

# Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Eatertainment Group Pty Ltd for an internal review of a decision by a delegate under section 47 to refuse an application made under section 9A for a restaurant and cafe licence for the premises trading as Paddle Battle, located at S5/31 Little La Trobe Street, Melbourne

**Commission:**

Ms Danielle Huntersmith, Chair  
Mr James O'Halloran, Commissioner  
Ms Deirdre O'Donnell, Commissioner

**Appearances:**

Mr Martin Towey, Counsel for the Applicant  
Ms Lydia Taylor-Moss, Counsel Assisting the Commission

*Objectors:*

Dr Elizabeth Oley  
Ms Julie Thomas (also representing Mr Warwick Thomas)  
Mr Bruce Hallows, a representative for Ms and Mr Thomas

**Date of Hearing**

**16 March 2023**

**Date of Decision:**

**27 April 2023**

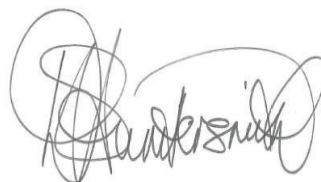
**Date of Reasons:**

**16 May 2023**

**Decision:**

The Commission has determined to affirm the decision of the Delegate and refuse the application

**Signed:**



**Danielle Huntersmith, Chair**

## Background

### Original Application

1. On 13 June 2022, Eatertainment Group Pty Ltd (**Applicant**) applied to the Victorian Gambling and Casino Control Commission (**VGCCC**)<sup>1</sup> under section 9A of the *Liquor Control Reform Act 1998 (LCR Act)*<sup>2</sup> for a restaurant and cafe licence for the premises located at S5/31 Little La Trobe Street, Melbourne (**Premises**) trading as Paddle Battle (**Original Application**).
2. The Applicant leases the Premises where it proposes to serve Australian contemporary food.<sup>3</sup> The original concept was for the Premises to be a *“conceptual activity bar in which the main focus is on playing ping pong and experiential social interactions”*.<sup>4</sup>
3. The reason for the Original Application was so that the Applicant could supply liquor to customers to consume on the Premises, usually with meals. The Applicant stated that it may also consider providing liquor for takeaway and home delivery with a meal at a later stage.<sup>5</sup>
4. The Premises is located on level 2 of the basement of Aurora Melbourne Central, an 86-storey, mixed-use building comprising residences, dining and retail outlets, and offices. The Premises can be accessed from Little La Trobe Street, La Trobe Street and Melbourne Central.
5. The Aurora Melbourne Central building provides public access to Melbourne Central train station from Little La Trobe and La Trobe Streets. Victorian Rail Track holds a footway easement in respect of this public access (**Easement**).<sup>6</sup> The Easement includes lift and escalator access from the ground level of Little La Trobe Street, and lift and stair access from the ground level of La Trobe Street, down to Melbourne Central on basement level 2.

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<sup>1</sup> Before 1 July 2022, the VGCCC was the regulator of liquor in the State of Victoria.

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

<sup>3</sup> The menu will be flexible and may include steaks, burgers, “parmas”, pizzas and pasta.

<sup>4</sup> Home of Hospitality, <<https://homeofhospitality.com.au/>> (accessed 16 May 2023). This website is controlled by Mr George Pezaros, a director of the Applicant, and is used to advertise the proposed opening of Paddle Battle.

<sup>5</sup> As to the supply limits for takeaway or delivery under restaurant and cafe licences, see section 9A(2)(db).

<sup>6</sup> Victorian Rail Track is a public entity that owns Victoria’s transport-related land, infrastructure and assets.

6. On basement level 2, the Easement cuts through the length of the Premises which potentially divides the restaurant into two separate areas, and then it opens onto a food court adjacent to the Melbourne Central train station entrance. The Premises also has a separate entrance to the food court.
7. The Premises comprises a main dining area, full kitchen and bar on one side of the Easement, and private dining rooms and a second full kitchen and another bar and other tables on the other side of the Easement.
8. The Premises includes separate female and male toilet facilities next to the lift to Little La Trobe Street, which are accessed via the Easement.
9. Importantly, the proposed red line plan excludes the Easement and three groups of lifts in the centre of the Premises. An annotated copy of the red line plan submitted by the Applicant as part of the Original Application is attached as Appendix A which depicts the Easement as it relates to the Premises. Appendix A has been annotated by the Commission to reflect the Applicant's proposed treatment of the interface between the Easement and the red line plan, and some other relevant information supplied by the Applicant in relation to its proposed management of the Premises.
10. The overall size of the floor space of the Premises is 1,277.82 square metres.<sup>7</sup>
11. Based on a building surveyor's report dated 4 May 2022, the Applicant, as part of the Original Application, sought a maximum patron capacity of 1,755 patrons.<sup>8</sup> The Applicant subsequently reduced the proposed maximum patron capacity to 500 patrons, with at least 400 seats available for customers to dine throughout the Premises, on 30 June 2022 and 18 September 2022.
12. The proposed trading hours for the supply of liquor were between the hours of 7 am and 3 am the following morning on any day, except ANZAC Day when trading would commence at 12 noon.
13. The Applicant proposed to supply beer, wine, spirits and cocktails.

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<sup>7</sup> The main dining area space is 889.69 square metres and the private dining area space is 388.13 square metres.

<sup>8</sup> Metro Building Surveying, 4 May 2022.

