


Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Mr John Mikulcic for an internal review of a decision by a delegate to grant an application by BHS Online Pty Ltd for a packaged liquor licence for the premises trading as Blackhearts & Sparrows, located at 108 Ormond Road, Elwood

Commission:	Mr John Larkins, Deputy Chair Ms Susan Timbs, Commissioner Mr Steven Brnovic, Commissioner
Appearances:	Mr John Mikulcic, Applicant Mr Martin Towey of LGS Legal, Solicitor for the Licensee Ms Lydia Taylor-Moss, Counsel Assisting the Commission
Date of Hearing:	16 November 2023 and 15 December 2023
Date of Decision:	8 July 2024
Date of Reasons:	8 July 2024
Decision:	The Commission has determined to affirm the decision of the Delegate subject to the conditions set out in Appendix A
Signed:	 John Larkins, Deputy Chair

Background

Original Application

1. On 13 February 2023, BHS Online Pty Ltd (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ for a packaged liquor licence for the premises located at 108 Ormond Road, Elwood (**Premises**) trading as Blackhearts & Sparrows (**Original Application**).
2. The Licensee sought the ordinary trading hours for a packaged liquor licence, namely:

Sunday	Between 10am and 11pm
ANZAC Day	Between 12noon and 11pm
Any other day other than Good Friday and Christmas Day	Between 9am and 11pm
3. In accordance with section 33, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector (together, **Victoria Police**) and the City of Port Phillip (**Council**) on 22 February 2023. On 17 March 2023, Victoria Police indicated that it did not object to the grant of the Original Application. On 29 March 2023, the Council also indicated that it did not object to the grant of the Original Application.
4. In March 2023, the Commission accepted four objections to the Original Application, pursuant to section 38, from occupants and owners of residential properties in the local area of the Premises (**Objectors**). The Objectors included Mr John Mikulcic (**Applicant**) and related individuals. The objections were based on concerns that granting the Original Application would be conducive to or encourage harm and would detract from or be detrimental to the amenity of the area.
5. The Objectors' concerns also included that a nearby packaged liquor store operated by the Applicant would be negatively impacted by the grant of the Original Application, and that the shopping strip already had too many stores which sell liquor. Those concerns in so far as they relate to any impact on existing businesses or lack of need for a further licence are invalid grounds for objection.² However, this is not to be

¹ All references to legislation are references to the LCR Act unless stated otherwise.

² LCR Act, section 38(3). See [30] below.

confused with legitimate and permissible issues which might arise from a significant density of licences within a particular area.

6. On 26 May 2023, a delegate of the Commission (**Delegate**) granted the Original Application under section 47, pending the grant of a planning permit by the Council, (**Original Decision**).

Application for Internal Review

7. On 23 June 2023, the Applicant applied for an internal review of the Original Decision (**Review Application**).
8. As part of the Review Application, the Applicant sought a stay of the Original Decision. The Commission refused that stay application on 30 June 2023.

Legislation and the Commission's task

The Commission's internal review power

9. 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 Applicants are eligible persons to apply for a review of that decision. The Review Application was made pursuant to section 153.
10. 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.³
11. 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:

³ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

- (a) grant the Original Application and, if so, whether to do so subject to conditions;⁴
or
- (b) refuse to grant the Original Application.⁵

Determination of a contested application

12. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Original Application was contested, as objections were received under division 5 of part 2 within the relevant period.⁶
13. 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.
14. Section 47(2) provides that the Commission may refuse to grant a contested application on any of the grounds set out in section 44(2) and section 44(3) applies accordingly.
15. Pursuant to section 44(2), the Commission may refuse to grant an application on certain grounds, including that the granting of the application would:
 - (a) detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated;⁷ or
 - (b) be conducive to or encourage harm.⁸
16. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.⁹ Factors that may be taken into account in determining whether granting a licence would detract from or be detrimental to the amenity of the area include:
 - (d) *the possibility of nuisance or vandalism;*
 - (e) *the harmony and coherence of the environment;*

⁴ LCR Act, sections 47, 49 and 157.

⁵ LCR Act, sections 47 and 157.

⁶ LCR Act, section 3(1) (definition of "contested application").

⁷ LCR Act, section 44(2)(b)(i).

⁸ LCR Act, section 44(2)(b)(ii).

⁹ LCR Act, section 3A(1).

(f) any other prescribed matters.¹⁰

However, the definition of “amenity” for the purposes of the LCR Act is not limited by these factors.¹¹

Exercising the internal review power

17. 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.
18. 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.*

19. 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.*¹²

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

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

¹⁰ LCR Act, section 3A(2). Until a legislative amendment in 2018, the following factors were also included as evidencing detriment to the amenity of the area: (a) the presence or absence of parking facilities; (b) traffic movement and density; (c) noise levels.

¹¹ LCR Act, section 3A(3).

¹² 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).

