proposed trading hours as follows:

Sunday:	Between 10 am and 1 am the following morning
Good Friday and ANZAC Day:	Between 12 noon and 1 am the following morning
Any other day:	Between 7 am and 1 am the following morning

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<sup>4</sup> As to the supply limits for takeaway or delivery under restaurant and cafe licences, see section 9A(2)(db) of the LCR Act.

<sup>5</sup> The internal dining area is 61 square metres, and the kerbside dining area is 14.8 square metres.

<sup>6</sup> Approved Building Surveyors, 31 March 2021.

<sup>7</sup> The condition requiring tables and chairs for restaurant and cafe licences is set out in section 9A(3)(a) of the LCR Act. See [50] below.

12. In accordance with section 33, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector<sup>8</sup> (together, **Victoria Police**) and the City of Melbourne (**Council**) on 18 August 2022.
13. On 15 September 2022, Victoria Police advised that it objected to the Original Application. The objection was made on the basis that the Applicant was not suitable to hold a liquor licence due to *“the association with the sole director Maslyn Salt who has a significantly poor history of managing licensed premises”*.
14. On 20 September 2022, the Council indicated that it did not object to the grant of the Original Application.
15. On 20 September 2022, a liquor inspector from the Commission issued infringement notices to the Applicant for supplying liquor at the CBD Premises<sup>9</sup> and for falsely indicating that the CBD Premises is licensed<sup>10</sup> on 3 September 2022 (together, **CBD Premises Infringement Notices**). The CBD Premises Infringement Notices are discussed in detail below.
16. On 28 September 2022, the Applicant submitted the following in response to Victoria Police’s objection:
  - (a) Mr Salt has around 30 years of hospitality experience and 17 years as a licensee. He operates numerous licensed businesses without issue and employs close to 100 people.
  - (b) If anything is raised by police or regulators, Mr Salt will on occasion challenge the allegations and on occasion some infringements are paid as commercial decisions.
  - (c) Mr Salt did not have an extensive criminal history. Neither the Applicant nor Mr Salt have convictions.
  - (d) Mr Salt has had to close some licensed premises due to the pandemic, not because those venues were uncompliant or unsuccessful. His venues are all 5-star venues and have never attracted any demerit points.
  - (e) The Applicant was seeking a low-risk licence for a very small food premises.

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<sup>8</sup> As to the meaning of “licensing inspector”, see section 3 of the LCR Act.

<sup>9</sup> Contrary to section 108(1)(b) of the LCR Act.

<sup>10</sup> Contrary to section 116(a) of the LCR Act.

- (f) The fact that the Applicant received two infringement notices dated 20 September 2022 does not mean that it is unsuitable. Those notices will be the subject of an internal review application by Mr Salt.<sup>11</sup>
- (g) The Applicant has a similar licensed venue that operates without issue. This venue will also operate without issue if licensed.
17. On 14 October 2022, Victoria Police advised that it maintained its objection but would not supply anything further in support of its objection.
18. On 5 December 2022, the Applicant provided the Commission with copies of letters to Fines Victoria requesting an internal review of the CBD Premises Infringement Notices on the basis that there were exceptional circumstances. Those applications for internal reviews were lodged out of time. As at 18 July 2023, the CBD Infringement Notices have not been paid and remain on foot. Fines Victoria advised on 11 July 2023 that those infringement notices remain unpaid and are now at the enforcement warrant stage.
19. On 21 December 2022, a delegate of the Commission (**Delegate**) refused to grant the Original Application under section 47 (**Original Decision**). The reason for the Original Decision was that the Delegate was not satisfied that the Applicant is a suitable person to hold a liquor licence due to having an unsuitable director. The Delegate found that Mr Salt was not suitable because of his history of non-compliance with the LCR Act; in particular, while the Original Application was on foot.
20. In the reasons for decision, the Delegate referred to the Applicant's social media advertising for bottomless brunches and cocktails at the CBD Premises. The Delegate expressed concerns about whether a restaurant and cafe licence was the correct type of licence having regard to the requirement that the predominant activity carried out at all times on the CBD Premises be the preparation and serving of meals to be consumed on the CBD Premises.<sup>12</sup> However, the Delegate determined that those concerns were not concrete enough to conclude that the CBD Premises will not function as a restaurant and cafe in accordance with the LCR Act.

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<sup>11</sup> A person who has been served with an infringement notice may apply for internal review of the decision to serve the infringement notice, pursuant to division 3 of part 2 of the *Infringements Act 2006*.

<sup>12</sup> The predominant activity requirement for restaurant and cafe licences is set out in section 9A(1)(a) of the LCR Act. See [49] below.

## Application for internal review

21. On 31 December 2022, the Applicant made an application for internal review of the Original Decision (**Review Application**).<sup>13</sup>
22. On 13 January 2023, Victoria Police confirmed that it maintained its objection to the Review Application.

## Previous applications

23. As stated above, the Applicant obtained a TLL for the CBD Premises which was valid between 7 December 2020 and 7 February 2021.
24. During the currency of the TLL, the Applicant (on 21 January 2021) applied for a permanent licence (restaurant and cafe licence) for the CBD Premises (**Previous Restaurant and Cafe Application**). In the Previous Restaurant and Cafe Application, in response to the question on his questionnaire “*Have you, as an individual received an infringement notice, or been a director or nominee of a body corporate that has received an infringement notice under the [LCR] Act?*”, Mr Salt answered “No”. This answer was false because, of the six licensee companies of which Mr Salt has been a director, four companies (including the Applicant) have received an infringement notice under the LCR Act. Victoria Police charged Mr Salt with making a false or misleading statement on the application form for the Previous Restaurant and Cafe Application, in breach of section 118. That charge was withdrawn on 15 November 2022.
25. On 30 March 2021, Victoria Police objected to the Previous Restaurant and Cafe Application on the following grounds:

*The applicant is not a suitable person due to having an unsuitable director, namely Maslyn Salt. Mr Salt is an unsuitable director due to the following factors:*

- *Making a false or misleading statement on the application form, failing to declare the existence of prior enforcement action by the [Commission]*
- *Prior history of poor management of licensed premises, leading to multiple infringement notices and warnings being issued against other licenses that the applicant holds*

26. On 6 April 2021, the Applicant withdrew the Previous Restaurant and Cafe Application.

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<sup>13</sup> In completing the Review Application, the Applicant, in the section headed “Reasons for review application”, stated that it was applying for a review of the Original Decision “to overturn a finding of unsuitable”.

