


# Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by FCC Pty Ltd for an internal review of a decision by a delegate to refuse an application for the transfer of a general licence to FCC Pty Ltd for the premises trading as ABR, located in regional Victoria

<b>Commission:</b>	Mr John Larkins, Deputy Chair Ms Susan Timbs, Commissioner Mr Steven Brnovic, Commissioner
<b>Appearances:</b>	CD, in person and for FCC Pty Ltd Mr William Newland, Counsel for FCC Pty Ltd on 24/8/2023 Sgt Walter Soto, on behalf of Victoria Police Mr Michael Majewski, Counsel Assisting the Commission
<b>Legal representative:</b>	Mr John Boundy of Boundy Legal for FCC Pty Ltd
<b>Date of Hearing:</b>	<b>24 August 2023 and 26 October 2023</b>
<b>Date of Decision:</b>	<b>24 November 2023</b>
<b>Date of Reasons:</b>	<b>15 April 2024</b>
<b>Decision:</b>	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.
<b>Signed:</b>	 John Larkins <b>Deputy Chair</b>

## Background

### Original Application

1. On 23 January 2023, Mr John Boundy of John Boundy Legal applied, on behalf of FCC Pty Ltd (**Applicant**), to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*<sup>1</sup> to transfer the existing general licence (**Licence**) for the premises located in regional Victoria (**Premises**), trading as ABR (**Original Application**).
2. Pursuant to section 32(1)(a), the Original Application is a joint application by KKU Pty Ltd as transferor of the Premises and the Applicant company as the proposed transferee.
3. The Premises is a regional hotel. The Licence specifies maximum capacities apply to the dining/lounge area after 12 midnight only, comprising 50 patrons.
4. The Licence specifies the following trading hours for consumption on the Premises:

<i>Sunday</i>	<i>Between 10am and 11pm</i>
<i>Good Friday</i>	<i>Between 12 noon and 11pm</i>
<i>ANZAC Day (not being a Sunday)</i>	<i>Between 12 noon and 1am the day following</i>
<i>On any other day</i>	<i>Between 7am and 1am the day following except for the morning of Good Friday</i>

*Note: Trading after 12 midnight is restricted to the dining/lounge area.*
5. The Licence specifies the following trading hours for consumption off the Premises:

<i>Sunday</i>	<i>Between 10am and 11pm</i>
<i>Good Friday and ANZAC Day</i>	<i>Between 12 noon and 11pm</i>
<i>On any other day</i>	<i>Between 7am and 11pm</i>
6. According to an ASIC Current Organisation Extract of 9 January 2023 (**ASIC Extract**), the sole director and shareholder of the Applicant company is CD. Based on the Applicant company's submissions to date, the Commission understands that CD conducts a concreting business.
7. The two Declaration of Associate forms dated 9 January 2023 that the Commission received as part of the Original Application were each completed by CD in his personal

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

capacity, and in his capacity as the sole director of the Applicant company (**Declarations of Associates**). In both forms, CD replied 'No' to the question 'Do you have any associates to declare?'

8. The application included a Nationally Coordinated Criminal History Check Certificate for CD dated 4 June 2021 (**Police Check**), which included the following disclosable court outcomes:

<b>Court</b>	<b>Date</b>	<b>Offence</b>	<b>Result</b>
<i>Bendigo Magistrates' Court</i>	<i>10/04/2018</i>	<i>Recklessly cause serious injury</i>	<i>Convicted and a Community Correction Order for 18 months. Unpaid Community Work Perform 100 hours of community work. Pay compensation \$10000.00 [sic]</i>
<i>Bendigo Magistrates' Court</i>	<i>10/04/2018</i>	<i>Unlawful assault</i>	<i>Convicted and a Community Correction Order for 18 months. Unpaid Community Work Perform 100 hours of community work [sic]</i>
<i>Bendigo Magistrates' Court</i>	<i>04/06/2009</i>	<i>Drunk in a public place act prejud sec/good order/management gaol [sic]</i>	<i>With conviction, fined an aggregate of \$400.00</i>
<i>Melbourne Magistrates' Court</i>	<i>01/11/2001</i>	<i>Intentionally cause injury assault police [sic]</i>	<i>With conviction, fined an aggregate of \$1500.00</i>

9. In accordance with section 33 of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) on 2 February 2023.

10. On 1 March 2023, Victoria Police advised that it objected to the Original Application. Relevantly, the objection was made on the basis that the Applicant company was unsuitable to hold a liquor licence because CD, its sole director:
  - (a) was convicted of recklessly causing serious injury and unlawful assault whilst under the influence of alcohol in 2018. This was in relation to an incident on 1 November 2017 at the NBH in regional Victoria, where CD punched another man in the head several times, knocking him unconscious (**2017 Incident**);
  - (b) has other criminal offences, including illegally lighting a fire during a prohibited period, being drunk in a public place, acting prejudicially and against the good order or management of a gaol, and an earlier history of cultivating and using drugs;
  - (c) has a prior adverse driving history; and
  - (d) has demonstrated his failure to comply with various regulatory schemes designed to ensure public safety (CFA Act, Road Safety Act, Road Rules Victoria).
11. On 16 March 2023, Mr Boundy made further submissions in support of a request that Victoria Police withdraws its objection against the Applicant company. Relevantly, Mr Boundy submitted the following (in summary):
  - (a) CD is “extremely ashamed and remorseful” in relation to the serious criminal offences arising out of the 2017 Incident, and that – apart from “mistakenly lighting a fire” on a total fire ban day (for which he was given a Good Behaviour Bond) – he has been “a stable and responsible member of the community”.
  - (b) CD admits and accepts his driving record is not good, but that he has had “minor speeding fines” since his historical driving offences.
  - (c) CD “acknowledges his past breaches of the law” and “wants the opportunity to enter the liquor and hospitality industry with acceptance of the fact that further breaches of the law, particularly those associated with liquor licensing, will most likely result in him losing that privilege”.
12. Mr Boundy provided a report by psychologist MO dated 28 January 2018 (**MO Report**). It stated that CD attended seven sessions of counselling following the 2017 Incident,<sup>2</sup>

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<sup>2</sup> According to the MO Report, the counselling sessions commenced on 15 November 2017 and concluded on 28 January 2018.

and provided the following relevant details about CD's behaviour and alcohol consumption (in summary):