- (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.*
- 21. In exercising the internal review power, the Commission:
 - (a) must consider all the information, material and evidence before the original decision maker;¹³ and
 - (b) may consider further information, material or evidence.¹⁴
- 22. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application on internal review 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.
- 23. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

Conduct of an inquiry

- 24. Section 47(3) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate. The Commission must give the applicant and each objector a reasonable opportunity to be heard.
- 25. 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 the rules of natural justice.

Packaged liquor licences

- 26. Pursuant to section 11(1), a packaged liquor licence authorises the licensee to supply liquor on the licensed premises in sealed containers, bottles or cans during ordinary trading hours for consumption off the licensed premises.¹⁵

¹³ LCR Act, section 157(2).

¹⁴ LCR Act, section 157(3).

¹⁵ A packaged liquor licence may also authorise the licensee to trade at other times if so determined by the Commission and specified in the licence: LCR Act, section 11(1)(b)–(d).

27. Section 3(1) defines the “ordinary trading hours” of a packaged liquor licence to mean: between 9am and 11pm on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; between 10am and 11pm on Sunday; and between 12 noon and 11pm on ANZAC Day.
28. A packaged liquor licence is subject to a condition that “the predominant activity carried on in the area set aside as the licensed premises is the sale by retail of liquor for consumption off the licensed premises”.¹⁶
29. Section 38(1) relevantly provides that any person may object to the grant of a packaged liquor licence on the grounds that the grant would detract from or be detrimental to the amenity of the area in which the licensed premises are situated, or would be conducive to or encourage harm.
30. Section 38(3) provides that the following are not valid reasons for objection:
 - (a) the business carried on under the licence would or would not be successful;
 - (b) the business of another licensee or permittee (including the objector) may be adversely affected by the grant; or
 - (c) there is insufficient need or demand to justify the grant.

Material before the Commission

31. The Commission on review had before it, and considered, all the materials before the Delegate. The Commission also received and considered the following materials:
 - (a) Original Decision and Reasons of the Delegate dated 26 May 2023;
 - (b) Review Application received on 23 June 2023;
 - (c) planning permit for the Premises granted on 11 July 2023;
 - (d) email communication received from the Applicant on 1 September 2023;
 - (e) email communication received from Mr Martin Towey on behalf of the Licensee on 18 September 2023;
 - (f) email communication received from the Applicant on 28 September 2023;

¹⁶ LCR Act, section 11(3)(aa).

- (g) email communication received from the Applicant on 4 October 2023;
 - (h) email communication received from Mr Towey on 30 October 2023 attaching:
 - (i) submissions on behalf of the Licensee;
 - (ii) data from the Crime Statistics Agency as at 6 October 2023;
 - (iii) business profile for the Licensee;
 - (iv) statement of display dated 27 March 2023; and
 - (v) letter from the Council to the Licensee dated 25 January 2023;
 - (i) submissions and evidence presented at the hearing of the Review Application on 16 November 2023;
 - (j) email communication received from Mr Towey on 13 December 2023 attaching:
 - (i) report prepared by Urbis Ltd dated 13 December 2023 (**Urbis Report**);
 - (ii) house rules/premises management plan (**Premises Management Plan**);
 - (iii) intoxication and ID guide;
 - (iv) online deliveries guide; and
 - (v) “20 Coolest Retailers in Australia” report;
 - (k) response to Urbis Report received from the Applicant on 29 December 2023;
and
 - (l) letter from Mr Towey received on 12 January 2024 and attached photographs.
32. Deputy Chair Larkins also viewed the Premises and other nearby packaged liquor premises on 13 November 2023, and the Blackhearts and Sparrows licensed premises in Brunswick Street, Fitzroy on 12 December 2023. Commissioner Timbs also viewed the Blackhearts and Sparrows on Commercial Road, Prahran

Hearing

33. A hearing was held in relation to the Review Application on 16 November 2023 (**Hearing**).¹⁷ The Applicant appeared in person. Mr Martin Towey of LGS Legal appeared on behalf of the Licensee. Mr Paul Ghaie, a director of the Licensee, gave evidence on behalf of the Licensee.

The Applicant's evidence

34. The Applicant gave evidence that he had witnessed “a lot of bad behaviour in the area” and had called the police on certain incidents.¹⁸
35. The Applicant stated that, although there were not a lot of objections to the Original Application, there were a lot of objections to the planning permit application. He said that most people who objected to the planning permit application were not aware that they also had to object to the Original Application.¹⁹

Mr Ghaie's evidence

36. Mr Ghaie stated that he ran the Blackhearts & Sparrows business with his sister. He said that they opened stores where they thought they would have a positive impact on the drinking culture within that neighbourhood by offering up something more elevated and specialised that was not currently available in the area.²⁰
37. Mr Ghaie said that 40% or 50% of the stock they sell is refrigerated and that corked wine is about 40% of their wine turnover. He stated that 75% of their sales were wine and that the bulk of customer purchasing is two or three bottles. He said that they did not carry much stock and their cheapest bottle of wine was \$12 to \$14. He stated that they did not select stock just because they were getting a good price on goods, but because it passed a rigorous tasting panel process and deserved to be in the store. He said that they were continuing to diversify their offering, including offering a large range of non-alcoholic drinks and a bit more food.²¹

¹⁷ A directions hearing was also held on 24 August 2023. The Applicant provided the Commission with a list of other nearby packaged liquor premises.