27. On 6 December 2021, a related entity, Comet Beverages Pty Ltd (**Comet**), applied for a pre-retail licence (**Pre-Retail Application**).
28. On 4 January 2022, Victoria Police objected to the Pre-Retail Application on the following grounds:

*[T]he applicant is not suitable due to the involvement of unsuitable associate Maslyn Salt who is unsuitable due to his:*

  - *extensive criminal history*
  - *failure to comply with regulatory schemes*
  - *previously being objected to in a liquor application*
29. Comet disputed the allegations in Victoria Police's objection to the Pre-Retail Application. The Victoria Police objection was subsequently withdrawn.
30. The Pre-Retail Application was granted on 22 February 2022.

## Legislation and the Commission's task

### The Commission's internal review power

31. 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.
32. 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.<sup>14</sup>
33. 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;<sup>15</sup>or

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

<sup>15</sup> LCR Act, sections 47, 49 and 157.

- (b) refuse to grant the Original Application.<sup>16</sup>

## Determination of a contested application

34. 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.*

35. 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.

36. Pursuant to section 44(2), the Commission may refuse to grant an 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)).

37. 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.*

38. 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.*

39. 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.*

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<sup>16</sup> LCR Act, sections 47 and 157.



## Exercising the internal review power

40. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review power, 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.
41. 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.*

42. 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.<sup>17</sup>*

43. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;<sup>18</sup> and

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<sup>17</sup> 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).

<sup>18</sup> LCR Act, section 157(2).

(b) may consider further information, material or evidence.<sup>19</sup>

45. The Commission considers that, whilst the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application is ultimately to be made pursuant to sections 47(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
46. Under section 49, the Commission may impose any conditions it thinks fit on the grant of an application.

## Conduct of an inquiry

47. 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 also give the Applicant and each objector a reasonable opportunity to be heard.
48. 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

### Restaurant and cafe licences

49. Pursuant to section 9A(1)(a), a restaurant and cafe licence authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises where the predominant activity carried out at all times on the premises is the preparation and serving of meals to be consumed on the licensed premises.
50. Section 9A(3)(a) further provides that a restaurant and cafe licence is subject to the condition that “tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at any one time”.
51. Moreover, section 9A(1)(a) provides that a restaurant and cafe licence authorises the licensee to supply liquor during ordinary trading hours (as defined in section 3(1)) and between 11 pm on any particular day until 1 am on the following day for consumption on the premises.

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<sup>19</sup> LCR Act, section 157(3).

## Limited licences

52. A limited licence may be a TLL or a renewable limited licence.<sup>20</sup> Pursuant to section 14(1A), a TLL authorises the licensee to supply liquor at the times determined by the Commission and specified on the licence. Notably, a TLL is not renewable.
53. Section 26(1) provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).
54. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions, the Commission has considered “*the nature, location, duration or frequency of hours of operation of the licence in question*” as relevant to the Scale and Scope Requirement.<sup>21</sup>

## Material before the Commission

55. 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, and other compliance information;
  - (d) witness statement of Mr Salt signed on 27 March 2023;
  - (e) undated character reference from the Honourable Luke Donnellan;
  - (f) evidence presented at the hearing of the Review Application on 27 March 2023;
  - (g) Victoria Police’s final submissions, received from Sergeant Rattigan on 11 April 2023;
  - (h) email communication from Mr Martin Towey, solicitor for the Applicant, dated 14 April 2023 enclosing: the Applicant’s final submissions; an email chain

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<sup>20</sup> LCR Act, section 14(1).

<sup>21</sup> See decision of *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-Internal Review)* [2016] VCGLR 19, [61].

between Mr Salt and the Commission dated November 2020; and an email chain between Mr Salt, Mr Jarrod Moore (operations manager of the Applicant) and Mr Towey dated 5 September 2022 and 27 March 2023; and

- (i) email notification from Sergeant Rattigan dated 10 July 2023 regarding the status of an infringement notice in relation to displaying an expired TLL issued by Victoria Police on 6 September 2021 (see paragraph 62 below).

## History of non-compliance with the LCR Act

- 56. The material before the Commission shows a number of occasions where Mr Salt, and licensees of which he has been a director, have not complied with the LCR Act.
- 57. Mr Salt has been the sole director of the Applicant since it was incorporated on 20 March 2008. In addition, from time to time since 2006, he has been the director of six other licensee companies (**Related Companies**), including Captain Obvious Pty Ltd (**Captain Obvious**).
- 58. With the exception of one of the Related Companies, the Applicant and all Related Companies have received at least one warning letter, infringement notice and/or been the subject of a prosecution, for breaches of the LCR Act while Mr Salt was a director.
- 59. Of particular relevance is the non-compliance by Captain Obvious while Mr Salt was a director.
- 60. Captain Obvious was prosecuted in relation to two charges of supplying liquor other than in accordance with a licence, in breach of section 108(1)(a)(i). The offending comprised Captain Obvious purporting to supply liquor at premises trading as Park using the Applicant's Brunswick East Catering Approval. One infringement notice was issued by the Commission on 29 November 2019 in respect of offending on 31 October 2019. A second infringement notice was issued by the Commission on 6 December 2019 in respect of offending on 4 December 2019. An application for an internal review of the relevant infringement notices was considered and failed. On 8 November 2021, Captain Obvious was placed into liquidation. On 9 February 2022, it pleaded guilty to the charges in the Magistrates' Court. It was ordered to pay an aggregate fine of \$1,000 plus the Commission's costs of \$5,900.

## Compliance history in relation to this matter

61. In the current matter, the Applicant sought once again to rely on the Brunswick East Catering Approval to trade at a separate premises — the CBD Premises.
62. As stated above, the Applicant initially held a TLL in respect of the CBD Premises which was valid between 7 December 2020 and 7 February 2021. On 26 March 2021, two Victoria Police officers from the Melbourne Divisional Licensing Unit (**DLU**) attended the CBD Premises and observed that the Applicant was offering liquor for sale while the expired TLL was on display (in breach of section 108(1)(b)). Victoria Police interviewed Mr Salt on 9 June 2021 regarding trading under the expired TLL and Mr Salt provided no comment. On or around 6 September 2021, Victoria Police issued an infringement notice to the Applicant in respect of that breach. It appears that the Applicant never saw that infringement notice because it was returned to sender on 21 October 2021. The matter was not progressed beyond that and was cancelled on 26 February 2023 due to being statute barred.
63. On 23 June 2022, Victoria Police officers from the DLU attended the CBD Premises again and observed that the Applicant was supplying liquor and, on this occasion, it was asserted on behalf of the Applicant that this was occurring under its Brunswick East Catering Approval. Victoria Police's licensed premises incident report indicates that:
  - (a) On 23 June 2022, the officers spoke with Mr Jarrod Moore (then the Applicant's executive chef) at the CBD Premises. Mr Moore said that the Applicant had legal advice that the CBD Premises could operate under the Brunswick East Catering Approval. The officers advised that that was not correct, and that the Applicant was currently trading without a licence. Mr Moore advised that he would follow up with the Applicant's lawyer and the business owner.
  - (b) On 24 June 2022, one of the officers spoke to Mr Moore by telephone and advised that the Brunswick East Catering Approval does not allow the Applicant to trade in the current capacity. The officer also spoke to the Applicant's solicitor, who stated that he would review the Brunswick East Licence and seek advice from Mr Salt.
  - (c) The officers sought advice from the Liquor Licensing Unit, who confirmed that the Brunswick East Catering Approval does not allow the Applicant to trade in its current capacity. A warning was to be given regarding supplying liquor outside

the conditions of an existing licence and the Applicant was to be advised to seek a licence for the CBD Premises. The warning was issued verbally on 1 July 2022.

