

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Wiffen Enterprises Pty Ltd for an internal review of a decision by a delegate to grant an application for a renewable limited licence for premises located at Portarlinton Harbour, Portarlinton, trading as Portarlinton Mussel Tours

- Commission:** Mr John Larkins, Deputy Chair
Ms Susan Timbs, Commissioner
Ms Thu-Trang Tran, Commissioner
- Appearances:** Ms Vittoria De Stefano of Harwood Andrews, Solicitor for the Applicant
Ms Lydia Taylor-Moss, Counsel Assisting the Commission
- Date of Hearings:** 16 June, 3 August 2023
- Date of Decision:** 1 December 2023
- Date of Reasons:** 1 December 2023
- Decision:** The Commission has determined to vary the decision of the Delegate and grant the application subject to the conditions set out in Appendix A

Signed:



John Larkins, Deputy Chair

Background

Original Application

1. On 24 January 2023, Wiffen Enterprises Pty Ltd (**Applicant**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ for a renewable limited licence for a boat (registration no. 431970) (**Premises**) moored at Portarlington Harbour, Portarlington trading as Portarlington Mussel Tours (**Original Application**).
2. By the Original Application, the Applicant sought a renewable limited licence for the following activity:

Guided boat tour of mussel farms in the Portarlington area. Patrons will prepurchase tickets online — that is no tickets will be sold on the boat or on the pier. There maybe some sunrise or sunset tours offered which is the reason for the extended trading hours.
3. The Applicant sought the following trading hours:

Good Friday and ANZAC Day	Between 12 noon and 9pm
On any other day	Between 7am and 9pm
4. The Applicant sought a maximum capacity of 12 patrons based on a certificate of survey issued by the Australian Maritime Safety Authority on 3 February 2023.
5. 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 Inspector² (together, **Victoria Police**) and the City of Greater Geelong (**Council**) on 3 February 2023. On 10 February 2023, Victoria Police advised that it did not object to the Original Application. The Council also did not object to the Original Application.
6. On 3 February 2023, a delegate of the Commission (**Delegate**) sent a number of questions to the Applicant seeking further details on its business. Ms Vittoria De Stefano of Harwood Andrews, on behalf of the Applicant, provided the following responses to the Delegate's questions on 13 February 2023:

- Will liquor be purchased on the boat during the tour or online when they purchase a ticket?

It is proposed that both will apply. Our client proposes 1 complimentary drink included in ticket price purchased online, any subsequent alcoholic drinks will need to be paid for on board vessel. It is proposed that a SQUARE POS is on board. Tickets cannot be purchased on the pier.

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

² As to the meaning of "licensing inspector", see section 3.

- What types and how many lines of liquor will be available for sale?

It is proposed that only Local (Bellarine Peninsula) wines, (Pinot Noir, Pinot Gris, Riesling, Chardonnay, Sparkling, Rose) are available for sale. Our client proposes to cycle through different Bellarine wineries, showcasing their products, sold by the glass. It also proposes to have a local Beer, sold by the can and a local premixed Gin drink from The Whiskery also sold in the can.

- Will liquor be served with food or snacks?

It is proposed that our client will [be] serving tasting plates showcasing the region, Cheeses, Smoked fish/dips, Olives, Bread, locally made Brownies served with coffee. Alongside this there are 2 different mussel dishes served on the tour. We are instructed that there is quite a lot of food on board.

- How long will the boat tours go for?

2.5 – 3 hours

- How many patrons will be on the boat?