- (a) CD had a "lifestyle which involved lots of drinking and fighting with other young men" until he was around 21 years old.
  - (b) CD had been "trying to cut down on his alcohol consumption" and that this included changing "to mid or low strength beer", but that he had still been drinking "on average 6-8 stubbies a day".
  - (c) CD said that his drinking "has impacted on his health and general wellbeing, often being short tempered with his own employees".
  - (d) Since the 2017 Incident, CD has "significantly reduced his drinking to very little" and that "he has only had a couple of drinks on 3 occasions since then" (Christmas Day 2017, New Years Eve 2017, and Australia Day 2018).
13. The MO Report also states that CD "appears to have developed a good understanding into his past behaviour".<sup>3</sup> It concluded that CD is "essentially a stable and productive member of the community who is committed to his family and maintaining his business which employs several local young men",<sup>4</sup> and who "seriously regrets the decisions he made at the time [of the 2017 Incident]".
14. Mr Boundy also provided a Judicial Monitoring report dated 11 October 2018 (**JM Report**). The JM Report was prepared in relation to CD's Community Correction Order (**CCO**), and recorded that (in summary):
- (a) CD participated in the completion of a Level of Service, Risk, Need, Responsivity assessment which determined him to be a medium risk of general re-offending, with drug and alcohol being his highest area of need;
  - (b) CD was referred to the Offending Behaviour Programs (**OBPs**) branch, who determined that he was eligible to participate in OBPs. CD successfully completed the LINC program on 5 July 2018;
  - (c) CD was assessed by the Community Offender Advice and Treatment Service of the Australian Community Support Organisation to determine his treatment needs

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<sup>3</sup> The MO Report stated that CD sees the 2017 Incident and its aftermath as "a wakeup call to change his own life and aspects of his lifestyle", emphasising the strain that it had placed on his family.

<sup>4</sup> The MO Report also stated that "CD is quite devoted to his family, he loves his wife very much, and wants to continue to be able to do things such as support his son's football team, which he does by pitching in with umpiring, coaching or doing whatever is required to assist."

in relation to alcohol use. He subsequently completed three sessions of counselling and was discharged as successfully completed on 6 August 2018; and

- (d) CD has shown a high level of compliance and engagement with Community Correction Services, despite also having full time employment and family commitments.
15. On 11 April 2023, Victoria Police stated that it maintained its objection. By reference to CD's serious criminal history, Victoria Police submitted that CD has had difficulty with compliance and has behaved in an unlawful manner whilst under the influence of alcohol. On that basis, it concluded that, whilst it no longer held any concerns with regards to associates or shareholdings of the Applicant company, it could have no confidence that CD will properly carry out the obligations expected of a licensee.
16. On 28 April 2023, Mr Boundy made the following submissions in response (in summary):
- (a) CD acknowledges his past breaches of the law.
  - (b) The conclusions of both the JM Report and the MO Report were positive, recording "compliance, remorse and optimism for [CD's] future".
  - (c) CD has run his business for approximately 19 years, where he employs several young men. He and his employees have driven several vehicles registered in his name. On that basis, and by reference to the allegation by Victoria Police that CD has an adverse driving history, it is CD's position that he is unaware as to which of speeding offences apply to his own driving.
  - (d) CD has previously been involved in the hospitality industry "from when he was 16 to 25 years old", where he "worked in nightclubs in Bendigo and Shepparton and was bar manager at the AEH in Melbourne". On that basis, Mr Boundy states that CD is "very familiar with the liquor industry and the standards that are required".
  - (e) It is "unfair and unjust to suggest that the public must be protected by the Commission refusing to grant the [Original Application] [...] on the grounds [that] CD's past suggests he may be a risk to the public". Mr Boundy argues that the conclusions of Victoria Police are "based on past events, the most recent being over 5 years ago apart from traffic fines incurred by business vehicles".
  - (f) CD wants to be given "the chance to show he has the character and qualities to operate a successful licensed premises and requests the Commission gives him the opportunity to demonstrate this by granting the [Original Application]".

17. In support of the 28 April 2023 submission, Mr Boundy provided several character references for CD dated between 26 – 28 April 2023.<sup>5</sup> Each of the references knew CD in a professional or a volunteer/fundraising capacity, and variously described him in positive terms, including that he is “honest”, “courteous”, and “community-minded”. KH said that CD “is a man who takes responsibility and ownership of his mistakes, and most importantly, learns from them”.
18. On 6 June 2023, a delegate of the Commission (**Delegate**) determined to refuse the Original Application on the basis that the Applicant company is not suitable to be granted a liquor licence due to having an unsuitable director (**Original Decision**).
19. As part of the reasons for decision, the Delegate stated that he had considered the cumulative number of offences that had occurred over a 20-year period, and the serious nature of those offences, as persuasive in concluding that CD was unsuitable to be a licensee involved in the supply of liquor, and that he had an inability to comply with a regulatory scheme. This was compounded by some of the offences having involved CD’s intoxication from alcohol consumption.
20. Nevertheless, the Delegate noted that, if in time CD could continue to avoid re-offending, he would reconsider the suitability of the Applicant. The acknowledgment was put in the following terms:

*I note that the Applicant has completed the court appointed judicial monitoring and assessment for alcohol abuse and anger management and attended counselling and has provided personal reference [sic], showing that he is of good character and an active member in the community. It clearly shows that the Applicant is trying to change in the right direction. However, as the last offence was in 2018 and given the number of offences and the 20-year period, I am not satisfied at this time of the suitability of the Applicant and his involvement in the liquor industry. If in time that the Applicant can continue to be good character and avoid re-offending, I would reconsider the suitability of the Applicant.*

## Application for Internal Review

21. On 16 June 2023, Mr Boundy lodged an internal review application of the Original Decision on behalf of the Applicant company (**Review Application**).

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<sup>5</sup> The character references for CD are from DH, IT and HT, KH, TQ, and CQ.



22. The Review Application included a statement of CD dated 16 June 2023, where CD made submissions to the effect that:
- (a) the Delegate made the Original Decision by reference to a previous criminal history which, save for the 2017 Incident, dates back to the years between 1998 and 2001;
  - (b) save for being involved in driving offences on one occasion per year, as well as mistakenly lighting a fire during a prohibited period, he has “not been in any trouble with police” since the 2017 Incident;
  - (c) he is “genuinely regretful” of the 2017 Incident and has “complied with all orders imposed by the Court arising out of [it], including payment of compensation to the victim”;
  - (d) he has “sought and obtained professional advice and assistance from a psychologist” in light of the 2017 Incident;
  - (e) he has “paid his debt to the community and should not be further penalised for past offences, a number of which occurred 20 or more years ago”;
  - (f) he is “fully aware” that, under legislation governing the liquor industry, he could face “sanctions in the event [he] gets into further trouble with the police”, which “would ultimately effect any liquor licence” held by him; and
  - (g) he wants to be given “the chance to show he has the character and qualities to operate a successful licensed premises and requests the Commission gives him the opportunity to demonstrate this by granting the [Review Application]”.
23. On 26 June 2023, Victoria Police confirmed that it maintained its objection.

