


Decision and reasons for decision

In the matter of an application under section 153 of the Liquor Control Reform Act 1998 for internal review of a decision by a delegate to grant an application for variation of a category of a licence for the premises trading as Benzina Cantina, located at 84 High Street, Preston.

Commission:	Mr John Larkins, Deputy Chair Mr James O'Halloran, Commissioner Ms Deirdre O'Donnell, Commissioner
Date of Hearing:	20 April 2023
Date of Decision:	28 April 2023
Date of Reasons:	8 May 2023
Appearances:	Mr Domenic Luppino of Luppino Group Pty Ltd (Licensee) Mr Martin Towey, solicitor, LGS Legal for the Licensee Mr Michael Majewski, Counsel Assisting the Commission Ms Annie Walter, Mr Cameron Mackin, Ms Azira Merkoska (also for Ms Yasin Merkoski), and Mr Phillip Seraiocco (also for Lorraine Seraiocco), Objectors
Decision:	The Commission has determined to set aside the decision of the Delegate and, in substitution, vary the licence subject to the conditions in Appendix A.
Signed:	 John Larkins Deputy Chair

Background

Original Application

1. On 5 September 2022, Luppino Group Pty Ltd (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*¹ to vary its restaurant and cafe licence no. 32346193 to a general licence category (licence no. 31962378) (**Licence**) in respect of the premises trading as Benzina Cantina, located at 84 High Street, Preston (**Premises**) (**Original Application**).
2. The Licensee confirmed that the reason for the Original Application was to have the Premises operate as a bar where serving food does not have to be the predominant activity.
3. On the *Variation to the Category of Licence* form, the Licensee ticked 'No' to the question 'Will you be providing amplified music other than background music on the premises?'.²
4. On 5 September 2022, in accordance with section 33(1), a delegate of the Commission (**Delegate**) provided a copy of the Original Application to the Chief Commissioner of Victoria Police (**Victoria Police**) and to the Darebin City Council (**Council**).
5. On 3 October 2022, Victoria Police informed the Commission that it did not object to the Original Application. The Council did not make any submission regarding the Original Application.
6. During October 2022, the Delegate received amenity-based objections from seven neighbouring residents (**Objectors**)² comprising five households variously located within approximately 250 metres of the Premises.
7. In summary, the Objectors submitted that the grant of the Original Application would lead to the venue generating an unacceptable level of noise which would travel down the neighbouring streets and would be heard within their homes. The Objectors also criticised the Premises, stating that the venue has already received many complaints regarding amplified and patron noise.
8. On behalf of the Licensee, Ms Karen Street, a consultant at LiqCon, made submissions to the Commission in response to the Objectors to the effect that (in summary):

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

² Phillip and Lorraine Seraiocco; Annie Walter and Cameron Mackin; Yasin Merkoski; Azira Merkoska; and Monique Lucas.

- a) the Premises is located in a Commercial 1 Zone³. Some of the Objectors reside in the bordering General Residential Zone, while other Objectors reside beside or behind other licensed premises;
 - b) the Licensee was of the view that residents who live immediately adjoining a commercial zone cannot expect the same level of amenity than those residents that reside in the middle of a residential zone;
 - c) other licensed venues are closer to where each of the Objectors reside, meaning that any noise disruptions may be coming from those premises, rather than the Licensee's venue; and
 - d) the Licensee has not received any noise complaints since they became the licensee on 1 June 2022, and that any previous noise complaints may have been directed towards the previous licensee (as opposed to the current licensee).
9. In addition, Ms Street submitted that the Licensee does not have live or amplified music on the Premises, and that additional sound proofing has been put in place on the Premises.
10. On 20 January 2023, the Delegate granted the Original Application as she was satisfied on balance that it would not be detrimental to the amenity of the area or contribute to alcohol related harm (**Original Decision**).
11. Specifically, the Delegate noted that the Premises is in a Commercial 1 Zone under the City of Darebin Planning Scheme, which was intended to "create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses".
12. The Delegate also considered that the Objectors' concerns would be ameliorated on balance by specifying the following special licence conditions:

Music above background music level is not permitted at any time.

No live music entertainment is permitted to be played at the premises at any time.

*The licensee must have signs placed in prominent positions in the outdoor areas and near patron exits requesting patrons to be respectful of neighbours, and to leave quietly at the patron exits (**Original Conditions**).*

³ The Commercial 1 Zone promotes commercial centres for retail, office, business, entertainment and community uses, and provides for residential uses. This zone generally affects land in the Central Business District (CBD) or in proximity. Under the Schedule to Clause 52.27 of the Darebin Planning Scheme, a permit is not required for a general licence in a Commercial 1 Zone.