14. On 1 July 2022, the Victorian Liquor Commission (**Commission**) was established under the LCR Act as the liquor regulator in Victoria. Accompanying legislative changes transferred the necessary functions and powers to consider and determine applications previously made by the VGCCC to the Commission.
15. In accordance with section 33 of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police and the Licensing Inspector (together, **Victoria Police**) and the City of Melbourne (**Council**) on 8 July 2022. On 28 July 2022, Victoria Police indicated that it did not object to the grant of the Original Application. On 12 August 2022, the Council also indicated that it did not object to the grant of the Original Application.
16. In August 2022, the Commission received four objections (**Residents' Objections**) to the Original Application, pursuant to section 38, from occupants and owners of residential properties in Little La Trobe Street, which forms part of the local area of the Premises (**Resident Objectors**).
17. The Residents' Objections were based on concerns regarding potential detriment to the amenity of the area in which the Premises are situated, particularly from a potential increase in noise from 7 am until 3 am; a potential increase in traffic; and a potential increase in anti-social behaviour. Two of the Residents' Objections also asserted that the Premises would be more akin to an entertainment complex, tavern or late night bar than a restaurant or cafe.
18. In response to the Residents' Objections, Mr Peter Aldred, a consultant of PAJ Consultants, on behalf of the Applicant submitted in writing (in summary) that:
  - (a) No planning permit is required for the Premises. There is no restriction on the Premises' operating hours, other than restrictions relating to the provision of liquor.
  - (b) The Premises is part of a major commercial and public transport development and is two levels below ground. The main entry to the complex, including the Premises, is from La Trobe Street.
  - (c) The Premises is surrounded by a wide and varied range of uses, including numerous licensed premises. The Melbourne central business district is actively promoted as a vibrant 24/7 city.
  - (d) There are many hundreds of residential premises in the immediate area — many occupied by young people, including students — but only a small number of Resident Objectors. Victoria Police and the Council did not object.

- (e) The Resident Objectors seem to be concerned with the existing amenity of the area and that their building is not properly constructed. The Applicant has no control over these matters.
  - (f) The Resident Objectors have not objected to the suitability of the Applicant, its directors or the Premises.
  - (g) The Premises are purpose built and will conform to all requirements, particularly relating to noise. The Premises will have all facilities and can accommodate the patron numbers sought.
  - (h) Given the location of the site, surrounding uses and strong residential area, the Applicant believes that there will be significant demand for the trading hours sought and that they will not impact on surrounding uses.
  - (i) Whilst patrons coming and going from licensed premises can disturb a neighbourhood, this usually relates to high-risk uses, not restaurants where the focus is on the provision of meals.
  - (j) The Applicant has the right to be presumed to be able to operate its business in a lawful manner.
19. On 17 October 2022, the Commission received a copy of correspondence from a State Member of Parliament addressed to the Minister for Consumer Affairs, Gaming and Liquor Regulation, highlighting amenity concerns on behalf of residents in Little La Trobe Street, Melbourne.
20. On 9 November 2022, at the request of a delegate of the Commission (**Delegate**) in relation to concerns about whether the business model could meet the restaurant and cafe licence “predominant activity” test,<sup>9</sup> Compliance Inspectors met with Mr Aldred and Mr George Pezaros, a director of the Applicant, to conduct an inspection of the Premises and discuss the intended operation of the business. The Compliance Inspectors found that it appeared that the Applicant intended to operate an entertainment facility, rather than a restaurant. Consequently, they concluded that the grant of a restaurant and cafe licence would be likely to result in ongoing compliance-related issues arising from the business not meeting restaurant and cafe licence conditions.

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<sup>9</sup> As to the restaurant and cafe licence “predominant activity” test, see section 9A(1).

21. On 9 December 2022, the Delegate refused to grant the Original Application under section 47 of the LCR Act (**Original Decision**). The reason for the Original Decision was that the Delegate was not satisfied that the predominant activity of the venue will be the preparation and serving of meals for consumption on the Premises.
22. The Delegate accepted that the potential amenity issues described by the Resident Objectors were problems primarily associated with late trading hours and premises with large patron capacities, both of which were applicable to the Original Application. The Delegate considered that the Resident Objectors' amenity concerns might be reduced if the activities being proposed were in line with a restaurant and cafe licence, which she was not satisfied was the case.

## Application for Internal Review

23. On 14 December 2022, the Applicant made an application for internal review of the Original Decision (**Review Application**).<sup>10</sup>
24. The Resident Objectors confirmed that they maintained their objections.

## Legislation and the Commission's task

### The Commission's internal review power

25. Division 2 of part 9 of the LCR Act governs internal review applications. Under section 152, the decision made by the Delegate in the Original Decision is a reviewable decision and the Applicant is an eligible person to apply for a review of that decision. The Review Application was made pursuant to section 153.
26. 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>11</sup>

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<sup>10</sup> In completing the Review Application, the Applicant, in the section headed "Reasons for review application", stated "*The proposal is for the grant of a new licence for a new Restaurant. From the outset and lodgement of the app. officers of the VGCCC were determined to refuse the application without trying to understand the proposal*".

<sup>11</sup> Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

27. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission must decide whether to:
- (a) grant the Original Application and, if so, whether to do so subject to conditions;<sup>12</sup>  
or
  - (b) refuse to grant the Original Application.<sup>13</sup>

## Determination of a contested application

28. Where an application is a contested application, pursuant to section 47(1) of the LCR Act:

*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.*

29. 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.
30. Pursuant to section 44(2), the Commission may refuse to grant the application on certain grounds, including that:
- (a) the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated;<sup>14</sup>
  - (b) the granting of the application would be conducive to or encourage harm;<sup>15</sup> and
  - (c) the application has not been made, displayed or advertised in accordance with the LCR Act.<sup>16</sup>
31. 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.<sup>17</sup> 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;*

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<sup>12</sup> LCR Act, sections 47, 49 and 157.