## Directions Hearing

24. On 27 July 2023, a directions hearing was held in relation to the Review Application (**Directions Hearing**).
25. CD appeared to represent himself and in his capacity as sole director of the Applicant company.
26. Sgt Walter Soto and Sgt Alison Morris appeared on behalf of Victoria Police.
27. CD made brief submissions to the effect that (in summary):
- (a) he pleaded guilty before the Bendigo Magistrates’ Court to the 2017 Incident;



- (b) he is motivated to work as a publican due to the physical demands of his career in concreting and his desire to spend more time with his children;
  - (c) he is handing over his concreting business to his nephews; and
  - (d) he has previous experience in the hospitality industry.
28. Sgt Soto made submissions to the effect that Victoria Police would be assisted by details of the licensed premises where CD had previously worked, and that this would enable it to provide the Commission with any information Victoria Police may have about CD's time at those premises.
29. After the Directions Hearing, the Commission invited the Applicant company to lodge and serve:
- (a) any current or recent medical reports that may be relevant to the Review Application, such as factors relating to CD's alcohol use, criminal history, and his ability to comply with the regulatory scheme of the LCR Act;
  - (b) a list of all previous hospitality venues that CD has worked at, including his dates of employment and positions held at each venue; and
  - (c) a submission relating to how CD intends to operate and manage the Premises.
30. The Commission invited Victoria Police to lodge and serve the summary of charges relating to the 2017 Incident and confirmation of CD's guilty plea before the Bendigo Magistrates' Court.
31. The Commission also asked the parties to lodge and serve any additional material they intend to rely on before the substantive hearing in the Review Application.
32. On 14 August 2023, Victoria Police forwarded a summary of the 2017 Incident that was read out to the Bendigo Magistrates' Court,<sup>6</sup> and the Victim Impact Statement tabled by the police prosecutor. Victoria Police also confirmed that, based on its recent enquiries, the victim of the incident did not have lasting effects from the injury.
33. On 15 August 2023, Victoria Police confirmed that CD had entered a guilty plea before the Bendigo Magistrates' Court in relation to the 2017 Incident.
34. On 23 August 2023, Mr Boundy submitted further material on behalf of the Applicant company. This included additional character reference letters on behalf of CD dated

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<sup>6</sup> The summary of the 2017 Incident was an annotated version of the same summary contained in the preliminary brief prepared by Victoria Police.

between 17 and 18 August 2023.<sup>7</sup> One of the reference letters was on behalf of the current licensee of the Premises in which it was stated that CD had been working there for several shifts over the last seven months, and describes him as “[having] remained polite, professional, hardworking and enthusiastic in all roles undertaken”.

35. The Applicant company’s further material included a supplementary report of MO dated 18 August 2023. MO reported that (in summary):
- (a) she had a consultation with CD on 4 August 2023 in relation to the Review Application;
  - (b) since the 2017 Incident, CD “has had no further incidents involving the Police or any other altercations with individuals”;
  - (c) in purchasing and intending to run a hotel, CD is “following a childhood dream”, and that “he has always had an interest in hospitality”;
  - (d) CD “wants to establish a quality business to attract patrons from the Bendigo area with a reputation for good food and drinks”;
  - (e) CD is a “friendly man, who appears to generally interact well with people and has a down to earth and sensible approach to most things”;
  - (f) CD experienced “challenges in dealing with staff with major drug and alcohol issues, with him having sacked three staff around 12 months ago for these reasons”;
  - (g) the issues experienced by his staff, as well as the 2017 Incident, “has made CD very aware of the many dangers of excessive drinking”. MO considers that this is “of considerable benefit to someone running a hotel”; and
  - (h) in managing a licensed premises, should any issues or difficulties arise with any patrons, CD “would take a very mature approach to dealing with them, as well as being able to recognise more complex problems associated with drug and excessive alcohol consumption”.
36. MO concluded her supplementary report by stating that CD “appears to present a very low risk of any further physical altercations, and has demonstrated that he is willing to learn other approaches to resolving disputes, and to be able to manage any of these challenges within the context of running his hotel”.

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<sup>7</sup> The character reference letters were by OU, and KX and MU of ABR.

37. Besides additional character references and the supplementary report of MO, the Applicant company's further material included CD's personal statement dated 23 August 2023 (**Personal Statement**).
38. The Personal Statement included details about the Premises and its ownership (in summary):
- (a) CD has known KU (deceased) and his partner, KX, for approximately 20 years. KU and CD signed a contract for the purchase of the Premises on 3 February 2023.
  - (b) The Premises is being sold with other parcels of adjoining land. CD's long-term goal is to have those additional parcels of land re-zoned to commercial, and then to develop them into accommodation as a complement to the ABR business.
  - (c) CD describes the Premises as a quiet, family pub, which also sells bread and milk in the drive-through. It has a blues club that plays once a month on Sunday afternoons.
  - (d) CD intends to operate the Premises with a focus on meals and acoustic entertainment. He also intends to re-open the coffee van in front of the Premises, as well as installing play equipment for young children.
  - (e) If the Applicant company is not successful in the Review Application, then CD acknowledged that he will have to find somebody else to run the Premises as his tenant.
39. The Personal Statement also included details about CD's background (in summary):
- (a) CD previously worked in various hospitality roles between the ages of 16 and 25. This included working as a busboy, then barman and later as manager at the RTH in Bendigo; working for KMS at a variety of hotels in Victoria; working as a bar supervisor at the PAH in Bendigo; and, lastly, as a bar manager at AEH in Melbourne.
  - (b) Since commencing in concreting in 2008, CD has trained multiple staff in the industry. He built up his business to have eight employees, as well as sub-contractors (including machine operators, truck drivers, and concrete pump operators).
  - (c) CD has received some speeding fines in the past. He states that this was not only in respect to his driving, but also in respect to the driving of his employees, "because the vehicles the employees were driving were work vehicles registered

in [his] name”. While CD reprimanded his employees, he would often pay the fines for their driving to “keep [them] happy because [he] was the one who required them to drive for work”. He also “would not always know exactly who was driving which car on the relevant day”. CD considers that this was an “irresponsible decision on [his] part” and “now accept[s] that [he] should not have done this”, recognising that “the consequences of [his] actions is a very poor traffic record, which is not an accurate reflection of [his] driving history”.

- (d) The 2017 Incident “was a huge mistake that changed [CD’s] life”. He describes his reaction that night as “the poorest decision [he] has ever made in [his] life”, and that “the way [he] reacted still haunts [him] to this day”. CD states that “[he] often reflect[s] that [his] own actions could have resulted in [him] spending time in jail”, and that it “[i]t remains a very raw memory”. He also states that he “remain[s] embarrassed and regretful for [his] actions on that day”, that he has “learned a lot from the experience”, and that he has “sought help from a psychologist to ensure that it does not ever happen again”.

40. Appended to the Personal Statement was a collection of various policies and procedures that CD said he intended to use in the operation of the Premises (if the Applicant company was successful in the Review Application).<sup>8</sup>

## Legislation and the Commission’s task

### The Commission’s internal review power

41. 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 company is eligible to apply for a review of that decision. The Review Application was made pursuant to section 153.
42. 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>9</sup>

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<sup>8</sup> These included the following documents (all either dated 20 February 2023, or otherwise undated): Code of Conduct; Discipline and Termination Policy; Drug and Alcohol Policy; Bar Duties Open List and Close List; Employee Benefits policy; Grievance Policy; Mobile Phone Policy; Non-Smoking Policy; Pub Cleaning Checklist; Proposed Roster; Staff Availability; Bottle Shop Stock list ALM; Bottle Shop list CUB; Work Health and Safety Policy; and Workplace Discrimination and Harassment Policy, dated 20 February 2023.