There will be a maximum of 12 paying passengers plus up to 5 crew

Delegate's decision

7. On 21 March 2023, the Delegate granted the Original Application (**Original Decision**). The Delegate specified the following “special conditions” in the Applicant’s renewable limited licence (**Licence**):
- (a) The supply of liquor is limited to patrons on a pre-booked guided tour of a Portarlington mussel farm (**Special Condition 1**).
 - (b) The supply of liquor is limited to liquor produced in the Bellarine Peninsula (**Special Condition 2**).
 - (c) Food must be available for consumption at all times when liquor is being supplied (**Special Condition 3**).
 - (d) The duration of a tour supplying liquor must not exceed three hours (**Special Condition 4**).
8. On 10 May 2023, the Delegate provided a statement of reasons for the Original Decision (**Delegate's Reasons**). In the Delegate’s Reasons, she stated that she considered the grant of the Original Application with the endorsed special conditions to be limited in nature. She noted that she had not endorsed a condition limiting the number of tours serving liquor that could be run in a set period of time and had endorsed extensive trading hours. She stated that she was satisfied that, as the supply of liquor is limited to tours of Portarlington mussel farms only, the Licence will continue to be limited in scale and scope.³ She said that she considered Special Conditions 3 and 4 to be appropriate,

³ As to the Scale and Scope Requirement for limited licences, see [28] below.

as there is no limitation on how many drinks a patron can be served per tour. She stated that all of the special conditions endorsed on the Licence were in line with the Applicant's submissions.

Application for Internal Review

9. On 18 April 2023, the Applicant applied for an internal review of the Original Decision (**Review Application**).
10. By the Review Application, the Applicant sought the following amendments to each of the special conditions:
 - (a) the words "of a Portarlington Mussel Farm" be removed from Special Condition 1 to allow the Applicant to undertake corporate events and weddings;
 - (b) the reference to the Bellarine Peninsula be removed from Special Condition 2 to cater for the possibility that from some varieties of liquor may be unavailable from Bellarine Peninsula producers (for example, gin not being available 12 months of the year);
 - (c) Special Condition 3 be removed due to ambiguity; and
 - (d) the duration in Special Condition 4 be increased to six hours to allow the Applicant to hold longer corporate events and functions on board.
11. The Applicant provided the following reasons for applying for review of the Original Decision:

During the application I was asked to provide information to the Commission about how I would use the licence, however, I was not expecting that that information would be endorsed on the licence as conditions that limit the way that I operate my business. I believe that these conditions are unreasonably restrictive and request that the Commission consider the removal or variation of the conditions.

While the predominant use of the boat will be for the operation of mussel tours, we have received requests to use the boat for corporate functions and for weddings. The inclusion of the following conditions has resulted in the licence being extremely limited. I have not received a statement of reasons as to why these limitations were included on my licence and wish for the decision to be reviewed.⁴

⁴ As stated above, the Applicant lodged the Review Application on 18 April 2023. The Delegate's Reasons were provided on 10 May 2023.

Legislation and the Commission's task

The Commission's internal review power

12. 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.
13. 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.⁵
14. 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;⁶
or
 - (b) refuse to grant the Original Application.⁷

Determination of an uncontested application

15. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Original Application was uncontested, as no objections were received under division 5 of part 2 within the relevant period.⁸
16. Where an application is an uncontested application, pursuant to section 44(1):

Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174).

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

⁶ LCR Act, sections 44, 49 and 157.

⁷ LCR Act, sections 44 and 157.

⁸ LCR Act, section 3(1) (definition of "uncontested application").

17. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that the granting of the application would be conducive to or encourage harm (section 44(2)(b)(ii)).

Exercising the internal review power

18. 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.
19. 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.*

20. 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.⁹

21. 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.*

⁹ 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).

22. In exercising the internal review power, the Commission:
 - (a) must consider all the information, material and evidence before the original decision maker;¹⁰ and
 - (b) may consider further information, material or evidence.¹¹
23. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application is ultimately to be made pursuant to sections 44(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.
24. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application.

Conduct of an inquiry

25. Section 44(4) provides that the Commission may have regard to any matter it considers relevant and make any enquiries it considers appropriate, but with respect to an uncontested application is not required to give any person an opportunity to be heard concerning the application.
26. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit, and is bound by the rules of natural justice.