Application for Internal Review

13. On 9 February 2023, the Licensee applied to the Commission for an internal review of the Original Decision (**Review Application**).
14. In the Review Application, the Licensee confirmed that the reason for the Review Application was because it intended to use the Premises as a venue to host various social functions and sought to have the Original Conditions amended to remove the special condition prohibiting music being above background music level at any time.
15. On 15 February 2023, a copy of the Review Application was sent to the Objectors in accordance with section 154.
16. All Objectors responded with objections to the Review Application. Broadly, their objections were along the same lines as was provided to the Commission in respect to the Original Application. That is, that the operation of the Premises would generate an unacceptable level of noise which would adversely impact the amenity of the neighbourhood⁴.
17. Between 19 February 2023 and 28 March 2023, the Objectors also submitted various complaints to the Commission about noise being played on the Premises above background level on several occasions in February and March 2023. Some of the Objectors also complained about the Licensee hosting a DJ for the Premises on several occasions during that period.
18. On 23 March 2023, the Commissioners visited the Premises for the purpose of conducting a site inspection.
19. On 17 April 2023, Mr Martin Towey of LGS Legal (now acting on behalf of the Licensee) provided an acoustic report prepared by Mr Nick Peters, acoustic engineer, Renzo Tonin & Associates, (**RTA**), dated 17 April 2023 (**Acoustic Report**). In the Acoustic Report, Mr Peters stated that he had assessed the impact of music noise arising from the operation of the Premises on the night of Tuesday, 11 April 2023.
20. The findings from Mr Peters' acoustic assessment were that:

⁴ Phillip Seraiocco now representing himself and Lorraine Seraiocco, and Azira Merkoska representing herself and Yasin Merkoski.

- *At representative volume, music noise levels conformed with EPA 1826 Noise Protocol day, evening and night noise limits⁵.*
- *At maximum volume (it was Mr. Peters' understanding that the Subject Venue does not operate at such a level) music noise levels can exceed EPA 1826 Noise Protocol limits.*
- *70-82 High Street [...] is the most affected sensitive premises: it was noted that it is presently an unfinished apartment building with no occupants.*
- *Following from the assessment, a sound level meter self-management strategy was set out to aid the Subject Venue:*
 - *LCfast 75 dB(C) amplified noise levels, indoors in the middle of the Bar (~6 metres from speakers)*
 - *LCfast 75 dB(C) at 2 metres from background music speakers for speakers serving the west outdoor area*
 - *LCfast 75 dB(C) at 1 metres from all other background music speakers.*

The above [strategy] corresponded with EPA 1826 Noise Protocol limit conformance during day, evening and night, and would be conformed with by the understood representative music noise levels for the Subject Venue⁶.

21. In addition, the Acoustic Report at pg. 11 recommended three different approaches to managing noise levels at the Premises:

1. *Mark / tape / lock sound system controls to prevent accidental increase in music noise levels. This is inexpensive and suitable for venues with no recorded valid instances of music limit non-conformance; augmented with use of the sound meter management strategy set out above.*
2. *Set up compressor/limiter hardware to limit audio noise levels based on incoming signal. There is additional cost and complexity compared to the*

⁵ According to the Acoustic Report, music noise emissions from public premises are controlled and assessed in accordance with Part 2 of EPA Publication 1826 'Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Subject Uses' (1826-P2). EPA 1826 sets the methodology for assessing the effective noise level to determine unreasonable noise under the *Environment Protection Regulations 2021*, and therefore under the *Environment Protection Act 2017*. EPA 1826-P2 applies the following music noise limits: for the day/evening period, music noise Leq dB(A) shall not exceed the background noise L90 + 5 dB(A); For the night period: Music noise LOCT10 dB shall not exceed the background noise LOCT90 + 8 dB.

⁶ As part of the sound management strategy recommended in the Acoustic Report, Mr Peters noted guidance on setting up a QM 1598 sound meter (e.g. available from Jaycar for ~\$140) to: (1) manage indoor music levels in the middle of the Bar area to generally not exceed LCfast 75 dB(C); and (2) manage music levels in outdoor patron area to not exceed LCfast 75 dB(C) 2 metres from west patron area background speakers, and 1 metre from all other background speakers.

above. Because it does not measure noise levels, changes in the audio signal chain can void the calibration limiter for conformance. As such this is not that much better than approach 1 above.

3. *Set up Cesva LF-200 limiter, which measures/records the noise level in the room, and manages music levels accordingly. The Cesva costs ~\$5k for the equipment and requires an acoustic consultant to configure it: a comprehensive but expensive measure.*

22. By reference to the three approaches from the Acoustic Report outlined in paragraph 21 above, Mr Peters considered that the first approach enhanced existing sound management strategies. He added that the third approach was an option if further sound management strategies were needed. He also advised that the third approach is a best practice response that the Licensee may consider.