<sup>9</sup> Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

43. 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:
- (c) grant the Original Application and, if so, whether to do so subject to conditions;<sup>10</sup>  
or
  - (d) refuse to grant the Original Application.<sup>11</sup>

## Determination of a contested application

44. 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.*
45. Section 47(2) provides that the Commission may refuse to grant a contested application on any of grounds set out in section 44(2).
46. Pursuant to section 44(2), the Commission may refuse to grant an application on certain grounds, including that the applicant is not a suitable person to hold or carry on business under the licence (section 44(2)(a)).
47. 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.*

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<sup>10</sup> Sections 47, 49 and 157.

<sup>11</sup> Sections 47 and 157.

48. 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.*

49. 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

50. 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.*

51. 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>12</sup>*

52. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;<sup>13</sup> and
- (b) may consider further information, material or evidence.<sup>14</sup>

54. 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 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.

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

## Conduct of an inquiry

56. 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

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<sup>12</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>13</sup> Section 157(2).

<sup>14</sup> Section 157(3).



Commission must give the applicant and each objector a reasonable opportunity to be heard.

57. 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.

## Material before the Commission

58. 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 6 June 2023;
  - (b) Review Application with accompanying statement of CD, dated 16 December 2023;
  - (c) Post-Directions Hearing submissions of the parties;
  - (d) Report of clinical psychologist, TL, dated 20 September 2023 (in particular, see paragraphs 84, 87ff. and 93ff. below);
  - (e) Email submissions of Mr Boundy on behalf of the Applicant company, variously dated between 21 September 2023 and 25 September 2023;
  - (f) Email submissions of Victoria Police, variously dated between 14 August 2023 and 19 October 2023; and
  - (g) Submissions and evidence presented at the hearing in the Review Application on 24 August 2023 (**First Hearing Day**) and 26 October 2023 (**Second Hearing Day**).

## First Hearing Day

59. The First Hearing Day was held on 24 August 2023.
60. Mr William Newland appeared as Counsel for CD of the Applicant company.
61. Sgt Walter Soto appeared for A/Supt Troy Hargadon of Victoria Police.

## Evidence of CD

62. CD gave evidence which primarily covered material from his Personal Statement. It also expanded on it in several areas.

## *Criminal history*

63. In response to the Commission's questions about the offence of lighting a fire during a prohibited period, CD said, in evidence, that he had lit "a heap of rubbish" on a block of

land he had then just recently purchased, and that he was currently living on. He said that it had been raining before, so he “didn’t think nothing of it”, but later learned that it was the first day of the fire season.

64. CD gave evidence to the effect that, after he was charged with the fire offence, he pleaded guilty before the Magistrate, saying that it was “just a silly mistake”.
65. CD gave the following evidence in relation to the 2017 Incident and its aftermath (in summary):
  - (a) CD went to a ticketed function at the Bendigo Cup Day, along with his wife and another concreter. They left at the end of the day, “after drinking booze all day, drinking heavies”, and went to the closest hotel to continue to drink.
  - (b) Some “guys turned up” at the hotel, who were “intoxicated as well”. CD further describes the men as having been “lippy”, and that they “spoke smut about [his] wife”.
  - (c) CD moved over to the other side of the bar and exchanged words with the group. One of the men asked him “are we going to go outside?”, to which he responded: “well me and you are going to go outside”. The man in the group replied “yep, let’s go”.
  - (d) As CD and the man from the group walked towards the door, the man’s “two mates come in behind [CD]”, who then “reacted and struck first”.
  - (e) Immediately after the 2017 Incident, CD went and saw someone for psychological consultations.
  - (f) CD received a CCO for 18 months, including 100 hours of community service. He attended a Judicial Monitoring hearing after six months, and the magistrate “was extremely happy” with his progress. CD was not required to attend another hearing in connection with the CCO.
66. CD told the Commission that he regretted his actions that led to the 2017 Incident.
67. CD answered the Commission’s questions about his 2009 conviction at the Bendigo Magistrates’ Court for ‘being drunk in a public place’ and ‘acting prejudicially to a security/good order/management of a gaol’. He gave evidence to the effect that he and a friend of his had been arrested and placed in a gaol cell after they were caught by police “jumping the fence” to get into another friend’s hotel. He said that, after he and his friend were placed in a gaol cell where his friend “threw toilet paper on the camera

to cover the camera up in the cell”, he was “dragged” out by police and “sprayed in the face from behind”.<sup>15</sup>

68. CD also answered the Commission’s questions about his 2001 conviction at the Melbourne Magistrates’ Court for intentionally causing injury and assaulting police. According to his evidence, the circumstances of the offences were a “big fight out the front of the nightclub that [he] was working at”. CD said that there was “a bus load of people” and that he had his “work colleague’s back and sort of was sticking up for them”. He gave evidence to the effect that the police subsequently arrived and grabbed hold of him from behind. In that instance, he was unaware who had grabbed him and subsequently “threw one over [his] shoulder” which “connected” with the police.
69. In response to the Commission’s questions about his prior offending, CD said the following:

*"I say talk, don't throw punches, it's not worth it. Too many people getting hurt. I've learnt so much from that last one. I would always want to step in for my mates and have their back. But it's not worth it".*

70. CD also said that the OBP he attended as part of the CCO in 2018 taught him to “be more responsible [...] of [his] surrounds” (see paragraph 14 above).

### **Anger management and alcohol consumption**

71. In response to the Commission’s questions regarding anger management, CD gave evidence to the effect that it was something he addressed during counselling sessions with MO. He said that it’s something he considers is “under control”, and that he found the counselling helpful. CD also said that he learned to deal with a ‘short fuse’ by “[taking] a step back” and taking a breath.
72. The Commission asked CD whether he has put the skills acquired during counselling to the test before (including, for example, when dealing with others in a pub environment). CD replied to the effect that he had not had such an opportunity to do so. He also said that, if someone were to attack him, he would “definitely defend [himself]”. However, he added that, if he were provoked by another person, “[he] could never swipe someone first again”.

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<sup>15</sup> The Commission understands that CD is referring to being sprayed with Oleoresin Capsicum spray by Victoria Police members.

73. CD also gave evidence about his current drinking habits, saying in effect that he no longer felt he needed to get drunk the way that he used to. He said that he drinks “mid-strength” beer, up to “two or three times a week”, adding that he would normally have “four beers” while watching sports, including with friends or with family.
74. CD explained that his strategy to avoid getting drunk was by keeping count of ‘stubby tops’ that pulled off for every beer that he consumed.
75. In response to the Commission’s questions about engaging in further counselling with MO, CD expressed a willingness to do so, and that he “would be going to see her anyway” when he could find the time.