64. On 26 August 2022, Victoria Police officers from the DLU again attended the CBD Premises. Victoria Police's records state that the venue manager stated that he was of the understanding that liquor could be supplied at the CBD Premises under the Brunswick East Catering Approval, despite being told the contrary on 23 June 2022. The records indicate that the officers again explained that the Applicant could not sell liquor at the CBD Premises under the Brunswick East Catering Approval. The records note that it "[a]ppears the venue staff are trained in how to respond to scrutiny by police when questioned about the supply of liquor".
65. On 3 September 2022 at 9:32 pm, a liquor inspector from the Commission attended the CBD Premises. The inspector observed that the Applicant was supplying liquor and displaying the Brunswick East Licence. The inspection notes do not record any conversation with staff or patrons, but do relevantly state as follows:

*The compliance history for this Licensee indicates a number of breaches identified during previous inspections, where several [written warnings] have been issued that don't appear to have much of an impact or deter the Licensee from future contraventions of the LCR Act.*

...

*I recommend that a Penalty Infringement Notice is issued to the Licensee for each of the 2 offences. I hope that this outcome will be enough to get through to the Licensee and prevent future non-compliance. I believe that this outcome is appropriate and proportionate, in line with the enforcement strategy and guidelines.*

66. On 3 September 2022 at 10:55 pm, Victoria Police officers from the DLU also attended the CBD Premises for a routine compliance check. Victoria Police's licensed premises incident report records the following:
- (a) One officer spoke with patrons who confirmed that they were drinking alcoholic beverages and were not attending any specific function.
  - (b) The other officer spoke with the duty manager who confirmed that no social function was being hosted currently and that various patrons were served liquor. The duty manager's understanding was that they could sell liquor under the Brunswick East Catering Approval, and that the Applicant's lawyer had confirmed and advised the licensee and staff to continue supplying liquor. The contrary has been explained to multiple venue managers on 23 June and 26 August 2022.

- (c) The duty manager was specifically told that the venue must not continue supplying liquor without a liquor licence and to relay the same to all staff, managers and the licensee.
  - (d) It appeared that an inspector from the Commission also attended the venue earlier in the night.
67. As stated above, the Commission issued the Applicant with the CBD Premises Infringement Notices on 20 September 2022 in respect of supplying liquor at the CBD Premises (in breach of section 108(1)(b)) and falsely indicating that the CBD Premises are licensed (in breach of section 116(a)) on 3 September 2022. These breaches occurred only seven months after Captain Obvious pleaded guilty to supplying liquor in breach of section 108(1)(a)(i). Captain Obvious had been trading in similar circumstances to the Applicant, insofar as it also purported to rely on the Brunswick East Catering Approval.
68. The Applicant provided to the Delegate copies of letters to Fines Victoria dated 2 December 2022 requesting internal reviews of the CBD Premises Infringement Notices on the basis that there were exceptional circumstances *“relat[ing] to confusion around a catering authority and information received by [the Applicant]”*. The letters stated that the Applicant sought that the infringements be withdrawn and replaced with official warnings. As stated above, the internal review applications were lodged out of time and, accordingly, the Commission understands that they are not eligible to proceed to a review. As at 18 July 2023, the CBD Premises Infringement Notices have not been paid and remain on foot. Fines Victoria advised on 11 July 2023 that those infringement notices remain unpaid and are now at the enforcement warrant stage.

## Hearing

69. A hearing was held in relation to the Review Application on 27 March 2023 (**Hearing**).
70. Mr Salt, sole director of the Applicant, and Mr Jarrod Moore, operations manager of the Applicant, gave oral evidence in support of the Review Application. Mr Dermot Connors of Counsel appeared on behalf of the Applicant, instructed by Mr Martin Towey of LGS Legal. Sergeant Jay Rattigan appeared on behalf of Victoria Police.

## Mr Salt’s evidence

71. Mr Salt gave evidence that he attaches *“[a] great deal of seriousness”* to complying with his licence conditions, including by training staff, tracking incidents and following the

advice of his legal team.<sup>22</sup> He said that he would characterise his history of compliance and management operating licences since 2005 as “*Excellent*”<sup>23</sup> and stated that “*our record is impeccable*”.<sup>24</sup>

72. When asked about the outcome of various infringement notices, Mr Salt responded that he would have applied for an internal review (through Mr Towey’s firm) and that he never heard anything further about the infringement notices.<sup>25</sup> He stated that he did not contest every infringement notice. Rather, he said that he accepted an infringement notice as being validly issued if there was a clear Victorian Civil and Administrative Tribunal (VCAT) decision and would consequently try to improve his processes. He also said that he contested an infringement notice if he believes there has been a misinterpretation or misapprehension of any sort, and that he did not think that he was overly aggressive in his defence of infringement notices.<sup>26</sup>
73. Mr Salt gave evidence that a warning is “*not a direct instruction to cease trading*”<sup>27</sup> and that he does not understand it to be telling him that he is trading outside conditions.<sup>28</sup> He said that a warning is “*a caution to look out for issues and to prevent them in future*”<sup>29</sup> and that he would treat it as an internal matter and seek legal advice.<sup>30</sup> He stated that, if he disagreed with a warning letter, there was nothing he could do.<sup>31</sup>
74. Mr Salt stated that he was not aware of all verbal warnings that were given to his venues. He said that, after a long experience, he now has a process in place for staff to record any engagement with Victoria Police in a shift report at the end of the night. He said that interactions with Victoria Police might be brought to his attention if it was deemed to be an issue that impacted on the licence.<sup>32</sup> He also said that his staff were young people who were quite busy and there had to be a level of trust given that the engagement register was an effective management system.<sup>33</sup>
75. Mr Salt said that he put the register of police engagement in place more than two years ago due to the evolution of business practices, rather than being prompted by a

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<sup>22</sup> Hearing transcript, page 30, line 26 to line 34.

<sup>23</sup> Hearing transcript, page 44, line 45.

