



DECISION AND REASONS FOR DECISION

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* for an internal review of a decision to vary a late night (general) licence in respect of the premises trading as the Manningham Hotel, located at 1 Thompsons Road, Bulleen.

Commission: Ms Deirdre O'Donnell, Deputy Chair
Mr Des Powell AM, Commissioner
Dr Dina McMillan, Commissioner

Date of Hearing: 19 March 2018

Date of Decision: 29 June 2018

Date of Reasons: 29 June 2018

Appearances: Mr Andrew Woods, Counsel for the Licensee (instructed by Tucker Partners)
Mr Matthew Gibson, Applicant
Ms Michelle Miller, Counsel Assisting the Commission

Decision: The Commission has determined to set aside the decision of the Delegate and, in substitution, refuse to grant the application to vary the licence.

Signed:

A handwritten signature in black ink, appearing to read 'Deirdre O'Donnell'.

Deirdre O'Donnell
Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. The Australian Leisure and Hospitality Group Pty Ltd (**the Licensee**) is the holder of late night (general) licence no. 31916848 (**the Licence**), which relates to particular areas of the premises trading as the Manningham Hotel, located at 1 Thompsons Road, Bulleen (**the Premises**). A separate full club licence no. 32122515 is applicable to other areas within the same building, trading as the Manningham Club.
2. The Licence specifies the trading hours for particular areas of the premises to which it relates, namely the Restaurant and Sports Bar/TAB (**Sports Bar**), and the remainder of the premises excluding areas to which the full club licence applies. The Licence also specifies the trading hours in relation to the supply of liquor for consumption off the licensed premises.

Original Application

3. On 2 November 2016, under to section 29 of the *Liquor Control Reform Act 1998* (**LCR Act**), the Licensee applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to vary the trading hours of the Sports Bar on a Friday and Saturday night. The application was to extend the closing time on those days from 1am the next day to 3am the next day in the Sports Bar (**the Original Application**), which would bring those trading hours into line with some other areas of the Premises.
4. Pursuant to section 33(1) of the LCR Act, a copy of the Original Application was served on the Chief Commissioner of Police. Victoria Police confirmed on 14 November 2016 that they did not object to the proposed variation to the Licence.
5. A copy of the Original Application was also served on the Manningham City Council (**the Council**) pursuant to section 33(2) of the LCR Act. The Council advised that planning permission was required for the variation in trading hours. The Original Application was put on hold while the Licensee applied for a planning permit.
6. On 2 December 2016, an objection to the application was received from Mr Matthew Gibson, a local resident of a property situated behind the Premises. On 7 December 2016, an objection was received from Mr Jack Gibson, another resident of a property behind the Premises (**the Objectors**).



7. In summary, the concerns of the Objectors were that the extension to the trading hours would detract from or be detrimental to the amenity of the area in which the Premises are situated. Specifically, the Objectors raised the following concerns:
 - (a) the extension of hours would exacerbate existing late-night noise issues;
 - (b) the proximity of the entrance to the Sports Bar and the adjacent car park to the nearby residents' homes, including the Objectors, means that vehicle and patron noise would be amplified in the early hours of the morning;
 - (c) the location of rubbish bins at the rear of the Premises, adjacent to the residents' fence line, means that the dumping of rubbish, including bottles, can be heard from inside the residents' homes;
 - (d) patron noise from the outdoor smoking area adjacent to the Sports Bar can be heard and the impact is likely to be worse later at night; and
 - (e) one of the Objectors reported that rubbish, including bottles, was being dumped in bins late in the night and as early as 4am and there would be additional noise from staff cleaning during and after events.
8. A copy of the submissions from the Objectors were provided to the Licensee.
9. On 5 January 2017, the Licensee wrote to the Commission to address the concerns of the Objectors. The Licensee submitted the following:
 - (a) the venue has not received any noise complaints from residents in relation to the current trade to 1am (in the Sports Bar, or the Premises generally);
 - (b) the entrance/exit to the Sports Bar has an airlock entry way designed to minimise the escape of noise from inside the Premises;
 - (c) the Licence for the Premises already contains late night conditions that require additional security measures when live or amplified music is provided. These conditions also include the use of crowd controllers, a surveillance recording system and notices advising patrons of the surveillance system;
 - (d) the venue has no record of receiving complaints about noise from the carpark areas, however, the Licensee would accept a condition on the Licence restricting the use of the north-west carpark to staff/contractors only on Friday and Saturday nights;
 - (e) the venue has no record of receiving complaints about the outdoor smoking area adjacent to the Sports Bar. The outdoor smoking area is protected on two sides by double storey concrete



walls and a third double storey concrete wall within metres of the area. The south-west side opens up to the front of the venue and is away from the residents. The outdoor smoking area is also partially enclosed by a roof;