### ***Adverse driving record***

76. CD gave evidence about his adverse driving history, estimating that 70% of the offences were in relation to his own driving, as distinct from those of his eight employees. He said that it has been three years since his last driving offence, and that this was in relation to speeding.<sup>16</sup>
77. In response to the Commission’s questions as to what he would have done differently in respect of his adverse driving history, CD made statements to the effect that he would have maintained a logbook to keep track of which of his employees were using his vehicles, and on what dates.

### ***Plans for the Premises***

78. The Commission raised questions with CD about the current status of the Premises, including his own involvement, and he responded in evidence that (in summary):
  - (a) he had been volunteering at the Premises;<sup>17</sup>
  - (b) cameras are installed in and around the Premises;
  - (c) the Premises is currently staffed with “two bar girls”, but he intends to hire back a number of former staff members who have expressed interest in returning to work there; and
  - (d) if successful in the Review Application, he intended to be very hands on in the day-to-day management of the Premises.

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<sup>16</sup> In relation to that offence, CD said that he was going 78km in a 60km zone.

<sup>17</sup> CD said that he would get free meals in exchange for volunteering at the Premises.

79. CD gave evidence about his intended plans for the Premises. He said that he would reopen the kitchen to serve meals, and that he would introduce more acoustic entertainment (e.g., country music groups), besides the blues group that used to perform there regularly.
80. In relation to his evidence about the venue management policies and procedures that he provided before the hearing, CD said that these were prepared in early February 2023 in anticipation of acquiring the Premises and before Victoria Police had objected to the Original Application. He said that he put these documents together with the assistance of an experienced staff member, and that the content was similar to venue management plans of other hotels in the Bendigo area.
81. However, in response to questions at the hearing from Victoria Police, CD admitted that he had not fully read the contents of the venue management policies and procedures that he had provided, and that he did not exactly know what they contained in detail.

## Submissions of Victoria Police

82. In his submissions before the Commission, Sgt Soto gave brief statements on behalf of Victoria Police (in summary):
  - (a) None of the character references for CD provided by the Applicant company addressed his drinking habits.
  - (b) The Applicant company has not provided “forensic material of any medical authority” to support CD’s evidence and give Victoria Police reassurance if it were granted a liquor licence.
83. Sgt Soto said, in effect, that Victoria Police would be assisted by the Applicant company furnishing some form of independent, objective, forensic medical assessment in relation to CD’s drinking habits. He suggested that the Applicant company could provide a medical report of CD’s liver function, arguing that such a report would be “indicative of alcohol being consumed, inconsistent with the evidence given”. Sgt Soto said that, if the report showed readings that are “standard or below, then that will provide the reassurance that [Victoria Police is] seeking”.

## Post-First Hearing Day material and submissions

84. On 25 August 2023, the Commission invited the parties to provide further material as follows:

- (a) The Applicant company to lodge an expert medical report of either a psychologist or a psychiatrist with addresses the following:
- i. factors relating to CD's past, current or future alcohol use;
  - ii. criminal history or driving history;
  - iii. factors relevant to his ability to comply with the regulatory scheme of the LCR Act; and
  - iv. his character and suitability to hold a liquor licence by reference to the Review Application.
- (b) The Applicant company to provide copies of any letters of reference from previous supervisors/managers/owners that CD has worked for at the following premises:
- i. RTH;
  - ii. PAH; and
  - iii. AHE (formerly known as AEH).

85. On 28 August 2023, Victoria Police submitted that, if the Commission were considering grant of the Review Application, then it recommended that CD consider joining the new 'Bendigo Drug and Alcohol Forum' (**Bendigo Liquor Forum**) on a voluntary basis and, if he were agreeable, for the Commission to consider formally endorsing a special condition to such effect "as a further safeguard on the licence". By reference to the Bendigo Liquor Accord (**Accord**), Victoria Police submitted that:

*"Victoria Police has engaged at a deeper constructive level with Bendigo Council and members of the Accord. The benefits from the exchange of information and assistance in the identification and intervention in dealing with problem patrons has proven successful."*

86. In September 2023, Mr Boundy submitted that CD was unable to locate his former employers at RTH, PAH, and AHE. In addition, Mr Boundy provided a brief submission on behalf of the Applicant company. Mr Boundy referred to the matter of *Danz Management Pty Ltd v Director of Liquor Licensing* [2010] VCAT 536 (**Danz Management**), which involved a sole director with convictions for criminal damage, unlawful assault, and selling liquor without a licence.<sup>18</sup> Mr Boundy submitted that, unlike

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<sup>18</sup> Mr Boundy referred to Deputy President Dwyer's comments at paragraph 35 of *Danz Management*: "[...] all three past offences, Mr Shaw's evidence, both in his statutory declarations and in oral testimony, was to attempt to 'explain

the applicant in that matter, CD has expressed remorse and embarrassment, and that CD accepts his wrongdoing.

## Report of TL

87. On 21 September 2023, Mr Boundy forwarded a report of TL, a clinical and forensic psychologist (**TL Report**). It was a psychological evaluation of CD dated 20 September 2023 in which TL reported the following conclusions:<sup>19</sup>

“[...]”

(1) *Factors relating to CD’s past, current and future alcohol use.*

*The history points to CD having had a past Alcohol Use Disorder, leading up to the incident in 2017. He subsequently received assistance and has moved into a controlled-alcohol-use approach which, based on the period 2017-23, presents as appropriate and the Alcohol Use Disorder is in remission. While abstinence may be a more conservative approach, the lack of offending between 2017-23 points to this approach being effective in him resolving the impulsivity issues that led to his past offending history.*

(2) *Criminal history and driving history.*

*[...] [T]here are past offences related to antisocial behaviours and driving problems connected to his impulsivity being affected by a past alcohol use condition (in remission since 2017). These alcohol issues were present particularly in his late teens and early 20s but also then leading up to the incident of 2017. The offences and aftermath clearly have been a watershed and he has resolved the alcohol problems that have led to the past offending.*

(3) *Factors relevant to CD’s ability to comply with the regulatory scheme of the Liquor Control Reform Act 1998.*

*Based on this evaluation, CD presents as able to comply with the regulatory scheme of the Liquor Control Reform Act 1998.*

(4) *CD’s character and suitability to hold a liquor licence.*

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away’ the seriousness of the offences, and to argue that they were minor and/or caused by or contributed to by others. This suggests to me a lack of insight and remorse, and that Mr Shaw has yet to fully take responsibility for his past actions, and accept his wrongdoing and its consequences.”

<sup>19</sup> The TL Report provides that the psychological evaluation of CD “involved evaluation of personality and cognitive issues, an examination of mental state via the Mental Status Examination (MSE), a semi-structured clinical interview and a structural clinical interview for DSM-5”.



*Based on this evaluation, CD presents as suitable to hold a liquor licence. He appears to have made appropriate changes to his behaviour, including alcohol use in particular, and has stabilised his life. His motivation to move into the hotel industry presents as reasonable, and this evaluation does not point to a risk associated with him holding a liquor licence.*

88. In short, TL found as follows: “There is no evidence of a formal personality disorder or other psychological disorder, although it is likely that in 2017 CD could have been assessed as having an Alcohol Use Disorder. This condition is in remission.”