<sup>24</sup> Hearing transcript, page 45, line 3.

<sup>25</sup> Hearing transcript, page 25, line 20 to line 22; page 29, line 33 to line 35; page 30, line 4 to line 5; page 36, line 6 to page 37, line 10; page 40, line 32 to page 41, line 17.

<sup>26</sup> Hearing transcript, page 32, line 26 to page 33, line 2.

<sup>27</sup> Hearing transcript, page 49, line 39.

<sup>28</sup> Hearing transcript, page 50, line 1 to line 4.

<sup>29</sup> Hearing transcript, page 50, line 22 to line 23.

<sup>30</sup> Hearing transcript, page 49, line 18; page 50, line 35 to page 51, line 15.

<sup>31</sup> Hearing transcript, page 27, line 13 to line 15.

<sup>32</sup> Hearing transcript, page 31, line 5 to line 8; page 32, line 10 to line 24.

<sup>33</sup> Hearing transcript, page 39, line 16 to line 25; page 40, line 25 to line 30.



particular incident. He said that he would not expect his staff to bring to his attention every interaction they have with a police officer; rather, he would expect them to bring to his attention a request to inspect the RSA register, red line plan or other issue that needs to be dealt with. He acknowledged that, in hindsight, it was a bit vague and there was no written policy. He said that he meets with his managers every week and that there was an automatic email that goes out with a report that is sent to the operations manager and him, although he may or may not see it. He also gave evidence that he has a security register and an incident report.<sup>34</sup>

76. In his witness statement, Mr Salt stated that, in relation to the issues surrounding the Captain Obvious property, he vehemently denied the version that was reported and was outraged at the mischaracterisation of events. In oral evidence, he stated that he saw the venue as *“an opportunity to host an event, to build awareness, to create buzz”*.<sup>35</sup> He said that anyone could attend and that the venue operated seven days a week for a few months.<sup>36</sup> He gave evidence that he initially contested the infringement notices, but was unable to complete his defence of the charges because the liquidator made a commercial decision that it was not in the company’s best interest to contest the charges.<sup>37</sup> The Applicant did not provide any documentary or other evidence to support this assertion as to the liquidator’s motivation for Captain Obvious pleading guilty to the charges.
77. Mr Salt acknowledged in his evidence that liquor inspectors and Victoria Police attended the CBD Premises on at least three or four occasions and *“raised the issue of whether or not we were compliant”*.<sup>38</sup> He said that, multiple times, senior and other staff directly asked if the liquor inspectors and Victoria Police wanted the Applicant to cease trading and were told *“we’ll get back to you”*.<sup>39</sup> He stated that Victoria Police were saying that it would get back to the Applicant even though there were existing infringement notices.<sup>40</sup> He said that he thought he asked for an internal review of the warning in June 2022 and that, while that was being done, *“we were certainly trying to organise a permanent licence to ensure that we were, you know, doing the right thing by the regulator”*.<sup>41</sup> He said that he decided to continue to trade while he dealt with it because *“we hadn’t been*

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<sup>34</sup> Hearing transcript, page 62, line 39 to page 64, line 19.

<sup>35</sup> Hearing transcript, page 55, line 3 to line 4.

<sup>36</sup> Hearing transcript, page 56, line 16 to line 32.

<sup>37</sup> Hearing transcript, page 22, line 39 to line 47.

<sup>38</sup> Hearing transcript, page 35, line 43 to line 46.

<sup>39</sup> Hearing transcript, page 35, line 43 to page 36, line 4.

<sup>40</sup> Hearing transcript, page 37, line 21 to line 34.

<sup>41</sup> Hearing transcript, page 67, line 4 to line 6.

*instructed that we couldn't*.<sup>42</sup> He said that the Applicant immediately ceased trading when instructed to do so, which was around 3 September 2022.<sup>43</sup> He stated that he could not attest, but he believed that internal reviews of the existing infringement notices were going on when he received instruction from the police to cease trading.<sup>44</sup>

78. Mr Salt “*completely den[ied]*” that there was a flagrant breach of the Applicant’s licence and that he was trading from the CBD Premises without a licence. He said that “*we’ve been trying to do the right thing at any stage, yes, and believe to have complied*”.<sup>45</sup> He said that he thought it was clear that he could use the Brunswick East Licence in the fashion that he did and that he had legal advice to that effect. However, Mr Salt did not produce any documentary or other evidence of that legal advice. Mr Salt stated that he would accept a decision of a court that he was not compliant with the Brunswick East Licence.<sup>46</sup>

79. Mr Salt gave evidence that the landlord initially offered him the CBD Premises for a short period of time. He said that he contacted the Commission via telephone and email for guidance about what the Applicant proposed for the CBD Premises.<sup>47</sup> He elaborated as follows:

*We spoke to them and said this is what we’re doing. You know, we’d like some guidance on what we can and can’t do here, which was all vague. We then had legal advice that what we were doing would constitute and I certainly interpreted it to be that we had a legal grounds for running an event at those premises, which was the pop up event. And following from that, as the premises looked to be heading down a lengthier uncertain period, we made an application for a permanent liquor licence.*<sup>48</sup>

80. Mr Salt confirmed that any person from the public could attend the CBD Premises and that there was no registration requirement. He stated that the Commission did not give him any guidance in terms of what constituted an event.<sup>49</sup> He said that the “*pop up*” event was for “*an undefined period*”,<sup>50</sup> which he described as follows:

*It was an activation to try and, you know, increase our brand presence. It was to increase awareness. The landlord has other commercial enterprises in that building,*

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<sup>42</sup> Hearing transcript, page 67, line 11.

<sup>43</sup> Hearing transcript, page 48, line 40 to line 41; page 61, line 31 to line 42.

<sup>44</sup> Hearing transcript, page 68, line 1 to line 6.

<sup>45</sup> Hearing transcript, page 37, line 18 to line 19.

<sup>46</sup> Hearing transcript, page 68, line 8 to line 28.

<sup>47</sup> Hearing transcript, page 33, line 46 to page 35, line 9.

<sup>48</sup> Hearing transcript, page 34, line 22 to line 28.

<sup>49</sup> Hearing transcript, page 35, line 26 to line 43.

<sup>50</sup> Hearing transcript, page 35, line 13.