- (f) any noise from patrons leaving the Sports Bar would be minimised by:
 - (i) no patron parking in the north-west carpark leading patrons away from the residences;
 - (ii) the airlock entry/exit; and
 - (iii) crowd controllers present during trading hours and for 30 minutes after closing;
- (g) the venue has no record of receiving complaints in relation to noise associated with cleaning processes, but is prepared to relocate the bins from the rear to the side of the Premises.

10. In November 2017, the Council finalised the amendment to the planning permit to allow the Sports Bar to stay open to the public until 3am on Friday and Saturday nights. A copy of the planning permit was provided to the Commission.
11. On 18 December 2017, the Commission's delegate (**the Delegate**) determined to grant the application to vary the trading hours and the Licence was varied accordingly (**the Original Decision**). In granting the Original Application, the Delegate noted the Objectors' concerns regarding additional noise but given the lack of complaints regarding the current operation of the premises, did not consider the objections sufficient to refuse the application.
12. However, in response to the Objectors' concerns, the Delegate determined to impose two conditions to the Licence:
 - (a) *The north-west carpark may only be used by staff/contractors on Friday and Saturday nights (as proposed by the Licensee).*
 - (b) *Glass and other rubbish from the Sportsbar/TAB area may not be disposed of to the exterior skip bins after 1am on any day.*
13. The Licensee and the Objectors were provided with the Delegate's decision and the reasons for the decision on 18 December 2017.

Review Application

14. On 27 December 2017, the Commission received an application for an internal review of the decision (**the Review Application**) from one of the Objectors, Mr Matthew Gibson (**the Applicant**). The Review Application included a request that the Original Decision not take effect



until the determination of the Review Application, also known as a stay of the decision (**Stay Request**).

15. On 8 January 2018, after reviewing all the material available to the Commission's Delegate, the Commission determined not to grant the Stay Request.

LEGISLATIVE FRAMEWORK AND THE TASK BEFORE THE COMMISSION

The Commission's internal review power

16. Division 2 of Part 9 of the LCR Act governs internal review applications. The Original Decision is a reviewable decision under section 152 of the LCR Act, as the decision was made under section 47 of the LCR Act as a contested application. Any objector is eligible to make an application for review of the decision by the Commission under section 153 of the LCR Act, therefore the Applicant is eligible to apply for review of the Original Decision.
17. Pursuant to section 157(1) of the LCR Act, the specific task for the Commission with respect to the Review Application is to make a fresh decision that either:
 - (a) affirms or varies the reviewable decision; or
 - (b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.
18. Under the LCR Act, an application for variation of a late-night licence may be contested or uncontested. The Original Application constitutes a contested application under section 3(1) of the LCR Act, in that it is an application for the variation of a licence in respect of which objections under Division 5 of Part 2 of the LCR Act have been received.
19. Mr Matthew Gibson and Mr Jack Gibson objected to the variation of the Licence on the grounds of amenity. Section 38(1), which is within Division 5 of Part 2 of the LCR Act, provides that "any person may object to the grant, variation or relocation of a licence on the ground that the grant, variation or relocation would detract from or be detrimental to the amenity of the area in which the licensed premises or proposed licensed premises are situated". Accordingly, the Original Application was contested, and the Review Application remains contested.
20. In effect, the Commission, on internal review, stands in the shoes of the original decision maker and makes a fresh decision with respect to the contested application. In doing so, it must consider



all the information, material and evidence that was before the original decision maker.¹ It may also consider further information, material or evidence as part of making its decision.²