Renewable limited licences

27. A limited licence may be a temporary limited licence or a renewable limited licence.¹² Pursuant to section 14(1B), a renewable limited licence authorises the licensee to supply liquor at the times determined by the Commission and specified in the licence, and it may be renewed in accordance with the LCR Act. A limited licence may further be subject to any conditions determined by the Commission and specified in the licence.¹³
28. Section 26(1) provides that the Commission may grant a limited licence only if it is satisfied that the scale and scope of the supply of liquor the subject of the licence is limited in nature (**Scale and Scope Requirement**).

¹⁰ LCR Act, section 157(2).

¹¹ LCR Act, section 157(3).

¹² LCR Act, section 14(1).

¹³ LCR Act, section 14(2)(c).

Material before the Commission

29. 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) Review Application received on 18 April 2023;
 - (b) Delegate's Reasons dated 10 May 2023;
 - (c) email communication and attachments received from Ms De Stefano on 14 June 2023;
 - (d) submissions presented at the hearing of the Review Application on 16 June 2023;
 - (e) written submissions and safety management system document received from Ms De Stefano on 5 July 2023;
 - (f) submissions presented at the hearing of the Review Application on 3 August 2023;
 - (g) written submissions and updated safety management system document received from Ms De Stefano on 17 August 2023; and
 - (h) email communication received from Ms De Stefano on 24 November 2023.

First Hearing, 16 June 2023

30. A hearing was held in relation to the Review Application on 16 June 2023 (**First Hearing**). Ms De Stefano appeared on behalf of the Applicant. The Applicant's director, Mr Lance Wiffen, and the Applicant's manager, Ms Elizabeth Franklin, also attended.
31. Mr Wiffen said that the Applicant's primary objective was "doing tours and taking people out to the mussel farm".¹⁴ He stated that he did not want to turn the boat into a "booze cruise",¹⁵ but the business was developing and he wanted to have options to be able to accommodate customer's requests, such as weddings and private tours. He said that he did not want to limit how many tours the Applicant can operate because he did not know what the demand was going to be. He later said he could not imagine doing more than 10 tours a year which were not the current tour of a Portarlington mussel farm.¹⁶

¹⁴ Hearing transcript, 16 June 2023, page 5, line 16 to line 17.

¹⁵ Hearing transcript, 16 June 2023, page 5, line 44.

¹⁶ Hearing transcript, 16 June 2023, page 5, line 23 to page 6, line 11; page 7, line 26 to line 27; page 9, line 8 to line 9.

32. Ms Franklin stated that she does not envisage the Applicant operating seven days a week or providing five or six tours a week. That was said to be because each tour involves a lot of preparation in terms of cooking, cleaning and other tasks.¹⁷

Written submissions, 5 July 2023

33. On 5 July 2023, the Applicant provided the following written submissions:
- (a) The Applicant would like to be able to offer pre-booked tours that do not attend the mussel farm. In line with the Scale and Scope Requirement, the Applicant requests that Special Condition 1 be amended to allow it to offer up to 24 tours per calendar year on the Premises which are not tours of the mussel farm.
 - (b) The Applicant requests that Special Condition 2 is broadened slightly to read: “The supply of liquor is limited to wines produced on the Bellarine Peninsula, together with beer and pre-mixed spirits irrespective of [where] the beer or pre-mixed spirits are produced.” This amendment will account for availability of some of the lines of alcohol.
 - (c) The Applicant does not request any amendment to Special Condition 3.
 - (d) The Applicant requests that Special Condition 4 be amended to read: “The duration of a tour supplying liquor must not exceed six hours.”
 - (e) The Applicant will ensure that all crew serving alcohol on board the Premises hold a current RSA certificate. No unqualified crew will be entitled to serve alcohol.
 - (f) The Applicant is governed by strict safety standards and safety management procedures.
34. The Applicant also lodged a copy of its safety management system document (**SMS**), which included a policy relating to alcohol, drugs and the responsible service of alcohol. The SMS listed two skippers (Mr Wiffen and Mr Shane Wiffen)¹⁸ and two crew (Ms Franklin and Ms Connie Trathen).