<sup>13</sup> LCR Act, sections 47 and 157.

<sup>14</sup> LCR Act, section 44(2)(b)(i).

<sup>15</sup> LCR Act, section 44(2)(b)(ii).

<sup>16</sup> LCR Act, section 44(2)(b)(v).

<sup>17</sup> LCR Act, section 3A(1).

- (f) *any other prescribed matters.*<sup>18</sup>

However, the definition of “amenity” for the purposes of the LCR Act is not limited by these factors.<sup>19</sup>

32. 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

33. Sections 172D(3) and 172U(3)(b) of the LCR Act 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.*

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<sup>18</sup> 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.

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



34. 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>20</sup>*

35. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;<sup>21</sup> and
- (b) may consider further information, material or evidence.<sup>22</sup>

37. 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.

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

## Conduct of an inquiry

39. As stated above, section 47(3) of the LCR Act 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.

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<sup>20</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>21</sup> LCR Act, section 157(2).

<sup>22</sup> LCR Act, section 157(3).

40. Section 172W(3) provides that the Commission:
- (a) is not bound by the rules of evidence but may inform itself in any way it thinks fit; and
  - (b) is bound by the rules of natural justice.

## Other sections of the LCR Act relevant to this matter

### Restaurant and cafe licences

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

## Material before the Commission

44. The Commission on review had before it, and considered, all the materials received by the Delegate. The Commission also received and considered the following materials:
- (a) Original Decision and Reasons of the Delegate dated 9 December 2022;
  - (b) Review Application received 14 December 2022;
  - (c) email communication from Dr Elizabeth Oley dated 3 March 2023, enclosing document entitled “*Objection to Liquor Licence*”;
  - (d) witness statement of Mr Pezaros dated 13 March 2023;
  - (e) acoustic report of Mr Nicholas Peters dated 10 March 2023;
  - (f) updated acoustic report of Mr Peters dated 16 March 2023;

- (g) evidence presented at the hearing of the Review Application on 16 March 2023;
  - (h) Aurora Interface Agreement dated 6 December 2018 between Victorian Rail Track, Metro Trains Melbourne Pty Ltd, UEM Sunrise (La Trobe Street) Pty Ltd, Public Transport Development Authority operating as Public Transport Victoria, Owners Corporation No. 1 PS731995U and Owners Corporation No. 5 PS731995U;
  - (i) email communication from Mr Martin Towey, Counsel for the Applicant, dated 12 April 2023, enclosing documents entitled “*Final Submissions from the Applicant*” and “*Venue Management Plan*”;
  - (j) email communication from Dr Oley dated 19 April 2023, enclosing document entitled “*Objection to Liquor Licence*”;
  - (k) email communication from Mr Towey dated 24 April 2023, enclosing amended document entitled “*Venue Management Plan*”;
  - (l) email communication from Dr Oley dated 25 April 2023, forwarding “*Appendix A*” to her submissions dated 19 April 2023; and
  - (m) email communication from Ms Julie Thomas dated 25 April 2023, enclosing document entitled “*Paddle Battle Review*”.
45. The Commissioners viewed the Premises on 23 March 2023 at approximately 2–3 pm (**View**).

## Hearing

46. A hearing was held in relation to the Review Application on 16 March 2023 (**Hearing**).
47. Mr Martin Towey appeared on behalf of the Applicant. Mr Pezaros and Mr Nicholas Peters gave oral evidence in support of the Review Application. Mr Bruce Hallows appeared on behalf of objectors Ms Julie Thomas and Mr Warwick Thomas. Ms Thomas gave oral evidence objecting to the Review Application. Objector Dr Elizabeth Oley appeared in person and did not give oral evidence but asked questions of witnesses at the Hearing.
48. At the Hearing, Mr Towey confirmed that the Applicant had reduced the capacity sought for the Premises to a maximum of 500 patrons.

49. Mr Pezaros's evidence is discussed below in relation to each issue which is central to the Commission's decision on review.

## Mr Peters' evidence

50. Mr Peters gave evidence that he predicted that noise levels emanating from the Premises would be around 44 decibels, which was a significantly lower impact than the pre-existing ambient noise in the area, namely, 58 decibels. He stated that the scope of his retainer was to assess the internal noise levels, rather than the level of noise generated by patrons leaving the Premises.<sup>23</sup>

## Ms Thomas's evidence

51. Ms Thomas gave evidence that the amenity of the area was currently detrimentally affected by late night urination, defecation and drug dealing, as well as bins being left in the street and noise from rubbish collection. She said that her home has been invaded twice since August, including being graffitied.<sup>24</sup>
52. Ms Thomas stated that voices in the middle of the night disturb her because the city gets quieter. She said that police and ambulance sirens were not particularly distracting. She gave evidence that she has trouble sleeping.<sup>25</sup>
53. Ms Thomas said that her main concerns were generated by patrons leaving the Premises and waste collection at night. She confirmed that, if the licence were granted, a lot of her concerns would be alleviated by trading hours being limited to 1 am rather than 3 am.<sup>26</sup>
54. During the Hearing, Mr Hallows submitted on behalf of Ms and Mr Thomas that many of their concerns had been ameliorated by the maximum patron capacity being reduced from 1,755 to 500. He contended that their remaining concerns could be addressed by restricting the trading hours and imposing conditions relating to waste disposal.<sup>27</sup>

## Parties' submissions after the Hearing

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

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<sup>23</sup> Hearing Transcript, page 6, line 1 to line 40; page 11, line 6 to line 19.