Conduct of an inquiry

21. The general conduct of an inquiry, including an internal review, is governed by the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*. Section 34 of the VCGLR Act provides that, subject to that Act, gambling legislation or liquor legislation, the Commission may conduct any inquiry in any manner it considers appropriate.
22. Section 33(1) of the VCGLR Act provides that “the Commission may conduct any inquiry for the purposes of performing its functions or duties, or exercising its powers under this Act, gambling legislation or liquor legislation.” The functions of the Commission are listed in section 9 of the VCGLR Act.
23. Section 33(3) of the VCGLR Act provides that when the Commission is conducting an inquiry for the purposes of performing a function under section 9(1)(a), (b), (c) or (d), the Commission has certain powers specified in the subsequently repealed Division 5 of Part I of the *Evidence (Miscellaneous Provisions) Act 1958*. These powers include the power to examine a witness on oath and the power to send for witnesses and documents.
24. Section 25(3)(a) of the VCGLR Act provides that the Commission in performing a function or duty, except when exercising a power under Division 5 of Part I of the *Evidence (Miscellaneous Provisions) Act 1958*, is not bound by the rules of evidence and may inform itself in any way it thinks fit. Section 25(3)(b) specifies that the Commission is bound by the rules of natural justice.

Determination of a contested application

25. Section 154 of the LCR Act provides that the Commission must notify every person who provided the original decision maker information or material, or gave evidence to the original decision maker, in writing that the Review Application has been received. The notification must specify that the Commission on review:
 - (a) will not be limited to the information or material provided or evidence given to the original decision maker; and

¹ Section 157(2) of the LCR Act.

² Section 157(3) of the LCR Act.



(b) may request further information or material from the person or may require the person to give evidence before the Commission.

26. 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.”

27. Under section 47(3) of the LCR Act, before granting or refusing a contested application, the Commission:

*“(a) may have regard to any matter that 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.”*

28. Section 9(3) of the VCGLR Act provides that:

“The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998, the Casino Control Act 1991, the Racing Act 1958 or any other Act, have regard to the objects of the Act conferring functions on the Commission.”³

29. Section 9(4) of the VCGLR Act provides that:

“The Commission must, when performing functions or duties or exercising its powers under gambling legislation or liquor legislation, have regard to any decision-making guidelines issued by the Minister under section 5.”

30. Accordingly, in exercising its discretion to either grant or refuse a contested application under section 47(1) of the LCR Act, the Commission must have regard to the objects of the LCR Act. The objects of the LCR Act are set out in section 4(1), which provides:

“(1) The objects of this Act are—

- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, 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*

³ The VCGLR Act does not contain any specific objects.



- (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.”*

31. Section 4(2) of the LCR Act provides further 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 and the risks associated with the misuse and abuse of alcohol.”

32. The Court of Appeal of the Victorian Supreme Court has made it clear in *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 (**Kordister**) that harm minimisation is a fundamental principle of the LCR Act, and can properly be regarded as “the primary regulatory object of the Act and therefore the primary consideration in liquor licensing decisions”.⁴ However, as was also noted by the Court of Appeal, “this is not to say ... that it [harm minimisation] is to be taken into account, or given such weight, to the exclusion of the other objects”.⁵

33. Pursuant to sections 47(2) and 44(2) of the LCR Act, the Commission may refuse to grant the Original Application on a number of grounds, including:

- (a) that the grant 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 situated⁶; and
- (b) that the grant of the application would be conducive to or encourage the misuse or abuse of alcohol⁷.

34. For the purposes of the LCR Act and relevantly in this matter, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.⁸ Section 3A(2) of the LCR Act lists the following factors that may be taken into account in determining whether the grant, variation or relocation of a licence would detract from or be detrimental to the amenity of an area:

- (a) the presence or absence of parking facilities;

⁴ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁵ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

⁶ Section 44(2)(b)(i) of the LCR Act.

⁷ Section 44(2)(b)(ii) of the LCR Act.

⁸ Section 3A(1) of the LCR Act.



- (b) traffic movement and density;
- (c) noise levels;
- (d) the possibility of nuisance or vandalism;
- (e) the harmony and coherence of the environment;
- (f) any other prescribed matters.

However, the definition of 'amenity' for the purposes of the LCR Act is not limited by these factors.⁹

35. Section 49 of the LCR Act provides that the Commission may impose any condition it thinks fit on the grant of an application.