¹⁸ Transcript of Hearing, page 8, line 21 to page 9, line 21.

¹⁹ Transcript of Hearing, page 6, line 14 to line 20; page 12, line 15 to page 13, line 39.

²⁰ Transcript of Hearing, page 17, line 8 to line 23; page 19, line 25 to line 40.

²¹ Transcript of Hearing, page 17, line 26 to page 17, line 35; page 20, line 4; page 21, line 10 to line 24; page 26, line 10 to page 27, line 4; page 32, line 31 to line 32.

38. Mr Ghaie gave evidence that staff undergo extensive training in wine knowledge and their responsible service of alcohol obligations. He said that, during the COVID-19 pandemic, staff members raised concerns about customers coming in too regularly and were advised how to help minimise what those customers were purchasing, including by suggesting low-alcohol and no-alcohol options.²²
39. Mr Ghaie stated that Blackhearts & Sparrows refers to themselves as a “wine store” to distinguish themselves from a “bottle shop”. He said they see themselves as a premium retailer and were not a discount retailer. He said that they offer a standard 10% off six bottles, which was about the extent of their discount, and are working on a loyalty program. He said that they attract a more discerning drinker who comes for an experience, rather than a “quick fix”. He said that they did not have an issue of attracting underage clientele.²³
40. Mr Ghaie said that they do not trade late: the latest any of their stores stays open is 9pm and they currently plan to close the Premises at 8pm.²⁴
41. Mr Ghaie gave evidence that the Premises would probably generate less noise than a surrounding cafe because the Premises does not have outside speakers, and they would not be emptying bottles into bins. He said that most of their recycling is cardboard recycling, some of which gets reused for packaging.²⁵
42. Mr Ghaie said that their business is very localised and that a lot of customers come from within a comfortable walking distance of 2 km to 3 km. He said that some customers drive to their stores, but he was not sure if they drove specifically to them as there are lots of complementary businesses nearby.²⁶
43. Mr Ghaie said that the Blackhearts & Sparrows business offers deliveries through its online store, but the Licensee will not offer deliveries from the Premises.²⁷

²² Transcript of Hearing, page 19, line 42 to page 20, line 18; page 24, line 5 to line 10; page 30, line 30 to page 31, line 27; page 32, line 43.

²³ Transcript of Hearing, page 20, line 22 to line 31; page 23, line 36 to page 24, line 19; page 32, line 30 to 39.

²⁴ Transcript of Hearing, page 28, line 10 to line 14.

²⁵ Transcript of Hearing, page 33, line 5 to line 22.

²⁶ Transcript of Hearing, page 33, line 26 to page 34, line 9.

²⁷ Transcript of Hearing, page 21, line 15 to line 18.

Applicant's alcohol-related harm statistics

44. The Commission may refuse to grant the licence if the grant of the licence would be conducive to or encourage harm.
45. In one sense, as a matter of logic, it could be said that any grant of a new packaged liquor licence would be conducive to or encourage harm, because it would mean another outlet from which to purchase liquor: the corollary of which is to lead to the increased supply of liquor, which may then lead to easier access to liquor (such as for minors), and increased consumption through cheaper liquor brought about by increased competition. Each of these could be said to be conducive to or encourage harm. But that would defeat the purpose of the Commission's power to grant such a licence.²⁸
46. Instead, in this case, the Commission has adopted an approach where it must consider whether the object of harm minimisation would be poorly served because of the particular local, social, demographic and geographic circumstances.²⁹ This requires forming a baseline understanding of the particular local circumstances affecting the application (including density of packaged liquor outlets and the existing degree of alcohol-related harm). 'Locality evidence' on the social, demographic or geographical circumstances of the application, are considerably relevant to this task.³⁰
47. To facilitate this task, on 28 September 2023, the Applicant provided the following statistics of alcohol-related harm (**Applicant's Harm Statistics**):

Port Phillip Council Area (PPCA).

- *The number of people hospitalised due to alcohol in PPCA for the 5 year period 2017 – 2021 (as last updated) was 6257. This was the 4th highest number in the state. For the preceding 5 year period 2012 – 2016 the number was 5341 admissions. Then ranked 8th in the state. This statistic shows an increase of 17% in hospital admissions.*
- *For the overall period PPCA has the 4th highest number of female hospital admissions in the state*
- *PPCA has the 6th highest number overall of ambulance attendances in the state. Of this it has the 5th highest number for women.*

²⁸ See *Black Lula Evangeline & Cooke Brian v Liquor Licensing Victoria & Green Dragon Pty Ltd* [2000] VCAT 459. See also *Kordister Pty Ltd* [2012] VSCA 325, 39 VR 92 at [17].