*so he was looking to bring some noise and colour and activity to support his other tenancy as well.<sup>51</sup>*

81. When asked whether the “pop up” event lasted from December 2020 until now, Mr Salt replied: *“Well, it’s still a grey area is we’re not quite sure what’s happening with the tenancy. Clearly it’s been extended beyond the original term that was discussed with the landlord, but exactly where the finite, you know, end is I still don’t know.”<sup>52</sup>*

82. With respect to the Brunswick East Catering Approval, Mr Salt was asked to explain his business insofar as it was social receptions or social functions. He responded as follows:

*Well, again, it’s designed to be a social generator. That’s what activations and urban ..... are. That’s what Section 8 [Bar], and it’s still there, you know, a bit longer than we’d expect from this one. But, you know, it’s a temporary occupation, you know, and we bring our business models that we work with, you know, artists with, you know, graphic designers and, you know, other personalities. We have a very loud social media presence and an activation program that revolves around doing stuff, you know, with food and people, and music, if appropriate, and all the rest of it. So it’s a — we sell alcohol and food as a, you know, pretty much a sub-activity after the dominant activity which is to create brand [awareness], and that’s how I ..... in general.<sup>53</sup>*

83. Mr Salt gave evidence that he would have spoken to the Commission — and had obtained legal advice — before setting up the CBD Premises under the Brunswick East Catering Approval because he had an outstanding matter in relation to the same issue for a previous place. He said that he had read the approval and that the difference to him between catering and running a business on a premises is permanency. He stated that the Commission had informed him prior to the CBD Premises opening that, if a premises operates for less than a year, then a permanent application is “*probably a waste of time*”. He said that he put in an application when he thought that the CBD Premises was going to be for more than a year.<sup>54</sup> (The Commission notes that Mr Salt did not provide any evidence of this advice and in fact it appears inconsistent with the email trail that the Applicant provided to the Commission, which is detailed below in paragraphs 90, 107–108).

84. When asked what a “social reception” means to him, Mr Salt responded as follows:

*Could mean anything. Could mean a whole range of things. Social function or a social reception could be a, you know, a birthday party. It could be an event for corporate. It could be, you know, a music band that wants to hold a launch party. It*

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<sup>51</sup> Hearing transcript, page 35, line 21 to line 24.

<sup>52</sup> Hearing transcript, page 52, line 14 to line 16.

<sup>53</sup> Hearing transcript, page 53, line 1 to line 10.

<sup>54</sup> Hearing transcript, page 58, line 17 to page 59, line 30.

*could be an art gallery that wants to have a three-month, you know, immersive, you know, art experience in the wilderness. It's a one-off event, I guess.*

...

*Well, it's a one-off event to ..... to run a small business for a limited period of time, yes. I mean, there's no other licence categories that apply to it, I don't believe.<sup>55</sup>*

85. Mr Salt confirmed that he inquired whether there are other licence categories.<sup>56</sup>
86. Mr Salt gave evidence that the Applicant did not have a TLL when it began the CBD Premises. He said that he assumed the reference in Victoria Police's records to an infringement notice being issued on 26 March 2021 in relation to an expired TLL referred to the Brunswick East Catering Approval.
87. Mr Salt gave evidence that he understood that the sale of alcohol at the CBD Premises was purportedly under the Brunswick East Catering Approval and that there was no separate licence for the CBD Premises.<sup>57</sup>
88. It is noted that Mr Salt's evidence that he did not have a TLL or a separate licence for the CBD Premises was incorrect. It is noted that the Applicant applied for the TLL, that Mr Salt personally corresponded with the Commission in relation to it (see paragraphs 90, 107–108 below), and that the TLL was in fact granted (for an 8 week period) and it was displayed by the Applicant at the CBD Premises for a period of time.
89. Mr Salt said that his use at the CBD Premises was within the Brunswick East Catering Approval because *"the catering event is not limited to a specific, you know, moment. It's the overall event which is that we were there to activate the premises."*<sup>58</sup> Mr Salt stated that there had been ticketed events at the CBD Premises, such as minor food events and drag bingo, about twice or three times a month. Otherwise, liquor had been available for any patrons walking in off the street, provided it was age appropriate and RSA compliant.<sup>59</sup>
90. Following the Hearing, the Applicant provided a copy of an email chain between Mr Salt and the Commission dated November 2020 regarding a TLL application that had been lodged by Mr Salt. The email chain shows that a senior licensing officer of the Commission advised Mr Salt that a "pop up" restaurant trading daily for 3 months did not

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<sup>55</sup> Hearing transcript, page 59, line 42 to line 46; page 60, line 5 to line 7.

<sup>56</sup> Hearing transcript, page 60, line 9 to line 11.

<sup>57</sup> Hearing transcript, page 60, line 31 to page 61, line 8.

<sup>58</sup> Hearing transcript, page 65, line 35 to line 37.

<sup>59</sup> Hearing transcript, page 61, line 44 to page 62, line 37.

meet the Scale and Scope Requirement of a TLL.<sup>60</sup> The officer stated that a TLL would be allowed for 8 weeks and that a restaurant and cafe licence would suit Mr Salt's business moving forward. The officer further advised:

*The reason for allowing this 8 weeks would also mean you could submit your Restaurant & Cafe licence application and this would run concurrently whilst you have the temporary limited licence in the mean time. Normally this would not be ideal running a business through a temporary limited licence, but more flexibility is being allowed in current times.*

91. It is not apparent from the email chain whether Mr Salt specifically discussed the Brunswick East Catering Approval with the Commission in November 2020.

## Mr Moore's evidence

92. Mr Moore gave evidence that he was aware that police officers attended the CBD Premises on at least four occasions between mid-2021 and 3 September 2022. He was present on two of those occasions, in June or July 2022 and late August 2022. On both occasions, he asserted his understanding of the situation, asked if the Applicant needed to cease trading and was advised that the officers would get back to them. He was not present on 3 September 2022 when an officer attended between 9:30 pm and 9:45 pm and another set of officers returned at around 11 pm, but he spoke to the duty manager via telephone. The second set of officers very clearly gave the direction that no alcohol was to be served from that point onwards. The Applicant stopped serving alcohol from that moment.<sup>61</sup>
93. Mr Moore said that he was not personally aware of any infringement notices.<sup>62</sup> He accepted that, theoretically, the infringement notice being issued in June 2022 could have been Victoria Police's response to saying they would look into whether the Applicant should be trading.<sup>63</sup>
94. Following the Hearing, the Applicant provided an email chain between Mr Moore, Mr Salt and Mr Towey dated 5 September 2022 and 27 March 2023, which supported Mr Moore's evidence that the Applicant stopped serving alcohol after direction by Victoria Police, pending legal advice.

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<sup>60</sup> As to the Scale and Scope Requirement, see [53] to [54] above.

<sup>61</sup> Hearing transcript, page 72, line 19 to page 77, line 20.

<sup>62</sup> Hearing transcript, page 80, line 20 to page 81, line 4.

<sup>63</sup> Hearing transcript, page 82, line 14 to line 22.