MATERIAL BEFORE THE COMMISSION AND PUBLIC HEARING

36. The Commission on review had before it, and considered, all of the materials received by the Delegate and which are detailed in paragraphs 3 to 10 above. The Commission also had before it the Decision and Reasons for Decision of the Delegate in relation to the Original Application, dated 18 December 2017.
37. The Commission also received the following documents:
- (a) an application for Internal Review from the Applicant dated 27 December 2017 including a petition signed by other residents;
 - (b) a written submission from the Licensee dated 3 January 2018 that included:
 - (i) a copy of the letter dated 5 January 2017 as submitted to the Delegate, referred to in paragraph 9;
 - (ii) a document titled *Management Plan – Manningham Club Hotel*; and
 - (iii) a copy of the amended planning permit;
 - (c) a written submission from the Applicant, dated 5 February 2018, enclosing an extract of EPA regulations for residential noise;
 - (d) a Pre-hearing Compliance Report, dated 7 February 2018, prepared by the Commission (**the Pre-hearing Report**);
 - (e) a written submission from the Licensee dated 9 February 2018 including a witness statement from the venue manager, Linda Russell-Green (**Ms Russell-Green**);

⁹ Section 3A(3) of the LCR Act.



- (f) a submission from the Applicant dated 2 March 2018 comprising letters from other residents outlining concerns regarding the extension of trading hours at the Premises;
 - (g) a further written submission from the Applicant dated 9 March 2018; and
 - (h) a copy of the 2017 licence and red-line plan for the Licence.
38. On 19 March 2018, the Commission conducted a public hearing in relation to the Review Application (**the Hearing**). The Licensee was represented by Mr Andrew Woods of Counsel at the Hearing and Ms Russell-Green was called to give evidence on behalf of the Licensee.
39. The Applicant appeared in person at the Hearing and gave evidence to the Commission. Mr Jack Gibson, one of the Objectors, was also present at the Hearing and made a brief oral submission to the Commission.
40. Commissioner O'Donnell visited the Premises prior to the hearing.

Preliminary issue: Admissibility of letters

41. On 19 April 2018, Mr Woods provided a written submission on behalf of the Licensee in relation to the admissibility and weight to be given to the Applicant's submission dated 2 March 2018, referred to in paragraph 37(f) above. In summary, Mr Woods submitted that the letters contained in the submission are not admissible pursuant to the LCR Act and should not be considered by the Commission. Reliance was placed on an interpretation of section 157 of the LCR Act, and it was argued that the review was a review of material before the original decision maker only with further evidence only being admissible if specifically requested by the Commission.
42. The Commission does not agree with this interpretation of the LCR Act. The Commission's view on its functions and powers on review is outlined above in paragraphs 16 to 35.
43. The Commission considers that section 157 of the LCR Act requires it to consider all the information, material and evidence before the original decision maker and allows the Commission to request further information and material from any person who provided information to the original decision maker or to require them to give further evidence for the purpose of making its decision. Section 157 does not require the Commission to only accept information or materials it has specifically requested.
44. As outlined in paragraph 26 above, section 154 requires the Commission to notify every person, including the Licensee and Objectors, who provided information or material or gave evidence to



the original decision maker that an application for review has been received. In this notification, the Commission must advise each person that the Commission on review will not be limited to the information or material provided or evidence given to the original decision maker. This express requirement would not make sense if section 157 was intended to restrict the Commission only to material before the original decision maker or to material that it has specifically requested.

45. Section 157 also contains a “note” referring to section 25(3) of the VCGLR Act as to how the Commission may go about making a fresh decision. Section 25(3) of the VCGLR Act provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit.
46. The Commission notes that the letters contained in the Applicant’s submission dated 2 March 2018 were provided to the Licensee on 5 March 2018, and the Licensee had an opportunity to respond to the letters. However, the Commission notes that the authors of the letters were not present at the Hearing and thus matters raised within the letters could not be extensively tested.

DETERMINATION OF THE REVIEW APPLICATION

47. In making its decision on review, the Commission must determine the following issues:
 - (a) whether the grant of the variation would detract from or be detrimental to the amenity of the area in which the Premises are located¹⁰;
 - (b) whether the grant of the variation would be conducive to or encourage the misuse or abuse of alcohol¹¹; and
 - (c) whether the variation should be granted or refused having regard to the objects of the LCR Act, with particular regard to the object of harm minimisation¹².