<sup>24</sup> Hearing Transcript, page 103, line 20 to page 104, line 32.

<sup>25</sup> Hearing Transcript, page 104, line 34 to page 106, line 6.

<sup>26</sup> Hearing Transcript, page 108, line 35 to page 109, line 10.

<sup>27</sup> Hearing Transcript, page 115, line 10 to page 115, line 18.

56. Mr Towey's submission received by the Commission after the Hearing on behalf of the Applicant contended that:

- (a) The Applicant's intended offering at the Premises will not struggle to meet the predominant activity test in section 9A of the LCR Act. That is because there are two commercial kitchens, revenue is intended to be 70% food and 30% beverage and Mr Pezaros has operated under numerous restaurant and cafe licences throughout his 30-year career without issue. Some food will be available on platters, but these offerings will not be the traditional finger food that is often available in vertical drinking scenarios.
- (b) Trading until 3 am is sought in order for late dinner dining to be an option given the Premises' location. It may be that the Premises will rarely operate until 3 am, but it will give greater commercial freedom to the Applicant in what is a very crowded market.
- (c) The maître d' will have an access-all-areas role and should not be confined by a licence condition to a specific entrance or post.
- (d) Given the offering at the Premises, a licence condition mandating crowd controllers is not warranted. The Applicant is best placed to ensure that the patron experience does not involve security personnel who cannot talk to the offering and are best employed at high-risk venues. The Applicant will not overlook deploying security personnel should the need arise.
- (e) The construction of the private dining rooms delivers flexibility so that space can be enhanced or reduced to accommodate small groups in an intimate environment or larger parties. It is not envisaged that the majority of the patron numbers endorsed on the licence will be accommodated in the function rooms, as the main offering at the Premises is dining throughout the Premises.
- (f) In light of the Resident Objectors' concerns, the Applicant now proposes the following conditions:

***Special Conditions***

***VENUE 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 Venue Management Plan, as amended from time to time. The Venue Management Plan must be retained on the premises in the possession of the licensee, nominee, manager or other person in charge. The Venue Management Plan*

*must be available to an authorised member of Victoria Police or a Liquor Inspector if requested.*

## **Signage**

*The Licensee must display signage at entrances and exits to the Restaurant asking Patrons to exit the Restaurant via the entrance to Melbourne Central Railway Station and avoid exiting by the Little La Trobe Street exit.*

## **SECURITY CAMERAS**

*The licensee must install and 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, bars and areas where entertainment occurs, and excluding toilets, washrooms, change rooms and lactation rooms. The position of the cameras must be to the satisfaction of the Licensing Inspector or Liquor Inspector. The surveillance recording system must operate at all times the venue is open, and when the venue is closed to the public, for 30 minutes after closure and from 30 minutes before the reopening to the public. 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 a person authorised by the Victorian Commission for Gambling and Liquor Regulation.*

*Signs must be displayed in all areas subject to camera surveillance and must read: For the safety and security of patrons and staff this area is under electronic surveillance.*

57. Dr Oley's submission received by the Commission after the Hearing argued that:
- (a) Granting the licence would detract from or be detrimental to the amenity of the area because the sound of patrons' voices in the street would wake residents, especially after midnight or 1 am. This could be addressed by limiting the Premises' trading hours to midnight or 1 am, rather than 3 am as sought.
  - (b) It would be miraculous if a patron read the Applicant's proposed notice on exiting the Premises.
58. Ms Thomas's submission on behalf of herself and Mr Thomas received by the Commission after the Hearing asserted that:
- (a) The application has been substantially changed from that which was originally lodged. They support and applaud the application as amended, save and except for the operation of the Premises beyond 1 am.
  - (b) Their concerns relating to the Premises operating as a substantial late night bar, including that patrons leaving would engage in anti-social behaviour, remain

undiminished. Trading between 1 am and 3 am will only exacerbate the problems already experienced in the surrounding residential area.

- (c) Mr Pezaros's offer to not remove rubbish or bottles from the Premises during certain hours addresses their concerns about noise from rubbish removal. They would also strongly recommend that bottle crushers be installed on site.

## Reasons for decision on review

### Issues for determination on review

- 59. During the course of the Hearing and from observations made by the Commissioners during their View of the Premises, it became apparent that this was a unique premises and layout. This is acknowledged by the Applicant in its venue management plan at clause 5.1, where it directs staff to consider all the conditions on the proposed licence *"as it is not a regular restaurant and cafe licence"*.
- 60. A restaurant and cafe licence is ordinarily considered to be a low-risk licence. However, the Commission considers that there is an elevated level of risk of the potential for harm, in this case, due to the existence and impact of the Easement which runs through the Premises and essentially divides the red line area and allows for a potentially significant interaction with the public who use the Easement.
- 61. In making its decision on review, the Commission must determine the following central issues:
  - (a) whether the predominant activity that is to be carried out at all times on the Premises is the preparation and serving of meals to be consumed on the Premises;<sup>28</sup>
  - (b) whether the grant of a restaurant and cafe licence would detract from or be detrimental to the amenity of the area in which the Premises are situated;<sup>29</sup> and
  - (c) whether the grant of a restaurant and cafe licence would be conducive to or encourage harm,<sup>30</sup> or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.<sup>31</sup>

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<sup>28</sup> LCR Act, section 9A(1).

<sup>29</sup> LCR Act, sections 44(2)(b)(i) and 47(2).

<sup>30</sup> LCR Act, sections 44(2)(b)(ii) and 47(2).

<sup>31</sup> 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).