¹⁷ Hearing transcript, 16 June 2023, page 7, line 14 to line 25.

¹⁸ For convenience, these reasons refer to Mr Lance Wiffen as **Mr Wiffen** and Mr Shane Wiffen as **Mr Shane Wiffen**.

Second Hearing, 3 August 2023

35. A second hearing was held in relation to the Review Application on 3 August 2023 (**Second Hearing**). Again, Ms De Stefano appeared on behalf of the Applicant, with Mr Wiffen and Ms Franklin also attending.

36. Mr Wiffen described the current tour (**Mussel-Guided Tour**) as follows:

So follow just up on that, our experience so far has been, you know, when people come on board, and we start the tour, there's a quarter of an hour taken up within those first three hours that we're doing at the moment in instructing them how to behave on board, their safety, safety check system. Then when they get their first drink, not long after that, that's when we do the oysters. Their second drink comes a lot later than that because they're then tasting oysters and stuff, and that's how the day goes. Like, the moment, then there's a gap between there and the farm, so I'll get another drink maybe, and then we're back viewing the mussels and actually doing things there.

They're actually physically doing things to the mussels over the side of the boat and then part of the hook-up and all that sort of thing. So it's not just a situation where they're sitting in a chair ...¹⁹

37. Mr Wiffen stated that the Applicant has different types of wines for different parts of the tour. He said that a big part of the tour is giving passengers a taste of the region and that passengers to date have not been drinking very much. He said that it is not a booze cruise and they do not want to have bucks parties.²⁰ Ms Franklin stated that, aside from being offered a champagne on arrival, passengers have to come up to the serving counter to ask if they want a drink.²¹

38. Mr Wiffen stated that the Applicant sought a longer tour (**Special-Guided Tour**) because its main farming operation (including where it grows oysters and hopes to grow scallops) is two hours away by boat. He said that the Applicant would serve tea, coffee and food on the way to the site, and offer alcoholic drinks once they start to bring up the oysters, mussels and, in future, scallops. He stated that, if they continued to offer liquor all the way back, that would take it to four hours.²² The total touring time would thus be six hours.

39. Mr Wiffen stated that private tours can be more challenging because the passengers all know each other and they could drink more alcohol because of that. However, he said that there is only three crew on board and they are supplying alcohol at the rate they want to supply it. He stated that they are busy running the boat, cooking meals and

¹⁹ Hearing transcript, 3 August 2023, page 9, line 7 to line 18.

²⁰ Hearing transcript, 3 August 2023, page 10, line 8 to line 12; page 11, line 32; page 13, line 4.

²¹ Hearing transcript, 3 August 2023, page 10, line 14 to line 17.

²² Hearing transcript, 3 August 2023, page 3, line 32 to page 4, line 3.

showing passengers the ropes; they are not rushing around filling up passengers' glasses.²³

40. Mr Wiffen and Ms Franklin spoke to the measures they employ to manage difficult passengers. Mr Wiffen stated that the Applicant would handle difficult passengers the same way as in a bar. He said that, if the crew see someone starting to drink too much, the crew would avoid them and slow their drinking down. Ms Franklin stated that there were areas on the Premises where they could encourage a person to go where there are no other patrons. Mr Wiffen and Ms Franklin said that they could contact water police if a passenger was difficult or hostile. Ms Franklin added that they would head straight to the nearest port. Ms Franklin and Mr Wiffen agreed that they would proactively use best endeavours to avoid the situation becoming an extreme one.²⁴
41. Ms Franklin and Mr Wiffen confirmed that passengers would not be allowed to bring liquor onto the Premises and that drinking water is available at all times during the tours. Ms Franklin said that there is a lot of food and there is a wide range of non-alcoholic soft drinks and juices.²⁵
42. Mr Wiffen stated that the current Mussel-Guided Tour takes the Premises about 35 to 40 minutes from the nearest jetty. He said that the Applicant's main farming operation is 45 minutes to one hour from the nearest jetty.²⁶
43. Ms Franklin stated that the Applicant has done 12 to 15 Mussel-Guided Tours so far and there had been no issues.²⁷
44. Mr Wiffen explained that the two skippers listed in the SMS are himself and his son, Mr Shane Wiffen, and that Mr Shane Wiffen has not yet completed his RSA training. Mr Wiffen stated that the boat can operate with one skipper and one crew, but the minimum they can operate a tour with is one skipper and two crew. He said that Mr Shane Wiffen will not skipper the Premises alone until he does his RSA training. Ms Franklin explained that Ms Trathen (the second crew member listed on the SMS, in addition to herself) is a staff member who works on board and has completed her RSA training.²⁸