AMENITY

48. In support of his objection on the ground of amenity, the Applicant submitted that he has raised noise and other amenity concerns directly with the venue on a number of occasions. These concerns included:
 - (a) that birds were accessing the bins, eating from the bins and transferring rubbish into his and his neighbours’ yards;

¹⁰ Sections 44(2)(b)(i) and 47(2) of the LCR Act.

¹¹ Section 44(2)(b)(ii) of the LCR Act.

¹² Section 4 of the LCR Act, in particular subsection (2).



- (b) noise that appeared to be from rubbish disposal, including bottles, into bins outside of ordinary business hours; and
- (c) music and patron noise emanating from the Premises being heard above an acceptable level late at night.

Rubbish Bins

49. The Applicant gave evidence at the Hearing that his primary concern was that the varied Licence allowed the Licensee to place rubbish in bins up until 1am. The Applicant's written objection to the Original Application, which the Commission had before it, noted that:

"...the use of the rubbish bins at the back of the establishment at those early hours I feel will certainly not be tenable given there (sic) immediate proximity."

50. In his submission, dated 9 March 2018, the Applicant stated that the noises that had woken him at night on Friday and Saturday nights included:

"Rubbish being placed in the bins at different times during the night and the closing of the rubbish bin lids;

Bottles being placed in the bottle bins whether by staff during the night or cleaners early in the morning."

51. The Applicant also stated that he has been woken up around 20 times, over the previous 12 to 18 months, by the sound of bottles being emptied into the bins.
52. At the Hearing, the Applicant told the Commission he had at least two conversations with Ms Russell-Green about the bins. One conversation was in relation to crows eating out of the bins and dropping rubbish into his front and rear yards and that this issue has been resolved by the lids on the bins being closed. The second conversation was about the noise of bottles being put into the bins, particularly early Saturday and Sunday mornings. The Applicant also gave oral evidence to the Commission that the venue's restriction on staff (including cleaners) taking rubbish out to the bins prior to 9am had only been adhered to in the previous six to eight weeks and that prior to that it had been "a shambles".
53. Mr Woods clarified with Ms Russell-Green that the planning permit expressly requires that the venue operator ensures that "no commercial rubbish pick-ups occur prior to 7:30 am on any day, and that bottles stored outside the building are handled in such a manner as to cause no noise disturbance to adjoining residents at night time."
54. In relation to the location of the rubbish bins, Ms Russell-Green submitted to the Commission at the Hearing, that the bins had been moved from being approximately 12 metres from the nearest



resident's fence line to approximately 94 metres from the closest residential fence. Evidence was later presented to the Commission that the bins had been moved a week prior to the Hearing. Ms Russell-Green further submitted that only the cleaners are permitted to take rubbish to the bins and that they may only do this after 9 am each day. Ms Russell-Green advised the Commission that a notice has been placed on the internal door of the cleaners' room advising them of this rubbish restriction.

55. The Commission considers that the new location of the bins and the restricted times on dumping of rubbish should reduce the impact on the residents. However, as the bins had only recently been moved, the Commission considers it is too early to assess the impact of these actions.

Music and Function noise

56. In his submission dated 9 March 2018, the Applicant stated that he has been "woken up about a half a dozen times in the last 12-18 months on a Friday or Saturday night because of music playing indoors at the club."
57. The Applicant gave evidence to the Commission that the noise issues at the Premises were ongoing. The Applicant further submitted that it was one thing to be woken before midnight by loud music knowing it would soon stop when the venue closed for the night, and another to be woken up and knowing that the venue could remain open until 3am.
58. Mr Jack Gibson told the Commission that the music noise from the venue is sometimes so loud that "you can almost sing the words to the songs...". Mr Jack Gibson went on to note that the music appears to primarily come from the Grand Ballroom but that when there are functions in the other function space, the Clariden Room, the music transmits "very loudly".
59. Ms Russell-Green gave evidence to the Commission that the venue is quiet at night time and is primarily patronised by seniors during the day and early evening.
60. Ms Russell-Green also gave evidence that the additional hours would allow for the viewing of late night sporting events in the Sports Bar and betting in the TAB. Ms Russell-Green advised the Commission that there was no intention to provide live music in the Sports Bar and that there would be no loud music late at night.
61. When asked about the extent of the use of the function rooms, Ms Russell-Green gave evidence to the Commission that there is usually a birthday function at least once a week in one of the function rooms and that functions usually finish at approximately 12:30 am. Ms Russell-Green



further stated that there are functions at the venue more than once a week and that the weekends are usually “full with functions”.