²⁹ *Ibid.*

³⁰ *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, (2012) 39 VR 92, 104-105 [51]-[53],

- *The number of people seeking direct line counselling has risen to 3rd in the state from the period (2016-21) from 4th in the preceding 5 year period.*
- *The number of people seeking online counselling has risen to 8th in the state from 11th in the preceding [period]*
- *The number of serious road injuries has risen by 70% in the period 2015-19 since the preceding 5 year period.*
- *Fatalities have increased by 7.5% in the period 2016-20 since the previous 5 years.*
- *Assaults have increased by 20% in the period 2016 – 20 since the previous 5 years*
- *908 liquor licences in operation as of the 2021 financial year, the third highest number out of all local government areas in the state*

According to the 2017 Victorian Population Health Survey:

- *39.3 per cent of adult Port Phillip residents were at an increased lifetime risk of alcohol related harm due to weekly drinking habits, compared to the Victorian average of 24.7 per cent.*
- *59.3 per cent of adult residents consumed more than 2 standard drinks on a single day once or twice a week, the Victorian average being 56.9 per cent.*
- *19.4 per cent of adult residents were at an increased monthly risk of alcohol-related injury from a single occasion of drinking, compared to the Victorian average of 12.8 per cent.*

Licensee's written submissions

48. On 30 October 2023, Mr Towey made the following submissions in relation to harm:
- (a) Harm to minors would be appropriately minimised because the Licensee has a robust process of challenging patrons as to their age and establishing proof of age.
 - (b) In relation to harm to vulnerable persons or communities and family violence, the Licensee relies upon the fact that the Victoria Police have not raised any concerns with the Original Application.
 - (c) Given the Licensee's experience and the lack of objections, there is no evidence that the confirmation of the grant of a packaged liquor licence will lead to an increase in anti-social behaviour.
 - (d) The accuracy of the Applicant's Harm Statistics was not disputed, but at no time will the grant of the licence to this Licensee lead to an increase in harms as alleged by the Applicant.
 - (e) Based on data from the Crime Statistics Agency, it appears that public disorder in the local area is not increasing (sic).

- (f) In relation to amenity, the Licensee will provide a high-end offering of products that do not lend themselves to being consumed in the street with the packaging contributing to littering.
 - (g) The fact that the only objections received were all identified as being family related, leads to a presumption that the wider community is in favour of the proposed offering that the Licensee intends to introduce at the Premises. Accordingly, granting a packaged liquor licence to the Licensee is entirely in keeping with community expectations.
49. On 13 December 2023, Mr Towey provided the Urbis Report, Premises Management Plan, and the Licensee's intoxication and ID guide and online deliveries guide. Mr Towey submitted that the following special conditions would be appropriate to mitigate identified risks in the sale of packaged liquor and the delivery of packaged liquor:

Premises Management Plan

The licensee must take all reasonable steps to conduct and supervise all aspects of the management of the premises in accordance with the Premises Management Plan provided to the Victorian Liquor Commission, as amended from time to time. The Premises Management Plan must be retained on the licensed premises in the possession of the licensee, nominee, manager or other person in charge. The Premises Management Plan must be available to an authorised member of Victoria Police or a Liquor Inspector if requested.

Liquor Accord

The licensee must participate in the Port Philip Liquor Accord as approved by a Victoria Police Licensing Inspector.

Security Cameras

The licensee must maintain a surveillance recording system that is able to clearly identify individuals, display time and date, and provide continuous images of all areas where patrons are permitted, including entrances and exits. The surveillance recording system must operate at all times the venue is open. A copy of the recorded images must be retained for at least one month and must be available upon request for immediate viewing and/or removal by Victoria Police or Liquor Control Victoria.

Proof of Age

All proof of Age checks will be undertaken under a security camera.

Complaints Register

The licensee must maintain a register containing details of any complaints made in relation to its operations on the licensed premises.

50. The Urbis Report made the following findings:

- (a) There is no reason to suggest that any of the Applicant's Harm Statistics are incorrect. While the data raises some concern in relation to the impact of alcohol-related harms in the Council area, it is not possible to make conclusions as to the impact of packaged liquor outlets compared to other licence types. Although the rate of alcohol-related hospital admissions and assaults in the Council area are above the Victorian average, the Applicant's Harm Statistics are likely skewed by other parts of the municipality where there is higher concentration of liquor outlets, such as St Kilda. Given the lower liquor outlet density, low crime rate and higher social and economic profile of residents in Elwood, alcohol-related harm in the local area is expected to be well below the municipal average. The Applicant's Harm Statistics are not able to provide a clear indication of whether there is likely to be alcohol abuse and misuse by the local community as a result of additional access to alcohol sales.
- (b) Alcohol-related harm is more closely associated with licensed premises such as hotels, bars and nightclubs, operating late at night. As people will not be drinking on site, issues such as noise, anti-social behaviour, violence and crime are unlikely outcomes. It is the positive impacts that are more likely to result from this proposal including the increased consumer choice of packaged liquor in the area.
- (c) The liquor outlet is likely to be accessed by people in the surrounding area due to its size and location, in comparison to "big box" liquor outlets which attract people from a wider catchment. The modest size of the liquor outlet and profile assists in minimising the risk of harm by providing a destination for customers seeking a more distinctive liquor product or a higher-end product, not typically found at larger format, standard bottle shops.
- (d) The following mitigation measures are in place:
 - (i) Local laws prohibit the consumption of liquor in public places.
 - (ii) The Licensee will notify the police where team members observe and become aware of persons consuming liquor in a public place. The Licensee does not supply liquor to persons whom they reasonably believe are likely to consume liquor in a public place.