²³ Hearing transcript, 3 August 2023, page 13, line 11 to line 20.

²⁴ Hearing transcript, 3 August 2023, page 5, line 42 to page 7, line 16.

²⁵ Hearing transcript, 3 August 2023, page 8, line 20 to page 9, line 3.

²⁶ Hearing transcript, 3 August 2023, page 3, line 29 to line 35.

²⁷ Hearing transcript, 3 August 2023, page 12, line 21 to line 27.

²⁸ Hearing transcript, 3 August 2023, page 17, line 27 to page 18, line 27.

45. Mr Wiffen confirmed that there are security cameras on the Premises. He said that the footage records 24 hours a day and is kept for three months.²⁹

Written submissions, 17 August 2023

46. On 17 August 2023, the Applicant provided the following written submissions:
- (a) The Premises is used to operate the Applicant's mussel harvesting business in addition to operating mussel tours, therefore the SMS needs to cover both uses.
 - (b) The Applicant's communication with prospective customers will be via its website terms and conditions. The terms and conditions are currently being updated to make it clear that booze cruises, bucks parties and hens parties will not be permitted. The terms and conditions will also include that intoxicated patrons will not be tolerated and tours will be ceased and patrons taken to the nearest port.
 - (c) The Applicant received advice from representatives in the tourism industry that, for a tour of this nature, an all-inclusive ticket price would be better received by the market, rather than including one drink in the ticket price with further drinks available for purchase on the boat, as previously advised. Therefore, the Applicant has increased the ticket price to include beer, wine and soft drink. Pre-mix cocktails are available on board, but are not included in the ticket price and can be purchased on board. As set out in the SMS, all alcohol will be served in accordance with the responsible service of alcohol guidelines.
 - (d) The Applicant proposed that a condition be endorsed on the Licence that referred to the SMS, noting that the SMS will be updated from time to time.
47. In addition, the Applicant lodged an updated copy of its SMS with an amended policy relating to alcohol, drugs and the responsible service of alcohol.

Reasons for decision on review

Issues for determination on review

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

²⁹ Hearing transcript, 3 August 2023, page 18, line 33 to line 41.

- (a) whether the Scale and Scope Requirement is met,³⁰ and
- (b) whether the grant of the Review Application would be conducive to or encourage harm,³¹ or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.³²

Whether the Scale and Scope Requirement is met

- 49. As stated above, the Commission may grant a renewable limited licence only if satisfied that the Scale and Scope Requirement is met — that is, that the scale and scope of the supply of liquor the subject of the licence is limited in nature.³³
- 50. There are no statutory signposts which prescribe specific factors for the Commission to consider in determining whether the Scale and Scope Requirement is met. On previous occasions, the Commission has considered “the nature, location, duration or frequency of hours of operation of the licence in question” as relevant to the Scale and Scope Requirement.³⁴
- 51. The Commission notes that the supply of liquor is limited to a maximum of 12 patrons on a pre-booked guided tour. The duration of hours of operation sought by the Applicant is limited: the duration of a Mussel-Guided Tour must not exceed three hours; and the duration of a Special-Guided Tour must not exceed six hours, with the duration for the supply of liquor for such a tour further limited to four hours.
- 52. In addition, the Applicant has sought that the supply of liquor be limited to wines produced on the Bellarine Peninsula, beer and pre-mixed spirits (irrespective of where the beer or pre-mixed spirits are produced).
- 53. Further, the Applicant has sought to be allowed to conduct a maximum of 24 Special-Guided Tours per year. For clarity, the number of Mussel-Guided Tours stands as per the current licence.
- 54. Consequently, the Commission is satisfied that the Scale and Scope Requirement is satisfied.