62. Ms Russell-Green gave evidence that the Sports Bar had been used as a function room at least two times in the approximately 19 months that she has been venue manager.
63. Ms Russell-Green stated that the function rooms are all soundproofed, including the internal doors, and that the windows are double-glazed.
64. Ms Russell-Green submitted that if the music was too loud in the function rooms it would have impacted on the patrons in the gaming room and they would have informed gaming staff. Further, the security staff are required to patrol the venue and report anything of concern to management.
65. The Licence to which this Review Application relates contains a condition that references the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (**the SEPP N-2**). The SEPP N-2 states that where music noise exceeds the set limit for a venue, it is the responsibility of the operator of the venue generating the music noise to take steps to reduce emissions. The specific condition (**the Music Noise Condition**) is as follows:

“The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.”
66. The Commission accepted the evidence of the Applicant that loud music can currently be heard from function rooms and notes that the Licensee has taken steps to reduce the noise emitted from the venue. Ms Russell-Green advised the Commission that the Licensee has previously tested the noise levels to check the venue’s compliance with the Music Noise Condition but did not specify the scope or the results of the testing.
67. Based on the evidence presented, the Commission considers that the operation of some of the function rooms at the venue is having an impact on the amenity of the area. The Applicant did not submit any evidence, either at the Hearing or by written submission, in relation to noise from the current operation of the Sports Bar. However, Ms Russell-Green confirmed that functions are held in the Sports Bar and theoretically could be ongoing until 3am under the proposed extended trading hours.
68. Given the existing issues at the Premises in relation to noise associated with music, functions and patrons, the Commission considers that the increased trading hours proposed would likely result



in further noise issues that would detract from or be detrimental to the amenity of the area in which the Premises is located.

Complaints process

69. The Applicant gave evidence, in relation to general noise issues, that he “could have rung up and complained every day with some of them” in reference to different venue managers over the years. The Applicant further submitted that in dealing with new venue managers, it appeared that they did not realise that they had neighbours and did not respond to requests to address late night noise.
70. The Applicant stated that he has made informal complaints to the venue between 12 and 20 times over the last two to three years. This is in contrast to the Licensee’s submission that they have no record of any complaints in relation to the current operation of the venue, submitted in the information before the Delegate and again submitted to the Commission in the Review Application. Further, the Applicant advised that he had attempted to communicate his concerns to the Council several times and was advised that the Council could not take any action.
71. However, the Applicant had spoken to Ms Russell-Green on the phone at least a couple of times in the last 18 months and advised that she had responded to his concerns on the night.
72. At the Hearing, Ms Russell-Green gave evidence that the amended planning permit required the venue to maintain a security register. Ms Russell-Green noted that three recent complaints from the Applicant had been logged in that security register. One complaint was in relation to the crows distributing rubbish from the bins and Ms Russell-Green did not specify the nature of the other complaints, other than they were letters from the Applicant and referred to noise.
73. The Commission clarified with Ms Russell-Green that one of the other noise complaints from the Applicant was in relation to music from a DJ in a function room (other than the Sports Bar) on 3 March 2018.
74. Given the evidence of the Applicant that he has contacted the venue informally between 12 and 20 times in the past two to three years and formally at least twice regarding noise concerns and that he has attempted to make noise complaints to the Council, the Commission is concerned that the Licensee’s complaints process is not effective in acknowledging and addressing issues raised by residents.



Conclusion on amenity

75. The Commission is satisfied that there are current amenity issues with the Premises, primarily noise issues stemming from music and bins. However, in making its decision, the Commission must consider whether the variation to the Licence that is the subject of the Review Application will detract from or be detrimental to the amenity of the area.
76. After review of the submissions provided and hearing the oral evidence of the Applicant and Ms Russell-Green, the Commission is not satisfied that the Licensee's internal complaint handling processes are sufficiently robust. Further, the Commission is of the view that there does not appear to be a genuine appreciation by the Licensee of the issues that late night and early morning noise of its business is having on its neighbours.
77. The Commission notes that parts of the venue already have a licence to trade until 3am and recognises the Licensee's desire for consistent trading hours across the venue. However, the Commission considers that to extend the area of the venue for which 3am trading is permitted would risk exacerbating the existing amenity impacts associated with the Premises. The Commission considers that extending the trading hours in the Sports Bar is likely to result in increased patron noise at the end of an event or function held there and, given the proposed closing time, this will have a detrimental impact on the amenity of the area.
78. Whilst the Commission notes some remedial steps have been taken by the Licensee, it is of the view that it is too early to tell whether these remedial actions proposed by the Licensee will resolve the concerns raised.