62. Each of these issues are discussed in turn.

## **Whether the predominant activity carried out at all times on the Premises will be the preparation and serving of meals**

63. In applying for a restaurant and cafe licence under section 9A of the LCR Act, the Applicant must satisfy the Commission that the “predominant activity” carried out on the Premises will at all times be the “preparation and serving of meals to be consumed on the licensed premises”.

64. In the Hearing, Mr Pezaros stated that he understood that a restaurant and cafe licence requires that *“the main focus of the venue has to be a sit-down restaurant that primarily serves meals to its patrons”*.<sup>32</sup>

65. Mr Pezaros gave the following evidence concerning the operation of the Premises:

- (a) The Premises would be open for breakfast, lunch and dinner, with seating for 400 people. He would like to be able to serve a meal at 11 pm or midnight if someone wants to come in that late.<sup>33</sup>
- (b) The Applicant sought a maximum patron capacity of 500. As part of the original concept, it had wanted a maximum patron capacity of 750. It never intended to have a maximum patron capacity of 1,755.<sup>34</sup>
- (c) The private dining rooms could be booked for functions and events. It was never proposed that patrons could use the private rooms without having meals. The function packages available for the private rooms were going to include finger food options in the early days, but those options have been taken away. The events would be sit-down meals rather than stand-up functions.<sup>35</sup>
- (d) Patrons could sit at the bar and order a drink while they wait for their table. However, patrons would not be able to drink without a meal.<sup>36</sup>
- (e) A maître d’ would be stationed at the Melbourne Central entrance to the Premises, directing patrons to seats. Tables would be laid out with cutlery, cloth napkins and

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<sup>32</sup> Hearing Transcript, page 14, line 1 to line 4.

<sup>33</sup> Hearing Transcript, page 21, line 17 to line 26; page 38, line 18 to line 26.

<sup>34</sup> Hearing Transcript, page 25, line 27 to page 27, line 22; page 29, line 3 to page 30, line 38.

<sup>35</sup> Hearing Transcript, page 23, line 6 to line 31; page 31, line 26 to page 32, line 20; page 38, line 1 to line 10; page 39, line 36 to line 42; page 42, line 20 to page 43, line 10.

<sup>36</sup> Hearing Transcript, page 52, line 28 to line 33; page 62, line 19 to line 41.



wine glasses. Patrons would order food at their tables using QR codes. The food would be delivered to their tables.<sup>37</sup>

- (f) The Applicant envisages 70% of its revenue from the Premises being generated by the sale of meals and 30% of its revenue from the Premises being generated by the sale of liquor.<sup>38</sup>

66. Mr Pezaros stated that the original theme of “Paddle Battle” was based around a ‘ping pong’ concept and that there was going to be multiple table tennis tables for patrons to play. He said that, due to confusion as to what the Premises was going to be, there would now be one table tennis table which patrons could play. He also said that the original concept included karaoke facilities in the private dining rooms. He stated that the concept changed after the Delegate refused the Original Application. He reiterated that, although the themed focus was ping pong, the way the Premises will operate and its main usage has never changed.<sup>39</sup>
67. When asked if the Applicant’s main concept was ever going to be ping pong, Mr Pezaros replied “No. No.”<sup>40</sup> When asked why he would put on his website that “*Paddle Battle is a conceptual activity bar in which the main focus is on playing ping pong and experiential social interactions*”, Mr Pezaros responded that, “*if we’ve taken advantage of a themed restaurant idea to try and get people’s interest, that doesn’t take away from what we’re doing*” and denied saying that it was never the concept that the main focus was on playing ping pong.<sup>41</sup>
68. Mr Pezaros stated that, if the restaurant and cafe licence is granted, the Applicant’s marketing for the Premises going forward would focus on the Premises as a restaurant and its meals offering.<sup>42</sup>
69. Plans depicting the layout of the Premises show that it has two commercial kitchens; one on either side of the Easement.
70. Having heard the evidence at the Hearing and considered the materials lodged by the Applicant, the Commission recognises that the Applicant has substantially reformulated

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<sup>37</sup> Hearing Transcript, page 59, line 27 to page 61, line 21; page 77, line 7 to page 78, line 19.

<sup>38</sup> Hearing Transcript, page 65, line 32 to line 38.

<sup>39</sup> Hearing Transcript, page 21, line 28 to page 23, line 22; page 27, line 29 to page 28, line 40; page 30, line 40 to page 31, line 24; page 33, line 12 to line 13.

<sup>40</sup> Hearing Transcript, page 31, line 45 to page 32, line 1.

<sup>41</sup> Hearing Transcript, page 34, line 10 to line 47.

<sup>42</sup> Hearing Transcript, page 59, line 16 to line 25.

its proposed offering to place a greater emphasis on the preparation and serving of meals.

71. However, the Commission considers that the main issue in determining the Review Application is the risk of harm, and therefore it considers that is unnecessary to decide whether the predominant activity carried out at all times on the Premises will be the preparation and serving of meals in accordance with section 9A(1) of the LCR Act. This is discussed further in paragraphs 84 to 105 below.