- (iii) The Licensee will decline purchase of alcohol to a minor, persons in school uniforms and persons who appear to be influenced by alcohol.
 - (iv) The Licensee observes compliance with the requirements of the *Liquor Licensing Code of Conduct: Packaged Liquor Licensees* (Victorian Commission for Gambling and Liquor Regulation, January 2019) in relation to the display of signage, and marketing and promotions.
 - (v) The Licensee fulfils online orders for next day delivery only.
 - (vi) The Premises has proposed reduced trading hours to 9pm.³¹
 - (vii) The Premises contains clear glazing along the Ormond Road frontage to enable passive surveillance of the street and the shop premises.
 - (viii) The Licensee has prepared a Premises Management Plan to ensure all reasonable steps are made to conduct and supervise all aspects of the management of the liquor outlet.
 - (ix) The Licensee will be involved in the Port Phillip Liquor Accord.
- (e) Overall, liquor licence outlet density in Elwood is well below the average level for the rest of the Port Phillip municipality and marginally above the outlet density for Melbourne. While packaged liquor licence density is above the Melbourne average, it is not significantly higher and is below the rest of the municipality.
- (f) There is some research that suggests increased outlet density can make alcohol more accessible or increase alcohol consumption by increasing market competition by lowering the price of alcohol. There is no evidence to suggest that this is necessarily the case in the Council area. There is also contrasting research that suggests that the impact of extra outlets diminishes as the number of outlets per square kilometre increases. However, there is no data to confirm this for the Council area.
- (g) When considering the community of Elwood and the potential increase in harm associated with alcohol misuse, it is reasonable that one cannot assume it is directly linked to a packaged liquor outlet. For example, the location and timing of

³¹ The Commission notes that Mr Ghaie said that they currently plan to close the Premises at 8pm: Transcript of Hearing, page 28, line 10 to line 14.

packaged liquor consumption is directed by the intentions of the purchaser (i.e., a customer may intend to consume liquor at a function to be held on the weekend and in a different suburb from the point of sale), as opposed to the location of the liquor outlet.

51. On 12 January 2024, Mr Towey provided submissions which relied on the existing Urbis report. He emphasised that the Premises is different to other offerings in terms of products and only limited discounts. He stated that granting a packaged liquor licence to the Premises is consistent with the objects of the LCR Act (in particular, diversity of licensed premises reflecting community expectations).³² He provided a table showing the number of licences in the Council area, St Kilda, South Melbourne, Elwood and other council areas where Blackhearts & Sparrows holds multiple packaged liquor licences. He highlighted that Elwood only has 7.25% of all licences in the Council area.

Applicant's response to the Urbis Report

52. On 29 December 2023, the Applicant responded to the Urbis Report as follows.
- (a) The Urbis report is unable to refute the Applicant's Harm Statistics. Urbis's assertion that the Applicant's Harm Statistics are related to areas with higher concentrations of liquor outlets is the crux of the Applicant's objection. He does not agree that the Applicant's Harm Statistics are not able to provide a clear indication of whether there is likely to be alcohol abuse and misuse by the local community as a result of additional access to alcohol sales. There is a clear correlation between alcohol harm and abuse and the ease of access to it.
 - (b) Spending on liquor is higher across the local area, which is creating a toxic drinking environment as supported by the Applicant's Harm Statistics. Explaining the higher spend by the higher income level in the neighbourhood is an assumption.
 - (c) The use of a 500 m radius is arbitrary. A radius of 3 km is more applicable as the Ormond Road shopping strip draws from surrounding neighbourhoods.
 - (d) It is practically impossible for a staff member to determine where a customer will consume the alcohol they have purchased once they leave the store. The other

³² LCR Act, section 4(1)(b). See [18] above.

mitigation measures proposed are quite standard across the industry and expected of all packaged liquor premises.

- (e) Increased competition can decrease prices and also lead to outlets overlooking RSA requirements to gain patronage. The flow on effect of this will be to negatively impact the amenity of the area and increase risks of harm. Urbis does not explain why research outlining that increased concentration can lead to increased consumption does not apply to the Council area.
- (f) It seems that the Urbis Report is trying to say that bottle shops are not associated with harm and damage occurring in a community, and that Urbis and the Licensee do not consider the real risk of alcohol abuse and related amenity issues as relevant considerations for the Premises. It is concerning that any applicant would think their proposed bottle shop would not impact behaviour or contribute to alcohol-related harms.