## Submissions

95. Mr Connors submitted as follows on behalf of the Applicant:

- (a) Mr Salt can and should be found suitable to be a director of a company holding a liquor licence because:
  - (i) he effectively holds three licences operating similar and even larger venues to that envisioned by the Original Application;
  - (ii) a restaurant and cafe licence is a low-risk licence;
  - (iii) he and the Applicant have no prior criminal history (save for some traffic matters of Mr Salt's which were disclosed to the Commission); and
  - (iv) his nearly 20-year history holding licences demonstrates that he is able and willing to operate in compliance with a licence for the CBD Premises.
- (b) No consideration or weight should be given to verbal or written warnings issued by Victoria Police or the Commission for two reasons: firstly, there is no basis for a warning in the LCR Act; secondly, as there is no ability for a recipient of a warning to contest or dispute the allegation, giving any consideration or weight to a warning would offend the common law principle of the presumption of innocence.
- (c) The material relied upon by Victoria Police in deciding to object to the Original Application detailed incidents where: no action was taken against Mr Salt's licensed companies; matters were unsubstantiated; no LCR Act offences were detected; and warnings were given.
- (d) Non-compliance with the LCR Act relied upon by the Delegate and Victoria Police related to minor infractions, such as incorrect time and date stamps on CCTV and patrons stepping away from tables where food was being consumed to have a cigarette.
- (e) There are a limited number of infractions given the significant number of licences and period of time over which Mr Salt has been operating. Whilst not unblemished, Mr Salt's record is not tarnished and there are no serious breaches of the LCR Act, such as serving minors or serving intoxicated persons.
- (f) Three licensed premises operated by Related Companies had nil non-compliance histories (excluding warning letters) despite operating for a number of years. This

should be given weight and should assure the Commission as to the likelihood of the Applicant's compliance with any licence.

- (g) No adverse inferences should be drawn against Mr Salt in regard to the charges against Captain Obvious because the liquidator dealt with the charges, which was akin to Mr Salt not being able to defend himself though wishing to do so.
- (h) No adverse inferences can be drawn against Mr Salt in regard to the CBD Premises Infringement Notices given that there is no established breach of the LCR Act. That is because Mr Salt believes that he has operated the Brunswick East Licence correctly and will have the matter internally reviewed and/or referred to court.
- (i) The CBD Premises was initially operated by way of a "pop up arrangement" which was licensed under a TLL. This licence was replaced by the Previous Restaurant and Cafe Application, which was discontinued in the circumstances of the contested criminal charge (which was dismissed) and allegations of an extensive criminal history. The Applicant has suffered through the expiration of time that his application (in all its iterations) has taken due to unfounded allegations and unmeritorious charges.
- (j) In all the circumstances as at the present time, there is no relevant risk leading to the potential failure to carry out the objects of the LCR Act if the Applicant is granted a licence. That is so even if some infringement notices issued have been paid (which there is no evidence in the case).
- (k) Further, there is not sufficient evidence before the Commission that the grant of the Review Application would cause harm at all, or harm that should not be accepted as being manageable in the harm-minimisation framework taking into account the other aims of the LCR Act.

96. Sergeant Rattigan submitted as follows on behalf of Victoria Police:

- (a) The Applicant is unsuitable to hold a licence due to its association with Mr Salt. Mr Salt has a significantly poor history of managing licensed premises, in particular with regard to supplying liquor at the CBD Premises purportedly under the Brunswick East Catering Approval.
- (b) The Applicant operated the CBD Premises unlawfully for a number of years by exceeding the scope of the Brunswick East Catering Approval. That was because running a business for over two and a half years could not reasonably be

categorised as a social reception, social function or “pop up” event. Further, the Brunswick East Licence was displayed at the CBD Premises in an attempt to deceive anyone who glanced at the licence into thinking that the CBD Premises was licensed. Mr Salt displayed the behaviour of someone who is unsuitable to be the sole director of the Applicant by continuing to operate the CBD Premises without a licence for a further three months after being told by Victoria Police that he was engaged in unlawful trade in June 2022.

- (c) In his evidence, Mr Salt clearly displayed the actions and behaviour of someone who plays by his own rules and flirts in the perceived “grey area” of the legislation, with little regard for the warnings or instructions given to him by regulatory bodies. Mr Salt was evasive in his answering and often changed responses if he thought they would better suit his narrative.

## Reasons for decision on review

### Issues for determination on review

97. 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 sole director of the Applicant has an adequate knowledge of the LCR Act;<sup>64</sup>
  - (b) whether the Applicant is suitable to hold a liquor licence,<sup>65</sup> and
  - (c) whether a restaurant and cafe licence should be granted or refused having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation.<sup>66</sup>

### Whether Mr Salt has an adequate knowledge of the LCR Act

98. An application may be refused if no director of the applicant has an adequate knowledge of the LCR Act.<sup>67</sup>

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<sup>64</sup> LCR Act, sections 44(2)(b)(iv) and 47(2).

<sup>65</sup> LCR Act, sections 44(2)(a) and 47(2).

<sup>66</sup> LCR Act, sections 4(1) and 172D(3). The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

<sup>67</sup> LCR Act, section 44(2)(b)(i v).



99. The Commission notes that Mr Salt has been the director of various licensee companies since 2006 and has completed the new entrant training requirements.
100. The Commission finds that Mr Salt gave contradictory evidence at the Hearing including evidence that was incorrect and evidence that was not credible.
101. Mr Salt gave evidence that the Applicant did not have a TLL when it began the CBD Premises but operated under the Brunswick East Catering Approval from the beginning. That was not the case.
102. Mr Salt also gave evidence that the Applicant did not apply for a permanent licence until he thought that the CBD Premises was going to operate for more than a year because the liquor regulator had advised him that a permanent licence was not required before then. That was also incorrect. The Applicant did apply for a permanent licence within the TLL operation period, being the Previous Restaurant and Cafe Application, consistent with the written advice given to Mr Salt by the Commission, and which the Applicant later withdrew.
103. Mr Salt gave evidence that he had legal advice and that he *“interpreted it to be that we had a legal grounds for running an event at those premises, which was the pop up event. And following from that, as the premises looked to be heading down a lengthier uncertain period, we made an application for a permanent liquor licence”*.<sup>68</sup>
104. Mr Salt did not produce any evidence of this legal advice other than his mere assertion and interpretation, despite the fact that the legal advice was purportedly given by the same solicitor that represented him in this matter. Further, this “interpretation” was in conflict with the course of action he had embarked upon with the regulator (see below).
105. Further, he gave evidence that a “licence person” (at the liquor regulator) who he spoke to said that, if the premises is operating for less than a year, a permanent application is probably a waste of time. Again, this is a mere assertion and Mr Salt did not provide any evidence of this advice. The Commission is not persuaded that this advice was given. In any event, the Commission notes that the Applicant in fact traded without a permanent licence at the CBD Premises for well over 12 months (in fact almost 1 year and 9 months).
106. This purported advice from the regulator that it is a *“waste of time”* to apply for a permanent licence for a premises operating for less than a year is also inconsistent with

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<sup>68</sup> Hearing transcript, page 34, line 25 to line 28.

the written advice that the Commission gave in the email trail described below. The Commission advised Mr Salt that he could not operate a “pop up restaurant” for more than 8 weeks and that he should apply for a permanent licence concurrently, as a permanent licence (restaurant and cafe) was the appropriate category.