## Whether granting the application would detract from or be detrimental to the amenity of the area

72. An application may be refused under sections 47(2) and 44(2) of the LCR Act if the grant of the licence would detract from or be detrimental to the amenity of the area in which the Premises are situated.
73. Historically, “noise levels” was one of the factors listed in section 3A(2) of the LCR Act that the Commission may take into account when determining whether the grant of a licence would detract from or be detrimental to the amenity of an area.
74. Since that time, an amendment to the LCR Act removed “noise levels” as a factor (along with reference to parking facilities, and traffic movement and density).<sup>43</sup> However, it is noted that the Minister’s second reading speech<sup>44</sup> and explanatory memorandum<sup>45</sup> in relation to this matter indicate that the rationale in removing these factors from section 3A(2) was to reduce duplication between the planning and liquor licence processes.<sup>46</sup> The removal of these factors is not intended to limit the Commission’s ability to grant a licence that has conditions relating to parking, traffic or noise levels as it sees fit on the basis of its consideration of amenity.<sup>47</sup>
75. The Commission notes that the Applicant does not require a planning permit to use the Premises for the purpose of a food and drink premises, or the sale and consumption of liquor.
76. In instances such as this, the Commission considers it appropriate to assess concerns regarding noise-related amenity so it can be satisfied that amenity of the area would not

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<sup>43</sup> Section 29 of the *Liquor and Gambling Legislation Amendment Act 2018* (effective 18 July 2018).

<sup>44</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 28 March 2018, 927 (Marlene Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation) (**Second Reading Speech**).

<sup>45</sup> Explanatory Memorandum, Liquor and Gambling Legislation Amendment Bill 2018, published 27 March 2018 (**Explanatory Memorandum**).

<sup>46</sup> Explanatory Memorandum, clause 29; Second Reading Speech, 928.

<sup>47</sup> Explanatory Memorandum, clause 29.

be negatively impacted upon by the grant of the application. Having said that, if noise issues had been (or were to be) considered by the Council as a part of the planning process, the Commission would have necessarily placed less weight on noise amenity concerns to reduce any possible duplication between the liquor licence and planning processes.

77. The Commission notes that the Resident Objectors raised amenity concerns, particularly regarding a potential increase in noise levels from patrons leaving the Premises, especially at late hours.
78. The Commission accepts the evidence of the Resident Objectors that granting a licence for the supply of liquor at the Premises has the potential to impact on the amenity of the area.
79. Mr Pezaros gave evidence that the noise generated by patrons leaving the Premises would be “*completely irrelevant*” in comparison to the “*thousands of university students*” and railway patrons coming and going via the Easement.<sup>48</sup>
80. Notwithstanding Mr Pezaros’s evidence, the venue management plan submitted by the Applicant after the Hearing indicates that the Applicant has been responsive to the Residents’ Objections and wishes to foster a harmonious and respectful relationship with them.
81. In particular, this is demonstrated as the venue management plan includes:
  - (a) procedures concerning patrons leaving the premises (clause 17 and appendix A), which the Applicant proposes to reinforce through a condition on the licence requiring display of signage asking patrons to avoid exiting via Little La Trobe Street;
  - (b) practices for noise management (clause 18);
  - (c) systems for cleaning/waste management (clause 19);
  - (d) a complaints register (clause 24 and appendix C); and
  - (e) a commitment to “*having a positive neighbourly relationship with local residents*” (clause 28.1).

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<sup>48</sup> Hearing Transcript, page 14, line 40 to page 15, line 4.

82. At the Hearing, Mr Pezaros confirmed that the Applicant sought a maximum patron capacity of 500, not 1,755 as initially requested in the Original Application.<sup>49</sup>
83. Having regard to the above steps taken by the Applicant and the Premises' location in the Melbourne central business district, the Commission considers that it may be possible to mitigate the risk of unreasonable noise impacting the amenity of the area through the imposition of appropriate conditions. However, the Commission has not reached a conclusion on this issue because, as discussed below, its central concern is with respect to harm minimisation.

## Whether granting the application would be conducive to or encourage harm, or be contrary to the objects of the LCR Act

84. An application may be refused if granting the application would be conducive to or encourage harm.<sup>50</sup> In addition, the Commission must exercise its discretion whether or not to grant a licence with regard to the objects of the LCR Act, particularly harm minimisation which is the primary object.<sup>51</sup>
85. The Commission notes that Victoria Police did not raise any concerns in relation to harm.
86. At the Hearing, Mr Pezaros gave the following evidence regarding the Easement during an exchange with the Chair, Ms Danielle Huntersmith:

*MR PEZAROS: So I've got an easement that runs through my tenancy that goes to the station.*

*MS HUNTERSMTITH: Okay. So people will actually be walking through.*

*MR PEZAROS: I don't control that.*

*MS HUNTERSMTITH: So how will you go about making sure there's no more than 500 on the premises at the one time?*

*MR PEZAROS: On my premises?*

*MS HUNTERSMTITH: Yes.*

*MR PEZAROS: There won't be. On that walkway - - -*

*MS HUNTERSMTITH: Yes.*

*MR PEZAROS: - - - I can't go and tell you .....*

*MS HUNTERSMTITH: And how will you go about it with the 500 given the size of the space.*

*MR PEZAROS: So you've got — so — very good question. So we looked at this very closely at the time. This is why you've got your two commercial*

<sup>49</sup> Hearing Transcript, page 25, line 27 to page 27, line 22; page 29, line 3 to page 30, line 38.

<sup>50</sup> LCR Act, sections 44(2)(b)(ii) and 47(2).

<sup>51</sup> LCR Act, sections 4 and 172D(3).