## Second Hearing Day

89. The Second Hearing Day was held on 26 October 2023.
90. CD appeared to represent himself, and in his capacity as sole director of the Applicant company.
91. TL gave evidence as a witness in support of the Applicant company’s Review Application.
92. Sgt Walter Soto appeared on behalf of Victoria Police.

## Evidence of TL

93. TL gave evidence which primarily covered material from his report. It also expanded on it in several areas.
94. Of CD’s personal background, TL said that CD reported spending most of his life in Bendigo, where he continues to reside. He separated from his wife in approximately 2022, moved into another property and saw his children on a regular basis. He initially worked in hospitality before moving into his own construction business, focusing on concreting. As he entered his 40s, the physical demands of this work became challenging and led him to reconsider his career options.
95. In terms of CD’s alcohol consumption, TL gave the following evidence (in summary):
- (a) CD used alcohol progressively from his late teens or early 20s.
  - (b) As his work and life became more stressful in his 30s, CD began using alcohol more regularly on a social basis and then more habitually.
  - (c) Leading up to the 2017 Incident, CD could be regarded as having an alcohol use disorder in that he was using alcohol to excess and on a regular basis.

96. By reference to CD's criminal record, TL considers that, in his early years, CD has "a background of some personality vulnerability factors with some impulsivity", and that this "is a factor connected with the alcohol as well".
97. Of the 2017 Incident, TL said that CD's "alcohol abuse led to the incident" in that the "disinhibition connected with alcohol coincided with [his] background vulnerability and also the chaos that the alcohol abuse caused around that time". He added that "the 2017 [I]ncident appears to have been triggered to a much greater degree by significant alcohol use on the day".
98. Nevertheless, TL said that CD "[does not] present as a man with marked antisocial offending tendencies". In addition, from "a personality perspective", CD "does not have any social offending characteristics".<sup>20</sup>
99. TL referred to CD's running of "his own relatively small, but reasonably successful, concreting business" where he "employs other people", adding that such factors "are indicative of individuals who have reasonable impulse control and ability to maintain themselves".
100. TL also said that CD has a "very clear insight into the negative effects of the 2017 incident", and that is he is "acutely aware of what a problem that caused for the victim and for himself and his family".
101. In terms of CD's progress since the 2017 Incident, TL gave the following evidence (in summary):
  - (a) CD's history since 2017 "would suggest that he's made some significant improvements", and that CD has "taken stock, received counselling and treatment".
  - (b) TL considered the counselling CD received in consultation with MO as appearing to have been appropriate.
  - (c) In terms of alcohol consumption, CD "set a path of moving to cessation and then ultimately what can be regarded as a controlled drinking approach to alcohol use disorder, where he drinks a maximum of what is, from his account, 2.7 drinks on any day, and from his account again no more than two or three days per week". TL described this as a reasonable approach, as he also said that "the World Health

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<sup>20</sup> In his evidence about CD, TL stated that he did not see "a pattern of problematic vulnerability in other areas, and particularly of the antisocial type".

Authority indicates that [...] up to four standard alcoholic drinks for males in one day is the limit”.

(d) By reference to CD’s reporting and criminal record to date, TL gave evidence to the effect that CD appears not to have “relapsed” into alcohol abuse.<sup>21</sup> TL considered that the fire-lighting incident was not representative of a pattern of offending.

(e) CD’s “prognosis is good”, and TL does not anticipate further problems with alcohol consumption “irrespective of whether or not he remains in his current industry or in hospitality”.<sup>22</sup> He does not perceive CD’s access to alcohol in hospitality to be a further risk factor.

102. By reference to all the factors listed above, TL said that CD is able to comply with the regulatory scheme of the LCR Act. He considered that CD does not have an issue with adhering to rules. In addition, TL’s evidence was to the effect that CD presented as being able to deal with interpersonal conflict (e.g., aggressive customers).<sup>23</sup>

103. In response to the Commission’s queries about CD’s counselling sessions with MO, TL said that he considered that “her treatment has been helpful to him”. He also said that “it would be helpful that he [continues counselling] in some respect”, but that this “[does not] need to be intense” (“just needs to be some ongoing support”).

104. When cross-examined by Victoria Police about monitoring CD via liver function testing, TL said that (in summary):

(a) he considered it is “not necessarily a great [method of testing alcohol consumption]”. He said that “it has difficulties in that it may pick up a whole variety of other things, including other pathology that’s unrelated to alcohol”; and

(b) hair follicle testing is “probably the most accurate in terms of consumption”; and

(c) he was not a medical practitioner, and so he would not be able to provide comment if CD were to provide a liver function test.

105. TL said in his evidence that “hair follicle testing” or “random alcohol readings” would be some ways to monitor CD’s longer term alcohol use. However, TL considered that this

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<sup>21</sup> TL said in his evidence that the “critical point” where people with alcohol use disorders are going to relapse is in the first 18 months”.

<sup>22</sup> TL said in his evidence that CD had described the construction industry as having “a greater amount of alcohol and drug use” than hospitality, and that CD “recognised that he didn’t want to be around [that] anymore”.

<sup>23</sup> In his evidence, TL referred to CD’s experience of running a concreting business, where CD employed “young males who are inclined to be difficult”.

would normally be suggested if there was evidence of ongoing significant alcohol use or problematic alcohol use, and that it would not be particularly useful where abstinence or controlled drinking is well established (as it appeared to in CD's case).

106. In response to questions from Victoria Police about whether TL had any concerns about CD's ability to be a licensee in control of the Premises (in circumstances where it was a hotel in a semi-remote area), TL said that it is "a complex issue". He considered that, on the one hand, CD may be placed in a difficult position to act as a "policeman" at times when his friends may come and drink at the hotel. On the other hand, he considered that such a circumstance "may make the functioning of the hotel easier in the sense that [CD] knows the individuals". TL considered that this was not uncommon across Australia. His evidence was to the effect that, on balance, it would not be an issue for CD to manage such a premises.

## Evidence of CD

107. The Commission asked CD to respond to the following statement from the submissions of Victoria Police dated 11 April 2023:

*It is submitted that the granting of a liquor licence to the Applicant in these circumstances would not be in the public interest and would undermine confidence in the liquor industry. Accordingly, the Commission is urged to make findings of unsuitability and refuse the Application.*

108. In response, CD said the following:

*"I don't think that's necessarily fair because you can't - you're not always guilty, like I have had my issues as a younger person, and then the slip up in 2017 where, yeah, I'm still paying for that today. For the community, I think I would be a great asset to that community. I know I'm an asset to the community as it is, and I believe in that industry where I can present myself, or put myself out there 100% of the time I'm there, I'm going to be the face of the business. I just don't think - I think it's unfounded, and it's not fair in my opinion. I had a slip up six years ago, previous to that I was young and stupid. I've only had a few slip ups, but overall I think I'm a good person, and I've got a lot to offer. That's my opinion and my side of it."*

109. CD also responded to the Commission's queries regarding how he intended to staff and operate the Premises by stating that (in summary):

(a) the Premises currently has two staff members;

(b) besides himself and an “off-sider”, he will need two other staff members to “run the pub smoothly”;

(c) he intends to “build up” the business, and that there are approximately 10 previous employees of the current licensee who are “all wanting to come back and work [at the Premises]”;<sup>24</sup> and

(d) in effect, he was not intending to continue with operating his concreting business.