Reasons for decision on review

Issues for determination on review

In making its decision on review, the Commission must determine the following issues:

- (a) firstly, whether the business will operate in a way that complies with section 11;
- (b) secondly, whether the grant of a packaged liquor licence would be conducive to or encourage harm,³³
- (c) thirdly, whether granting a packaged liquor licence would detract from or be detrimental to the amenity of the area in which the Premises are situated,³⁴ and
- (d) fourthly, whether granting a packaged liquor licence would be contrary to the objects of the LCR Act.³⁵

53. Each of these issues is discussed in turn.

³³ LCR Act, sections 44(2)(b)(ii) and 47(2).

³⁴ LCR Act, sections 44(2)(b)(i) and 47(2).

³⁵ LCR Act, sections 4 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).

Compliance with section 11

54. In applying for a packaged liquor licence, an applicant must satisfy the Commission that the “predominant activity” carried on in the licensed premises is “the sale by retail of liquor for consumption off the licensed premises”.³⁶
55. Having considered the materials lodged by the Licensee, the Commission is satisfied that the Licensee will comply with the predominant activity condition in section 11(3)(aa).

Whether granting a packaged liquor licence would be conducive to or encourage harm

56. An application may be refused if granting the application would be conducive to or encourage harm.³⁷
57. As stated above, “harm” for the purposes of the LCR Act means harm arising from the misuse and abuse of alcohol. This includes harm to minors, vulnerable persons or communities, including groups within communities; family violence; and anti-social behaviour, including behaviour that causes personal injury or property damage.³⁸
58. The Applicant’s Harm Statistics relate to hospitalisations, ambulance attendances, road injuries, assaults, fatalities and other risks of harm due to drinking habits, across the Council area as a whole.
59. The Premises would service predominantly the local area, being the Elwood area and its immediate surrounds. The Commission accepts Mr Ghaie’s evidence that the Licensee’s proposed clientele would be ‘very localised’ and would predominantly be those persons who shop around the Ormond Road shopping precinct in which the Premises is located.
60. The Commission accepts that Elwood is a relatively affluent area in Melbourne which the Urbis Report describes as having a population ‘reflective of the area being a sought-after inner-city lifestyle suburb with high amenities and access to beach, especially amongst the young and established families.’ It is an area with ‘below average’ disadvantage. The Urbis Report also states that the overall crime rate in

³⁶ LCR Act, section 11(3)(aa). See [28] above.

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

³⁸ LCR Act, section 3(1) (definition of “harm”).

Elwood is 'well below' the municipal, southern metropolitan region and Victorian average levels. It states that overall liquor licence outlet density in Elwood is well below the average level for the rest of the Port Phillip municipality and marginally above the outlet density for Melbourne.

61. The Licensee's Urbis report made submissions on the density of licensed packaged liquor outlets. It submitted that there were three such premises within 100 metres of the site and four within 500 metres of the site. One such premises was a supermarket; another was a butcher selling a limited number of wines under its own brand and in both cases, it was submitted, that the sale of liquor was an ancillary component to the purchase of groceries and meat, respectively. Mr Towe submitted that Elwood had only 7.25 per cent of all licences in the City of Port Phillip.
62. The evidence was that the Premises may serve persons from two to three kilometres away (being a 'comfortable walk') from the premises and those passing through Ormond Road *en route* to the city or elsewhere. The City of Port Phillip local government area – which includes Elwood, Port Melbourne, South Melbourne, Albert Park, St Kilda, St Kilda East, Balaclava and Ripponlea— is one where there is a relatively high density of liquor licences and where data indicates there is a significant and concerning degree of alcohol-related harm.
63. Given on Mr Ghaie's evidence, the Premises would serve an area including and adjacent to Elwood, it is appropriate to, in the words of Judge Bowman VP in *Nardi v Director of Liquor Licensing* [2005] VCAT 323, take a 'conservative' approach to the matter. This is so even considering that the likely area served by the Premises would be smaller than the City of Port Phillip local government area, and that the data on harms identified by the parties is very likely to be skewed by harms arising from nightclubs and entertainment areas, particularly in St Kilda and South Melbourne.
64. The Commission considers there is a significant existing degree of alcohol-related harm arising from the area that may be serviced by the Premises.
65. But that is not the end of the matter. The Commission is to consider the likely degree of harm arising if this licence were to be granted, such that it can assess whether and the extent to which the granting of the application would be conducive to or encourage harm as against the *status quo* as presented to it by the parties.