*kitchens, right, and your two separate areas. So I don't have to have crossover between the two and, in fact, I'm running — you know when you go on to, like, the red carpet and they've got those — so we're sectioning off that walkway area between our two areas and you — unless you sort of want to jump the rope or you want to go back around the other way, if you're going to the station there's a cordoned off area to go to the station. So yes.*<sup>52</sup>

87. Mr Pezaros repeatedly stated in his evidence that there would be “*thousands*” of people walking through the Easement at peak times.<sup>53</sup> He also stated that the Applicant needed to leave the Easement entrances open for the train station from 5 am or 6 am until 2 am or 3 am the following morning.<sup>54</sup> He said that a maître d’ will be stationed at the Melbourne Central entrance to the Premises.<sup>55</sup>
88. The View by the Commissioners after the Hearing was valuable given the unique features of the Premises and given that the Premises is still being fitted out and is not complete.
89. The View highlighted for the Commissioners the size and scope of the Premises and the size, scope and location of the Easement running through it, together with the location of the escalators, lifts, toilets and food court as well as the entrance to the underground Melbourne Central station.
90. The Premises was not yet fitted out, however Mr Pezaros, who accompanied the Commissioners (together with Mr Towey) at the View, was able to point out where he was intending to put the rope barriers (“*red carpet*” type cordons) and where any internal walls would be built etc. As mentioned above, the Applicant’s proposed plan has been marked up by the Commission, and attached as Appendix A, to reflect the proposed fitted out form of the Premises (including rope barriers, walls etc).
91. A venue management plan was initially submitted by the Applicant after the Hearing on 12 April 2023. This venue management plan made two references to the restaurant operation at the Premises being “*low risk*” in nature.<sup>56</sup> It did not address the Easement (and its attendant issues) at all.
92. The View highlighted to the Commission the challenges that the Applicant may have in ensuring that alcohol is not taken outside the proposed red line area and the increased potential for harm given the existence of the significant Easement. The Commission

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<sup>52</sup> Hearing Transcript, page 75, line 19 to page 76, line 2.

<sup>53</sup> Hearing Transcript, page 14, line 41; page 19, line 33 to line 34; page 66, line 23 to line 37.

<sup>54</sup> Hearing Transcript, page 18, line 43 to page 19, line 13; page 20, line 32 to line 38.

<sup>55</sup> Hearing Transcript, page 60, line 7 to line 16; page 77, line 7 to page 78, line 19.

<sup>56</sup> Clauses 15.1 and 16.1.

considers that the increased potential for harm arises due to the high volumes of pedestrian (commuter and food court) traffic that will be using the Easement thoroughfare that runs right through middle of the Premises with no proposed walls (whether opaque or glass) and only low ropes (“red carpet” style) as delineation of the red line.

93. The Commission was concerned about the absence of measures by the Applicant to mitigate the issues arising from the Easement and provided the Applicant an opportunity to lodge any further submissions or an amended venue management plan addressing this issue.
94. The Applicant submitted an amended venue management plan on 24 April 2023 (**Management Plan**), which contained the following additional clause:

**30 Management of the Easement**

- 30.1 *It is critical for all staff to manage the migration of patrons through the easement area (at the bottom of the escalators) that is outside the redline plan.*
- 30.2 *Under no circumstances are drinks containing liquor (or otherwise) to be taken into the easement area as it is a potential hazard to persons using the route to the railway station and critically the movement of liquor through this area is prohibited at law.*
- 30.3 *Please can all staff ensure that the Notices below are reproduced and in place to inform patrons and staff of the prohibition on taking drinks into and across the easement area.*

95. Appendix A to the Management Plan inserted the following additional notice relating to the Easement (**Easement Notice**):

**IMPORTANT NOTICE**

*Drinks are not taken into the area beyond this notice. The fines for taking liquor beyond this notice are significant.*

*Please assist us and do not take liquor into this area.*

*If you wish to go to the areas beyond this sign and across to the licensed area beyond, please do so by walking through the area behind the escalators to the other side.*

*We thank you for your assistance in this matter.*

96. At the View, the Commissioners observed that the Premises and the Easement about a food court and the train station in Melbourne Central, both of which accommodate high-volume traffic. This was despite that, although the Little La Trobe Street access is currently closed while the Premises is being fitted out, the La Trobe Street access is open. The Commissioners observed a non-stop flow of pedestrians using that portion of

the Easement. It is expected that when construction is finished, consistent with Mr Pezaros's evidence at the Hearing, there will be thousands of people using the Easement throughout each day.

97. To illustrate the unusual nature of the Premises and the relevance of the Easement to this application, a copy of the red line plan submitted by the Applicant has been annotated by the Commission to depict the Easement as it relates to the Premises, based upon Mr Pezaros's evidence at the Hearing; the Commissioners' observations at the View; and the Management Plan (refer to Appendix A).
98. As shown in Appendix A, and as mentioned above, the Applicant does not propose to delineate the Easement with any hard barriers. Instead, it proposes to utilise rope along the pink area which, consistent with Mr Pezaros's evidence, people walking through the Easement could jump/step over or otherwise cross the rope barrier. In addition, as Mr Pezaros confirmed at the View, the Applicant proposes not to have any barrier at all along the green interfaces with the Easement. Whilst the Applicant proposes to employ a maître d' at the Premises' entrance to Melbourne Central, it does not propose to station a security guard, crowd controller or any staff member(s) directly in the vicinity of the Easement.
99. The Commission is concerned that, whilst the Applicant accepts that "*thousands*" of people will be walking through the Easement and that it cannot control those people or their access to the Easement, it has not provided any considered proposals to manage this issue and potential risk for harm. This is especially so given the Applicant seeks to trade until 3 am.
100. The Management Plan provides a singular statement that liquor is not to be taken into the Easement. There is no detail of any management practices or their intended implementation or oversight, to ensure that this does not happen.
101. In addition to the dearth of intended management mitigation measures, there is also no intention to have any hard barriers preventing alcohol being removed from the red line plan or preventing Easement pedestrians or patrons crossing in and out of the licensed Premises, with the only barriers being low ropes which can be jumped/stepped over or otherwise crossed, and in part of the interface no barriers at all.
102. The only procedure established by the Management Plan concerning the Easement is the display of the Easement Notice, although no directions are provided as to where the notice(s) should be displayed. Further, by encouraging patrons and staff to cross the

Easement using the areas marked green in Appendix A, the Easement Notice may be read as endorsing them taking liquor via this route.