³⁰ LCR Act, section 26(1). See [28] above.

³¹ LCR Act, section 44(2)(b)(ii).

³² 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).

³³ LCR Act, section 26(1).

³⁴ See *Fynix Pty Ltd at 36A Vickers Street, Sebastapol premises (Liquor-Internal Review)* [2016] VCGLR 19, [61].

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

55. An application may be refused if granting the application would be conducive to or encourage harm.³⁵ 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 the primary object of harm minimisation.³⁶
56. The Commission notes that Victoria Police did not raise any concerns in relation to harm.
57. As identified in a previous decision by the Commission, the supply of liquor during cruises poses certain risks, including the loss of judgment and coordination from alcohol consumption that can lead to the inability to react appropriately to a dangerous boating situation.³⁷ These risks may be exacerbated on longer cruises pre-booked for special occasions, where customer groups may engage in excessive drinking of alcohol.³⁸ In this regard, the Commission notes that the Applicant's SMS states that no bucks parties, hens parties or booze cruise bookings will be accepted. However, as indicated in the Review Application form and reiterated by Mr Wiffen at the First Hearing,³⁹ other special occasions, such as weddings, will be accepted.
58. The Commission accepts that passengers on a Mussel-Guided Tour will be occupied doing activities during the tour, not just sitting and drinking, and that these tours will not exceed three hours. As such, the Commission considers that these tours pose a lower risk of harm and risky drinking of alcohol than other tours proposed by the Applicant, such as for weddings. As acknowledged by Mr Wiffen, passengers on private tours may drink more alcohol because they all know each other.⁴⁰ Moreover, Special-Guided Tours have a longer duration of touring, a maximum of six hours. For this reason, the Commission considers it appropriate that the duration for the supply of liquor be limited to four hours and that the already installed security cameras be conditioned to operate during Special-Guided Tours, in order to minimise the risk of harm. This is especially so where the number of drinks which may be served to each passenger is not limited and

³⁵ LCR Act, section 44(2)(b)(ii).

³⁶ LCR Act, sections 4 and 172D(3).

³⁷ *On A Boat Pty Ltd at WTC Wharf, 18/38 Siddeley St, Docklands and Berth 4, Southbank Wharf, Lower Yarra River* (Victorian Liquor Commission, 1 September 2023) [76] (“*On A Boat*”).

³⁸ *Ibid* [77].

³⁹ See [10]–[11], [31] above.

⁴⁰ See [39] above.

where the Premises may travel in open water up to an hour away from the nearest jetty and far from water police.⁴¹

59. A practice in the industry is to put in place a venue management plan to provide for adequate controls to exist over the supply and consumption of liquor at a licensed premises. The Commission accepts that the Applicant's SMS contains policies and procedures designed to minimise the risk of harm arising from the misuse and abuse of alcohol, such as: refusing boarding to clearly intoxicated passengers; having food, water and non-alcoholic drinks available at all times; and dealing with drunk or hostile passengers. As such, the SMS serves as a good framework in which to address matters relating to the responsible service of alcohol on tours and therefore serves as the venue management plan for the Premises.
60. In its submissions dated 5 July 2023, SMS as at 5 July 2023 and SMS as at 17 August 2023, the Applicant proposed that all crew involved in the supply of liquor would have an RSA certificate. However, the SMS as at 17 August 2023 also contains a somewhat contradictory statement that "[t]here must be two crew with current RSA certificates on board". In the circumstances, the Commission considers it appropriate that a condition be placed on the Licence requiring all staff involved in the service of liquor to have a current RSA certificate.
61. With the imposition of the conditions in Appendix A, the Commission is satisfied that adequate controls exist over the supply and consumption of liquor at the Premises and that any harm should be minimised. Accordingly, the Commission considers that the grant of a licence in this instance would not be conducive to or encourage harm and would not be contrary to the LCR Act's object concerning harm minimisation.