66. The Commission accepts that the Licensee has applied for a packaged liquor licence for its specialist wine store and that on Mr Ghaie's evidence, the Licensee is a premium retailer which selects its products based on quality rather than price, and does not engage in substantial discounting or sell in bulk. The Licensee also offers a large range of non-alcoholic options and some food. The Licensee will cease trading at 8pm, three hours earlier than the ordinary trading hours permitted for a packaged liquor licence.³⁹
67. The Commission accepts Mr Ghaie's evidence that when he operated in Balaclava, he 'rarely saw any troubles' and that their clientele was 'more about lifestyle' and an 'experience' rather than a 'quick fix' of alcohol. The Commission gives significant weight to the fact that the Licensee's business model is substantially different to other packaged liquor outlets in the area, given its particular focus, liquor lines, its recognised brand, niche market and clientele.
68. The Commission considers that all of these factors mean that the Licensee's patrons are very unlikely to purchase liquor from the Licensee and consume it in the local area in such a way as to contribute to or exacerbate harm within that area. The addition of the Premises to the density of packaged liquor outlets does not therefore necessarily lead to an exacerbation of harm simply because more liquor will become more accessible. The Licensee's pricing model also means that it would not have an impact on competition in the area such that alcohol would become unduly cheaper or more accessible.
69. Further, the Licensee and its directors are experienced packaged liquor retailers with a history of complying with their obligations under the LCR Act. This was clear from Mr Ghaie's evidence, which acknowledged the relevance and worth of matters raised and showed awareness of potential harms of operating a packaged liquor licensed premises. The Licensee's Premises Management Plan, intoxication and ID guide, and online deliveries guide are thorough policies, which include comprehensive refusal procedures and regular staff training.
70. Mr Ghaie gave evidence of staff raising concerns about customers coming in too regularly, demonstrating a strong understanding by staff of their RSA obligations. The training described by Mr Ghaie of directing such customers to low-alcohol and

³⁹ Transcript of Hearing, page 28, line 10 to line 14.

no-alcohol options is an appropriate procedure for encouraging a culture of responsible consumption of alcohol. The Commission is confident that the Licensee would continue to engage in appropriate RSA practices and adopt harm minimisation strategies in the licenced premises if licensed.

71. The Commission accepts from Mr Ghaie's evidence and the Licensee's policy and procedures documents that the Licensee is aware of and has adequate controls in place to mitigate many of the harms arising from the misuse and abuse of alcohol associated with packaged liquor premises. It is also clear that the Licensee strives to encourage a culture of responsible consumption of alcohol and reduce risky drinking of alcohol and its impact on the community.
72. Drawing all of these matters together, the Commission considers that the Licensee engages in the following activities and strategies that are over and above what might ordinarily be expected of a packaged liquor outlet to appropriately minimise harm from the misuse and abuse of alcohol:
 - (a) The Licensee supplies high-end lines of liquor, promoting itself as focusing on the wine experience (and providing that experience), and as such is unlikely to be a destination for bulk purchases leading to potentially harmful drinking;
 - (b) The Licensee does not engage in substantial discounting or bulk sales of liquor, which might otherwise lead to a greater and riskier volume of supply;
 - (c) The Licensee adopts, and ensures its staff adopt, responsible service of alcohol practices (including an awareness of when customers may be at risk of harm);
 - (d) The Licensee supplies a range of low- or non-alcoholic beverages which encourages responsible drinking practices, and also supplies food (which is well known to assist in slowing intoxication);
 - (e) The Licensee does not intend to supply liquor during late night hours which are associated with higher levels of harm;
 - (f) The Licensee adopts a Premises Management Plan, training practices and policies to guide the responsible service of liquor in a manner that encourages a culture of responsible consumption of alcohol.
73. It is on these bases that the Commission is satisfied that there would not be an unacceptable degree of harm arising from the grant of this particular licence, such that

it would not materially contribute to the existing (but significant) level of harm within the local area. The Commission's view is that it is of significant importance that the Licensee continues to operate as described above.

74. That being so, it is necessary and appropriate that Licensee be under an obligation to continue to implement these protective factors by way of the imposition of conditions.
75. The Commission considers that requiring the Licensee to adopt its 'House Rules' that gives effect to the factors identified above at paragraph 72 for the life of the licence will facilitate the objectives of the LCR Act as set out at section 4.
76. The Commission has considered the conditions proposed by the Licensee, and considers they are reasonable and appropriate measures to further minimise harm and risks to amenity, and so the Commission has determined to impose them.
77. Accordingly, taking a cautious approach in the specific circumstances before the Commission, and imposing the conditions made by the Delegate and reproduced in Appendix A, the Commission is not satisfied that the grant of the application would be conducive to or encourage harm.

Whether granting a packaged liquor licence would detract from or be detrimental to the amenity of the area

78. An application may be refused under sections 47(2) and 44(2) if the granting of the application would detract from or be detrimental to the amenity of the area in which the premises are situated.
79. The Applicant's objections to the Original Application and the Review Application included amenity concerns, such as drunkenness, violent and disorderly behaviour, drinking in public places and littering.
80. The Commission notes that the Council issued a planning permit for use of the Premises for the sale of packaged liquor for consumption off the premises. That permit includes conditions concerning waste management and the loading and unloading of delivery of goods.
81. As discussed above, the Licensee and its directors have demonstrated experience in the packaged liquor industry and a comprehensive approach with respect to the responsible service of alcohol and minimisation of alcohol-related harm. As a small

specialist wine store with reduced trading hours, the Premises will operate at times considered to be a lower risk of detrimental impact.