107. The Commission accepts that Mr Salt contacted the liquor regulator before he commenced operating at the CBD Premises in late 2020 and sought advice. This is consistent with the email trail that the Applicant produced to the Commission in this matter. An email from a senior licensing officer of the Commission dated 23 November 2020 refers to a telephone discussion he had had with Mr Salt and explains that Mr Salt’s application for a TLL seeking to trade for 3 months (7 days per week) would not meet the Scale and Scope Requirement, but a period of 6–8 weeks could be considered for his pop up restaurant. Mr Salt then replied by email to the senior licensing officer, relevantly stating:

*I will look at the restaurant and catering license but there would be, other than the application fees, other expenses incurred which could make it prohibitive I believe- surveyors and drawings etc.*

*I am surprised that the 6-8 weeks limit is there, I was sure I have seen temporary activations for longer than that period ...*

*Our hope is that if the 3 month activation works then there will be a business case for an agreement to continue and at that stage we would be in a position to invest in the permanent infrastructure. ...*

108. In response, the senior licensing officer at the Commission explained by email on 27 November 2020 that:

*... a pop-up restaurant trading for 3 months daily does not fall under this [TLL] category.*

*Normal policy would allow for a pop up such as yours to run for a 6 week period, but given the current climate we are prepared to extend it to 8 weeks as previously discussed.*

*...*

*The reason for allowing this 8 weeks would also mean you could submit your Restaurant & Cafe licence application and this would run concurrently whilst you have the temporary limited licence ...*

109. Mr Salt demonstrated his understanding and commitment to this approach by applying for a TLL, displaying it on the wall at the CBD Premises and lodging the Previous Restaurant and Cafe Application on 21 January 2021, whilst the TLL was on foot.

110. The Commission accepts that this behaviour in obtaining a TLL and then lodging an application during the TLL period for a permanent licence was consistent with Mr Salt's assertion that he was trying to do the right thing by the regulator at that stage.
111. However, the Commission does not accept Mr Salt's evidence that he was "*trying to do the right thing*" by the regulator as time went on. Specifically, by the time he lodged another permanent licence application (the Original Application) on 4 August 2022, he had already been running his "*pop up*" restaurant or "*activation*" for over 1 and half years.
112. The Commission notes the Applicant withdrew the Previous Restaurant and Cafe Application on 6 April 2021 and appears to have continued to trade under the TLL well after it had expired.
113. The Applicant did not lodge another restaurant and cafe licence application until 4 August 2022. It appears the Applicant made a decision, at some point, to deviate from the pathway discussed with the Commission and initially embarked upon, and rather assert that it was able to trade at the CBD Premises under the Brunswick East Catering Approval. The Applicant did not provide any evidence of any discussions or engagement with the regulator prior to doing this or any evidence of any legal advice received that the Applicant could legitimately do so.
114. The Commission finds that, in all the circumstances, Mr Salt knew or ought to have known that the regulator would be of the view that the Brunswick East Catering Approval could not be utilised in this manner. Accordingly, it is remarkable that he repeatedly asserted in evidence that he was "*trying to do the right thing*" by the regulator.
115. The Commission finds his decision and action to assert reliance on the Brunswick East Catering Approval without any interaction with the regulator to be additionally concerning given that Mr Salt, at this time, was a director of another licensee which was the subject of an enforcement process in train in relation to the use of the same catering approval at the Park premises and where the application for an internal review of the relevant infringement notices had already been considered and failed.
116. Mr Salt asserted that he was unable to complete his defence of the charges there because that licensee went into liquidation and the liquidator made a commercial decision that it was not in the company's best interests to contest the charges and a guilty plea was entered. No evidence was produced to support this assertion.
117. Mr Salt acknowledged this issue with the Park premises in his evidence, stating that he would have spoken to the Commission and had obtained legal advice before setting up

the CBD Premises under the Brunswick East Catering Approval because he had an outstanding matter in relation to the same issue for a previous place. As stated above, the Applicant did not provide any evidence of any discussions or engagement with the Commission prior to doing this. The material submitted by the Applicant does not show that he raised this with the regulator before setting up the business, but rather that he was advised to apply for a restaurant and cafe licence during the period of the TLL under which the Applicant commenced operating the CBD Premises.

118. Victoria Police advised the Applicant on 24 June 2022 that the Brunswick East Catering Approval does not allow the Applicant to trade at the CBD Premises; including issuing a verbal warning on 1 July 2022; and again explaining to the Applicant on 26 August 2022 that liquor could not be supplied by the Applicant at the CBD Premises under the Brunswick East Catering Approval.
119. The Commission accepts that a warning is not conclusive evidence of a breach. However, a warning serves to put the licensee on notice that Victoria Police or the Commission considers that the licensee is not compliant with the LCR Act. Moreover, a warning is consistent with the Commission's functions to promote and monitor compliance with the LCR Act and the regulations,<sup>69</sup> and to detect and respond to contraventions of the LCR Act and the regulations.<sup>70</sup>
120. The Commission finds that Mr Salt gave inconsistent evidence in relation to his obligations as director of a licensee and in particular the operation of the new business and the basis for the supply of liquor at the CBD Premises.
121. Mr Salt referred to the use of the CBD Premises by the Applicant for over one and a half years variously as a "*pop up event*", an "*activation*" and a "*social generator*".
122. It is noted that Mr Salt's stated understanding of the actual parameters of the Brunswick East Catering Approval is also inconsistent with his asserted "interpretation" of the legal advice he purportedly received.
123. The Brunswick East Catering Approval allows supply "*in the course of catering for social receptions or social functions on premises other than the licensed premises*".

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<sup>69</sup> LCR Act, section 172D(1)(c).

<sup>70</sup> LCR Act, section 172D(1)(d).