Decision on review

62. The Commission is satisfied that the Review Application meets all legislative requirements set out above. Accordingly, for the reasons set out above, the Commission is satisfied that granting the licence the subject of the Review Application is appropriate in the circumstances.

⁴¹ In this regard, the current Review Application differs from the Commission's recent decision of *On A Boat*. In that decision, while the premises was also a boat, that boat only travels along the Yarra River and a condition limiting the number of standard drinks per passenger was imposed on the licence.

63. The Commission has therefore determined to vary the Original Decision and grant the licence the subject of the Review Application subject to the conditions set out in Appendix A.

The preceding 63 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Ms Susan Timbs (Commissioner) and Ms Thu-Trang Tran (Commissioner).

Appendix A

Type of licence

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

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Maximum capacities

12 patrons

Responsible Service of Alcohol

All staff involved in the service of liquor on the licensed premises must have completed an approved Responsible Service of Alcohol course within the preceding three years.

All copies of the RSA certificate for each member of staff must be at one central place within the licensed area for inspection if requested by a member of Victoria Police or a liquor inspector.

Safety Management System (venue management plan)

To the extent that a matter is not already dealt with on this licence, the licensee must comply with the provisions relating to the supply or consumption of liquor in its Safety Management System (venue management plan) (as amended from time to time and approved by Liquor Control Victoria).

Where the licensee amends its Safety Management System in such a way as to vary its provisions relating to the supply or consumption of liquor pursuant to this licence, the licensee must submit to Liquor Control Victoria for approval a copy of those provisions within five business days of the amendment.

The licensee must make the Safety Management System (as amended from time to time and approved by Liquor Control Victoria) available for inspection at the licensed premises on request by a liquor inspector or member of Victoria Police.

Special conditions

- (1) The supply of liquor is limited to patrons on a pre-booked guided tour (**Guided Tour**).
- (2) Guided Tours may be a Mussel-Guided Tour or a Special-Guided Tour.
- (3) A Mussel-Guided Tour is a tour of a Portarlington mussel farm with the following conditions:
 - (a) The duration of the tour must not exceed three hours.

- (b) The duration of the service of liquor must not exceed three hours.
- (4) A Special-Guided Tour is a Guided Tour with the following conditions:
 - (a) The duration of the tour must not exceed six hours.
 - (b) The duration of the service of liquor must not exceed four hours.
 - (c) A maximum of 24 Special-Guided Tours may be conducted per calendar year.
 - (d) Where a Special-Guided Tour is longer than four hours in touring duration, the licensee must prominently display on its website, and state during its pre-tour passenger safety briefing prior to any supply of liquor, that the duration for the supply of liquor must not exceed four hours.
- (5) The supply of liquor on a Guided Tour is limited to:
 - (a) wines produced on the Bellarine Peninsula; and
 - (b) beer and pre-mixed spirits.
- (6) Food must be available for consumption at all times when liquor is being supplied.
- (7) Free drinking water must be available for consumption at all times when liquor is being supplied.

Security cameras

The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment/dance floor areas. The surveillance recording system must operate from 30 minutes before the premises is open to the public for a Special-Guided Tour and until 30 minutes after the Special-Guided Tour. A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by Liquor Control Victoria, and/or otherwise retained for at least one month.

Signs, as described below, are to be displayed in all areas subject to camera surveillance. Such signs shall read: "For the safety and security of patrons and staff this area is under electronic surveillance."

Trading hours

Good Friday & ANZAC Day	Between 12 noon and 9pm
On any other day	Between 7am and 9pm