110. When cross-examined by Victoria Police about having procedures in place for the impending decriminalisation of intoxicated patrons, and for providing entertainment and higher risk activities at the Premises (e.g., dealing with intoxicated patrons), CD gave evidence to the effect that he and his staff would fall back on complying with RSA principles.

## Post-Second Hearing Day material and Submissions

111. On 30 October 2023, Mr Boundy forwarded a statutory declaration of OQ, a District Nurse and Ambulance Officer, dated 30 October 2023. The statutory declaration was a character reference for CD, having “known [him] for over thirty years as a personal friend”. OQ stated that he has “associated with [CD] in all types or [sic] social settings and environments”, and that he has “always felt safe in his presence with his mature manner”. OQ also stated that he considered CD would operate the Premises “safely, responsibly with accountability, respectful [sic] and inclusive of all patrons, with honest and truthful dealings”.

112. On 10 November 2023, Mr Boundy submitted that CD would be prepared to:

(a) provide an undertaking to attend follow-up counselling sessions with MO; and

(b) join the Bendigo Liquor Accord and attend the Bendigo Liquor Forums.<sup>25</sup>

113. On 17 November 2023, the Commission invited CD to provide an enforceable undertaking to (in summary) recommence counselling with a qualified psychologist, and to attend a minimum of two counselling sessions (held six months apart, at minimum) over a period of 12 months (**Enforceable Undertaking**). CD provided a signed copy of the Enforceable Undertaking on the same day, which the Commission counter-signed on 21 November 2023.

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<sup>24</sup> In response to cross-examination by Victoria Police, CD provided the following additional details of how he intends to “build up the business”: “bring back good service”; “bring meals back”; feature live recorded and amplified music on holidays (e.g., Boxing Day or Easter).

<sup>25</sup> Mr Boundy also submitted that CD attended a meeting of the Bendigo Liquor Accord on 26 July 2023.

## 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 had to determine whether the Applicant is suitable to hold a liquor licence;<sup>26</sup> and 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.<sup>27</sup>
115. The Commission considered the following key issues in deciding to exercise its discretion to set aside the Original Decision and, in turn, grant the Original Application that was the subject of the Review Application:
- (a) whether the Applicant is suitable to hold a liquor licence; 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.

## Whether the Applicant is suitable to hold a licence

116. An application may be refused if the applicant is not suitable to hold a licence.<sup>28</sup> An applicant may be found to be not suitable because an associate or a director is not suitable.
117. In the context of this Review Application, the Commission was tasked with assessing whether CD, as the sole director and shareholder of the Applicant company, is suitable to hold a licence.
118. Considering the objects of the LCR Act, particularly the emphasis on harm minimisation, CD's past criminal history particularly given its association with alcohol issues raised significant concerns about his suitability. However, the comprehensive evidence of his rehabilitation mitigated those concerns.

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<sup>26</sup> LCR Act, sections 44(2)(a) and 47(2).

<sup>27</sup> The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

<sup>28</sup> LCR Act, sections 44(2)(a).

## ***Public confidence***

119. It is important that the public have confidence in the liquor industry, confidence in the administration of the liquor industry and that the community can rely on those approved as a licensee as having been honest and diligent in making their application.<sup>29</sup>
120. In its submissions of 11 April 2023, Victoria Police stated that CD has had difficulty with compliance and has behaved in an unlawful manner whilst under the influence of alcohol. The Commission considers such concerns as extremely relevant in that they point to public safety and maintaining public confidence in the liquor industry.
121. With respect to the 2017 Incident, it is very serious and is directly relevant to CD's suitability in the context of the LCR Act, in that it involved a serious violent offence against a stranger, arising out of CD's intoxication and conduct at a licensed premises. It gave the Commission grave concerns as to whether the public's confidence in the liquor licensing system would be eroded if CD, with his 2017 Incident, and his history with respect to alcohol, were to be permitted to manage a licensed premises on behalf of the Applicant.
122. Alcohol-related violence cannot be condoned. The public, and the Commission, expects that licensees (or potential licensees) are keenly aware of that, and that they will take steps to minimise the risk of harm arising from the supply of alcohol.
123. Moreover, CD's other offences have required serious scrutiny in terms of whether he is suitable for the purposes of the LCR Act. CD's offence relating to lighting a fire is serious, in that it has the potential to cause fires at high-risk times, which may place persons and property at risk of harm. It is relevant to CD's understanding of the need to comply with laws designed to protect the public and is therefore relevant to the question of his suitability for the purposes of this application. So too might a sustained period of driving while exceeding the speed limit show a lack of appreciation as to the risks involved in speeding. His offences for which he was convicted in 2001 and 2009 are also serious and relevant in terms of safety and security.
124. But those offences do not, and ought not, of themselves, disqualify CD from ever being suitable for the purposes of the LCR Act. The Commission must consider his suitability having regard to all of the circumstances and material before it.

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<sup>29</sup> See *Galafaro v Director of Liquor Licensing* [2009] VCAT 919 and *Buzzo Holdings Pty Ltd & Anor v Loison* [2007] VSC 31 (26 February 2007).



125. Importantly, that includes the evidence from CD himself.
126. He presented as a person who has learned from his mistakes and who showed genuine remorse, insight and demonstrated positive rehabilitation. In his evidence to the Commission, CD was frank in answering questions about his history. He accepted responsibility for his actions. He became visibly upset when responding to the consequences of his actions on the victim in the 2017 Incident. The Commission did not consider that he attempted to minimise his conduct, nor direct blame towards others.
127. He has managed his own business, which necessarily involves engaging in stressful situations, and gave evidence about having proactively dealt with unlawful behaviour by his employees.
128. In addition, the Commission recognises CD's engagement in counselling and successful completion of the CCO, along with his willingness to continue psychological counselling (even though the evidence before the Commission was that such counselling was not strictly necessary).
129. The Commission has given significant weight to the fact that CD has given the Enforceable Undertaking and has joined the Bendigo Liquor Accord. The Commission considers that these factors demonstrate both a commitment to personal responsibility and community safety, and to minimising the risks of harm associated with the supply of liquor. They weigh significantly in favour of the community having confidence in the Applicant holding a licence under the LCR Act.
130. It was put to TL that CD might have an opportunity to drink at a hotel he would manage and might 'succumb' to confrontation. TL did not 'see that as an issue', noting that CD had already managed a business, has experience in the area and has gone back to work. CD stated he had been working at the Premises for some months on a voluntary basis (where the current operator of the licence had described CD as remaining polite, professional, hardworking and enthusiastic). There was no evidence that CD had been tempted into irresponsible drinking or inappropriate conflict during this time, which is consistent with TL's opinion that temptation or confrontation would not be an 'issue' for CD. Moreover, it shows community acceptance of CD working at the Premises.