103. For the above reasons, the Commission considers that the porous Easement poses significant risks of harm which will always be present during the Applicant's proposed trading hours. There is a real risk that harm arising from the misuse and abuse of alcohol will occur. This may manifest itself in ways such as minors or adults crossing the rope barrier, or anti-social behaviour being directed to pedestrians using the Easement or to patrons given the potential for unrestricted interactions arising from the unique physical layout. The Commission is concerned that the Applicant has not demonstrated that it would have adequate procedures and controls over the Premises to fulfil its obligations as a licensee. The Commission notes that the Applicant has incorrectly assessed the Premises as "low risk" (referring to it as such throughout the Management Plan) despite significant increased risks arising from the porous Easement.
104. Having considered the proposed fit-out and the Management Plan and all the other materials before the Commission, the Commission does not consider that the Applicant would be able to sufficiently manage the risk of harm in such a unique, unusually elevated risk setting.
105. In all the circumstances, the Commission is not satisfied that adequate procedures and controls will exist over the supply and consumption of liquor at the Premises and that harm will be appropriately minimised. Consequently, the Commission considers that the grant of the restaurant and cafe licence in this instance would be conducive to or encourage harm and be contrary to the LCR Act's object concerning harm minimisation.

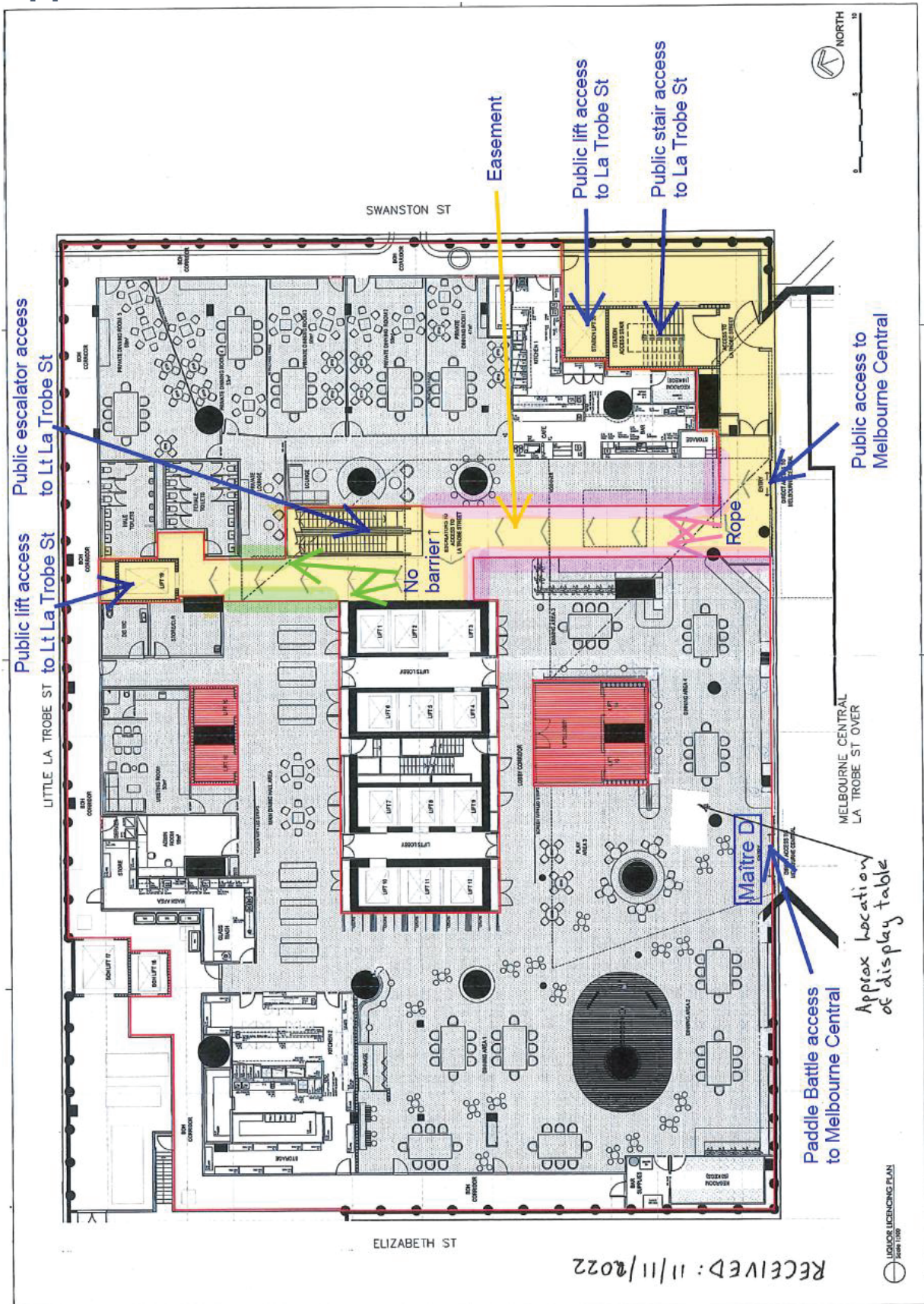
## Decision on review

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

***The preceding 107 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Mr James O'Halloran (Commissioner) and Ms Deirdre O'Donnell (Commissioner).***



## Appendix A



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