124. The Macquarie Dictionary relevantly defines “reception” as “a function or occasion when people are formally received”.<sup>71</sup> It relevantly defines “function” as “any ceremonious public or social gathering or occasion”.<sup>72</sup>
125. Mr Salt gave evidence that there had been ticketed events at the CBD Premises, such as minor food events and drag bingo, about twice or three times a month. Otherwise, liquor had been available for any patrons walking in off the street, provided it was age appropriate and RSA compliant.<sup>73</sup>
126. Mr Salt was asked to explain his business insofar as it was social receptions or social functions. He responded as follows:

*Well, again, it's designed to be a social generator. That's what activations and urban ..... are. That's what Section 8 [Bar], and it's still there, you know, a bit longer than we'd expect from this one. But, you know, it's a temporary occupation, you know, and we bring our business models that we work with, you know, artists with, you know, graphic designers and, you know, other personalities. We have a very loud social media presence and an activation program that revolves around doing stuff, you know, with food and people, and music, if appropriate, and all the rest of it. So it's a — we sell alcohol and food as a, you know, pretty much a sub-activity after the dominant activity which is to create brand [awareness], and that's how I ..... in general.<sup>74</sup>*

127. When asked again “What does a reception mean to you?”, Mr Salt gave evidence that it:

*Could mean anything. Could mean a whole range of things. Social function or a social reception could be, you know, a birthday party. It could be an event for corporate. It could be, you know, a music band that wants to hold a launch party. It could be an art gallery that wants to have a three-month, you know, immersive, you know, art experience in the wilderness. It's a one-off event, I guess.*

...

*Well, it's a one off event to ..... to run a small business for a limited period of time, yes. I mean, there's no other licence categories that apply to it, I don't believe.<sup>75</sup>*

128. When asked “what's the difference between catering, to you, and running a business on a premises”, Mr Salt stated “Permanency.”<sup>76</sup> When questioned how long is permanent, he responded, “Well, I guess that's the thin end of the stick again. Again, the licence person that I spoke to said, well, if your premises is less than a year, you know, then a

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<sup>71</sup> Macquarie Dictionary (online at 18 July 2023) “reception” (def 4).

<sup>72</sup> Macquarie Dictionary (online at 18 July 2023) “function” (def 2).

<sup>73</sup> Hearing transcript, page 61, line 44 to page 62, line 37.

<sup>74</sup> Hearing transcript, page 53, line 1 to line 10.

<sup>75</sup> Hearing transcript, page 59, line 42 to line 46; page 60, line 5 to line 7.

<sup>76</sup> Hearing transcript, page 59, line 4.

*permanent application's probably a waste of time. ... Well, I put in an application when I thought that it was going to be, and I was charged with making a false statement".<sup>77</sup>*

129. Mr Salt said that this use was within the Brunswick East Catering Approval because *"the catering event is not limited to a specific, you know, moment. It's the overall event which is that we were there to activate the premises."*<sup>78</sup>

130. Mr Salt said that the "pop up" event was for *"an undefined period",*<sup>79</sup> which he described as follows:

*It was an activation to try and, you know, increase our brand presence. It was to increase awareness. The landlord has other commercial enterprises in that building, so he was looking to bring some noise and colour and activity to support his other tenancy as well.<sup>80</sup>*

131. When asked whether the "pop up" event lasted from December 2020 until now, Mr Salt replied: *"Well, it's still a grey area is we're not quite sure what's happening with the tenancy. Clearly it's been extended beyond the original term that was discussed with the landlord, but exactly where the finite, you know, end is I still don't know."*<sup>81</sup>

132. Mr Salt gave evidence that he contested an infringement notice if he believes there has been a misinterpretation or misapprehension of any sort, and that he did not think that he was overly aggressive in his defence of infringement notices.<sup>82</sup> Mr Salt's application for an internal review in relation to the CBD Premises Infringement Notices issued in September 2022 was lodged out of time on 2 December 2022 and the Applicant did not refer the matter to a magistrate for a hearing. The CBD Premises Infringement Notices are now at the warrant stage. This failure to refer the matter to a magistrate is not consistent with Mr Salt's view that he believed the Brunswick East Catering Approval applied to the Premises and that he would contest an infringement notice if he believes there has been a misinterpretation or misapprehension of any sort.

133. The Commission considers that, in all the circumstances, Mr Salt has shown a disregard for the parameters of the catering approval condition, which is a privilege held by the Brunswick East licensee (of which he is the sole director). He has also demonstrated a willingness to disregard the views of the regulator and seems to have ceased his

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<sup>77</sup> Hearing transcript, page 59, line 8 to line 10, line 16 to line 17.

<sup>78</sup> Hearing transcript, page 65, line 35 to line 37.

<sup>79</sup> Hearing transcript, page 35, line 13.

<sup>80</sup> Hearing transcript, page 35, line 21 to line 24.

<sup>81</sup> Hearing transcript, page 52, line 14 to line 16.

<sup>82</sup> Hearing transcript, page 32, line 26 to page 33, line 2.

interaction for guidance when things did not go as planned with the initial restaurant and cafe licence application.

134. The Commission finds that, in all the circumstances, including the lack of credibility and inconsistencies in Mr Salt's evidence (including about his conduct, the conditions of the Brunswick East Licence, and his interactions with the regulator and his obligations as a director of a licensee more generally) together with his reliance on an expired TLL and on permissions not appropriate for the licensee's business, Mr Salt does not have adequate knowledge of the LCR Act. A disregard of the scope and purpose of a statutory permission, and of the views (and by extension, the role) of the regulator, demonstrates Mr Salt's lack of knowledge and does not give the Commission confidence that he understands the need to comply with the obligations and requirements imposed under the LCR Act.
135. Given that Mr Salt is the sole director of the Applicant, it follows that no director of the Applicant has adequate knowledge of the LCR Act.
136. The Commission must ensure that the public has confidence in the liquor industry and its administration. This includes ensuring that licensees are aware of the regulations and the laws around liquor.<sup>83</sup> In the Commission's view, granting a licence to the Applicant may adversely affect the public's confidence in the regulation of the industry.

## Whether the Applicant is suitable to hold a licence

137. An application may also be refused if the Applicant is not suitable to hold a licence.<sup>84</sup> It is not necessary in this case to determine if the Applicant is suitable as the application is refused on the basis that no director of the Applicant has adequate knowledge of the LCR Act.

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

138. In all the circumstances, having regard to all the materials before it and the objects of the LCR Act, the Commission is satisfied that it is appropriate to exercise its discretion to refuse to grant the Applicant a licence on the basis that the Applicant's sole director does not have an adequate knowledge of the LCR Act.

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<sup>83</sup> *Galofaro v Director of Liquor Licensing* [2009] VCAT 919, [22].

<sup>84</sup> LCR Act, sections 44(2)(a).

## Decision on review

139. Based on the reasons set out above, the Commission is not satisfied that granting the Original Application the subject of the Review Application is appropriate in the circumstances.
140. The Commission has therefore determined to refuse to grant the Review Application and affirm the Original Decision.

***The preceding 140 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Ms Susan Timbs (Commissioner) and Mr Steven Brnovic (Commissioner).***