## ***Effluxion of Time***

131. The Commission acknowledges specifically the 'cycle of suitability' concept adopted by the Commission in *An Application by PJ Rahme*, in which it states that suitability is a

“temporal concept and the effluxion of time can reduce the effect of actions that impact suitability”.<sup>30</sup>

132. The Commission considers that CD's most serious offences occurred more than five years ago, with no subsequent similar behaviour. His efforts to address his alcohol use since these incidents, as reported by MO and TL, indicate a significant positive change in his behaviour and attitude.
133. Based on all material before it, the Commission agrees with Mr Boundy's submission of 23 September 2023 that, unlike the applicant in *Danz Management*, CD has expressed remorse and embarrassment, and that he accepts his wrongdoing. Moreover, the Commission is persuaded that CD has learned from his past mistakes.

### ***Is the Applicant a suitable person to hold a licence?***

134. For the reasons set out above, the Commission found that CD is not an unsuitable person.
135. Critically, the Commission has accepted the evidence of TL and the material in the MO Report as to CD's personal growth and rehabilitation since the 2017 Incident (as described above). These matters significantly weigh in favour of CD's suitability, in terms of his character, rehabilitation, and the likelihood that CD and the Applicant would comply with their responsibilities under the licence and the LCR Act.
136. Given that CD is not an unsuitable person, he is also not an unsuitable director of the Applicant company. Consequently, the Commission considered that the Applicant company was not unsuitable to hold a licence under the LCR Act.

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

137. Although the Commission was satisfied that there were no grounds for refusal under sections 47(2) and 44(2) of the LCR Act, it also had to consider if it should exercise its discretion to grant the transfer of the Licence. The Commission notes that such a discretion must be exercised by it 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.

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<sup>30</sup> *Patrick Rahme at OMG Bar and Function Premises (Liquor-contested application)* [2013] VCGLR 39 (15 July 2013) at para 26.

138. The Commission is satisfied that risks of harm can be appropriately minimised and compliance with the LCR Act maintained. However, having regard to all of the circumstances, Commission considers that it was appropriate that a condition be placed on the Licence requiring that the Applicant company complies with the Enforceable Undertaking. The Commission considers that a commitment to the Enforceable Undertaking demonstrates the Applicant company's ability to comply with the regulatory scheme of the LCR Act.
139. In addition, having regard to all the circumstances, the Commission also considers that it was appropriate that a condition be placed on the Licence requiring that the Applicant company provides a Venue Management Plan to include the duties and responsibilities of staff members in the following areas:
- (a) following the principles of responsible service of alcohol;
  - (b) assisting customers to drink within appropriate limits;
  - (c) assessing alcohol affected customers and identifying those to whom sale or service must be refused; and
  - (d) refusing to provide alcohol.
140. The Commission does not consider it necessary or appropriate to require follicle testing, having accepted TL's evidence that it would not be particularly useful in CD's case.
141. With the imposition of these conditions as set out in Appendix A, the Commission was satisfied that adequate controls will exist over the supply and consumption of liquor at the Premises and that any potential for harm should be minimised. Accordingly, the Commission considers that the grant of the transfer of the Licence in this instance was not contrary to the LCR Act's object concerning harm minimisation.

## Decision on review

142. The Commission was satisfied that the Review Application met all legislative requirements set out above. Accordingly, based on the reasons set out below, the Commission was satisfied that granting the transfer of the licence the subject of the Review Application was appropriate in the circumstances.
143. On that basis, the Commission determined to set aside the Original Decision and, in substitution, grant the application for a transfer of the licence subject to the conditions in Appendix A (**Review Decision**).

144. On 24 November 2023, the Commission advised the parties of the Review Decision, and that the reasons for decision would follow. It also advised Mr Boundy that it was the Commission's expectation that the Applicant company would join the Bendigo Liquor Accord as soon as practicable.

***The preceding 144 paragraphs are a true copy of the deidentified Reasons for Decision of Mr John Larkins (Deputy Chair), Ms Susan Timbs (Commissioner) and Mr Steven Brnovic (Commissioner).***

## Appendix A

### Type of licence

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

The licensee must notify the Victorian Liquor Commission before commencing the supply of liquor by off-premises request.

If the licensee commences the supply of liquor by off-premises request, it must comply with the conditions set out in section 18C of the *Liquor Control Reform Act 1998*.

The licensee must not allow liquor to be delivered except during ordinary trading hours.

### 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.

### Special conditions

The licensee must comply with the undertaking given by the licensee on 17 November 2023 and as amended from time to time.

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 and bars and entertainment areas. The surveillance recording system must operate from 30 minutes before opening and until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by Victoria Police or a person authorised in writing by the Victorian Liquor Commission, or otherwise retained for at least one month. The positioning of cameras is to 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'

By 8 February 2024, the licensee must have developed and implemented a venue management plan, which is to include the duties and responsibilities of staff members, including bar staff and packaged liquor salespersons (**Venue Management Plan**). The Venue Management Plan is to include the duties and responsibilities of staff members in the following areas:

- Following the principles of responsible service of alcohol.
- Assisting customers to drink within appropriate limits.
- Assessing alcohol affected customers and identifying those to whom sale or service must be refused.
- Refusing to provide alcohol.

By 15 February 2024, the licensee must submit a copy of the Venue Management Plan to Liquor Control Victoria. Where the licensee amends the Venue Management Plan in such a way as to vary its provisions relating to the duties and responsibilities of staff members, the licensee must submit to Liquor Control Victoria a copy of the amended venue management plan within five (5) business days of the amendment, where such amendments must be to Liquor Control Victoria's satisfaction.

The licensee must make the Venue Management Plan (as amended from time to time) for inspection at the licensed premises on request by a liquor inspector or member of Victoria Police.

To the extent that a matter is not already dealt with on this licence, the licensee must comply with the Venue Management Plan as amended from time to time and approved by Liquor Control Victoria.

## Maximum capacities (Applicable after 12 midnight only)

Dining/Lounge LM1 (50 persons)

## Trading hours

### FOR CONSUMPTION OFF THE LICENSED PREMISES –

Sunday	Between 10am and 11pm
Good Friday & ANZAC Day	Between 12 noon and 11pm
On any other day	Between 7am and 11pm

### FOR CONSUMPTION ON THE LICENSED PREMISES –

Sunday	Between 10am and 11pm
Good Friday	Between 12 noon and 11pm
ANZAC Day (not being a Sunday)	Between 12 noon and 1am the day following
On any other day	Between 7am and 1am the day following except for the morning of Good Friday

Note: Trading after 12 midnight is restricted to the dining/lounge area.