OTHER CONSIDERATIONS

79. The Commission has had regard to the decision-making guidelines issued under section 5 of the VCGLR Act in relation to cumulative impact¹³ and restrictions on applications for late night licences¹⁴ when determining this Review Application. The Commission considers that the guidelines are not relevant to the particular circumstances of this Review Application but acknowledges the general principles of the guidelines as the policy position of the Government.
80. The Commission notes that the Pre-hearing Report records a breach of the LCR Act at the Premises on 30 January 2015 whereby notices required to be displayed by the venue were not

¹³ Decision-Making Guidelines, Assessment of the Cumulative Impact of Licensed Premises, 7 June 2012.

¹⁴ Decision-Making Guidelines, Applications for Liquor Licences to Trade after 1.00 am, 25 June 2015.



displayed correctly, but that this matter does not relate to amenity or significantly affect the decision in this matter.

81. In determining this Review Application, the Commission has also had regard to the objects of the LCR Act, in particular harm minimisation, including whether granting the Review Application would be conducive to or encourage the misuse or abuse of alcohol.
82. There is no evidence before the Commission of instances of anti-social or harmful behaviour at the Premises in the past. The Council and Victoria Police did not raise any concerns in relation to the Premises. There is currently a condition on the Licence requiring the presence of crowd controllers when live or recorded amplified music other than background music is provided. The Commission is satisfied that, if granted, the Review Application would not be likely to increase misuse or abuse of alcohol due to the increase in trading hours in this matter.

DECISION

83. The Commission considers, based on the reasons detailed in paragraphs 79 to 82 , that there is not sufficient risk that the grant of the variation to the Licence subject of the Review Application would result in an increased risk of harm or be conducive to or encourage the misuse or abuse of alcohol, that would justify the refusal to grant the Review Application.
84. However, based on the reasons detailed in paragraphs 48 to 78, the Commission is satisfied that granting the variation to the Licence that is the subject of the Review Application would detract from or be detrimental to the amenity of the area in which the Premises are located, given the existing issues at present and that the remedial actions have not yet had adequate time to take effect in addressing these issues.
85. Having regard to these findings and the objects of the LCR Act, pursuant to sections 47 and 157 of the LCR Act, the Commission has determined to set aside the decision of the Delegate and, in substitution, refuse to grant the variation to the Licence.
86. Accordingly, for the avoidance of doubt, the following conditions imposed by the Delegate in the Original Decision are to be removed from the Licence:
 - The north-west carpark may only be used by staff contractors on Friday & Saturday nights.
 - Glass and other rubbish from the Sportsbar /Tab areas may not be disposed of to the external skips bins after 1am on any day.



87. The Commission expects that recent improvements, such as restricting parking in the north-west carpark and the relocation of the rubbish bins, will continue as they relate to existing amenity concerns and are not related to the Review Application.

88. Also for the avoidance of doubt, the trading hours for the Sports Bar (including the TAB and outside area) will revert to the following:

Sports Bar and TAB areas including outside area –

Sunday	Between 10 a.m. and 11.30 p.m.
Sunday (being Christmas & New Year's Eve or Day)	Between 10 a.m. and 1 a.m. the day following.
Good Friday	Between 12 noon and 1 a.m. the day following.
Anzac Day (Monday to Thursday)	Between 12 noon and 1 a.m. the day following.
Anzac Day (Friday and Saturday)	Between 12 noon and 1 a.m. the day following.
Anzac Day (Sunday)	Between 12 noon and 11.30 p.m.
Friday & Saturday	Between 7 a.m. and 1 a.m. the day following
On any other day	Between 7 a.m. and 1 a.m. the day following.

The preceding 88 paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, Mr Des Powell, Commissioner and Dr Dina McMillan, Commissioner.