82. There is no evidence that the Premises will have a significant impact on existing litter problems.
83. Consequently, having regard to all the material before it, the Commission is satisfied that the grant of a packaged liquor licence subject to the conditions made by the Delegate and reproduced in Appendix A would appropriately mitigate the risk of adverse impacts on the amenity of the area such that it would not detract from or be detrimental to the amenity of the area.

Whether granting a packaged liquor licence would be contrary to the objects of the LCR Act

84. Although the Commission is satisfied that no grounds for refusal exist under sections 47(2) and 44(2), the Commission must still exercise its discretion whether or not to grant a packaged liquor licence. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, as well as with regard to the objects of the LCR Act.⁴⁰
85. As stated above, the objects of the LCR Act include contributing to minimising harm; facilitating the development of a diversity of licensed facilities reflecting community expectations; and contributing to the responsible development of the liquor, licensed hospitality and live music industries.⁴¹
86. Having regard to all the material before it, the Commission considers that the grant of a packaged liquor licence in this instance would not be contrary to the LCR Act's objects.

Decision on review

87. The Commission is satisfied that the Original Application meets all legislative requirements set out above. Accordingly, for the reasons set out above, the

⁴⁰ LCR Act, sections 4, 47(3) and 172D(3).

⁴¹ LCR Act, section 4(1)(a)–(c). The object relating to sexually explicit entertainment in section 4(1)(d) is not relevant to this Review Application. See [18] above.

Commission is satisfied that granting the licence the subject of the Original Application is appropriate in all the circumstances.

88. The Commission on review has therefore determined to affirm the Original Decision subject to the conditions set out in Appendix A.
89. The Commission notes that, while there has undoubtedly been delay in the delivery of this decision and reasons because of the Commission wanting to ensure a consistent approach is adopted insofar as is reasonably possible with a number of packaged liquor licence applications recently before the Commission, the Licensee has been continuing with its business operations at the Premises in the meantime.

The preceding 89 paragraphs are a true copy of the 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 packaged liquor licence and authorises the licensee to supply liquor in sealed containers, bottles or cans on the licensed premises for consumption off the licensed premises during the trading hours specified below.

The licensee must comply with any Ministerial Order determined by the Minister pursuant to Section 18D of the *Liquor Control Reform Act 1998* or any successor legislation.

Special conditions

Premises Management Plan

The licensee must conduct and supervise all aspects of the management of the premises in accordance with the licensee's Premises Management Plan, as amended from time to time. The Premises Management Plan must be retained on the licensed premises in the possession of the licensee, nominee, manager or other person in charge. The Premises Management Plan must be available to an authorised member of Victoria Police or a person authorised in writing by the Commission if requested.

Liquor Accord

The licensee must participate in the Port Philip Liquor Accord as approved by Victoria Police.

Security Cameras

The licensee must maintain a surveillance recording system that is able to clearly identify individuals, display time and date, and provide continuous images of all areas where patrons are permitted, including entrances and exits. The surveillance recording system must operate at all times the venue is open. A copy of the recorded images must be retained for at least one month and must be available upon request for immediate viewing and/or removal by an authorised member of Victoria Police or a person authorised in writing by the Commission.

Proof of Age

All proof of age checks must be undertaken under a security camera.

Complaints Register

The licensee must maintain a register containing details of any complaints made in relation to its operations on the licensed premises.

House Rules

The licensee must develop, implement, maintain and comply continuously with House Rules (**House Rules**) with respect to the licensed premises, which must include the following matters for the purposes of minimising harm arising from misuse and abuse of alcohol:

The licensee engages in the supply of niche or high-end lines of liquor, and focuses on the wine experience.

The licensee does not engage in substantial discounting or bulk sales of liquor.

The licensee adopts, and ensures that its staff adopt, responsible service of alcohol practices (including with respect to awareness or identification of potential risky purchases).

The licensee supplies a range of low or non-alcoholic beverages and food products.

The licensee adopts training practices and policies to guide the responsible service of liquor in a manner that encourages a culture of responsible consumption of alcohol.

The licensee operates its Premises Management Plan in accordance with and subject to the House Rules.

The licensee conducts and supervises all aspects of the management of the licensed premises in accordance with the House Rules.

Before implementing the House Rules as described above, the licensee must ensure that the Commission receives a copy.

At all times, the House Rules must be available to an authorised member of Victoria Police or a person authorised in writing by the Commission if requested.

Trading hours

On any day other than Sunday, Good Friday,
ANZAC Day or Christmas Day
Sunday
ANZAC Day

Between 9am and 8pm
Between 10am and 8pm
Between 12 noon and 8pm