23. On 17 April 2023, Mr Towey also submitted that the Licensee intended to revise the Review Application to the effect that it now sought “live music or entertainment in the internal areas only above background noise levels” and that “the external areas will be unchanged at background noise levels”. In the initial Review Application, the Licensee sought to have the Original Conditions amended to remove completely the special condition prohibiting music being above background music level at any time.

Legislation and the Commission’s task

The Commission’s internal review power

24. Division 2 of Part 9 governs internal review applications. Under section 152, the decision made by the Delegate in the Original Application is a reviewable decision and the Licensee is an eligible person to apply for the review of that decision. The Review Application is made pursuant to section 153.

25. 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 reviewable decision; or

(b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁷

26. 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 conditions⁸; or
- (b) refuse to grant the Original Application.⁹

27. Under the LCR Act, an application for a licence may be contested or uncontested. Pursuant to section 3(1), a contested application is defined to include:

“an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which any objections are received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).”

28. As there were five objections to the Review Application, it remains a contested application.

Determination of a contested application

29. Where an application is a contested application, pursuant to section 47(1):

“Subject to Division 3, the Commission must, after the period for making an objection under Division 5 has expired, including any extension of time granted for making an objection, grant or refuse a contested application.”

30. 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).

31. Section 44(2) empowers the Commission to refuse to grant the Review Application on various 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. 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 agreeable¹⁰; or

⁷ Section 157(2) to (5) further prescribes the manner in which the Commission is to undertake internal reviews.

⁸ Sections 44, 49 and 157.

⁹ Sections 44 and 157.

¹⁰ Section 3A(1).

(b) the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.¹¹

32. Pursuant to section 3A(2) and (3), a list of non-exhaustive factors that may be taken into account in determining whether a proposed grant, variation or relocation 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; and
- (f) any other prescribed matters.”

33. Pursuant to section 3AA, the LCR Act further provides that for the purposes of that Act:

“... evidence of any of the following factors, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to that premises, are taken to constitute evidence of detraction from, or detriment to, the amenity of the area in which the licensed premises is situated—

- (a) violent behaviour;
- (b) drunkenness;
- (c) vandalism;
- (d) using profane, indecent or obscene language;
- (e) using threatening, abusive or insulting language;
- (f) behaving in a riotous, indecent, offensive or insulting manner;
- (g) disorderly behaviour;
- (h) causing nuisance;
- (i) noise disturbance to occupiers of other premises;
- (j) obstructing a footpath, street or road;
- (k) littering.”¹²

¹¹ Section 44(2)(b).

¹² The LCR Act does not define the meaning of the term “misuse or abuse of alcohol”, nor specify factors that constitute evidence of that which would be “conducive to or encourage the misuse or abuse of alcohol”.

Conduct of an Inquiry

34. Section 47(3) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.
35. Section 172W(3) provides that the Commission is not bound by the rules of evidence, but may inform itself in any manner it thinks fit and is bound by the rules of natural justice.

Exercising the internal review power

36. Section 172U(3)(b) requires 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) and provide that:

“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
 - (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;
- (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.”

37. 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 and the risks associated with the misuse and abuse of alcohol.”¹³

38. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the ultimate determination of a contested application is 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.

39. Under section 49, the Commission may impose any condition it thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.

Material before the Commission

40. The Commission on review had before it, and considered, all materials received by the Delegate. In addition, the Commission received and considered the following:

a. the Original Decision and reasons for the Original Decision dated 20 January 2023.

From the Licensee:

b. the Review Application dated 9 February 2023;

c. the Acoustic Report prepared by Mr Nick Peters of RTA dated 17 April 2023;

d. written submissions dated 17 April 2023 and 27 – 28 April 2023, including a Noise Management Plan.

From Ms Annie Walter and Mr Cameron Mackin

e. written submissions dated 15 February 2023 and 13 March 2023.

From Mr Phillip Seraiocco (representing himself and Ms Lorraine Seraiocco):

f. written submissions dated 19 February 2023, between 8 – 13 March 2023, and 14 April 2023; and

¹³ See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 323, 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).

g. acoustic advice prepared by Mr Scott Henderson of Audiometric & Acoustic Services (AAS) dated 19 April 2023.

From Ms Azira Merkoska (representing herself and Mr Yasin Merkoski):

h. written submissions dated between 21 – 22 February 2023 (including from Mr Yasin Merkoski) and also dated 7 March 2023;

From Ms Monique Lucas

i. written submissions dated 22 February 2023 and 8 April 2023.

Public hearing

41. On 20 April 2023, the Commission held a hearing into the Review Application (**Hearing**).
42. Mr Cameron Mackin and Ms Annie Walter appeared together.
43. Mr Phillip Seraiocco appeared and represented himself and Mrs Lorraine Seraiocco.
44. Ms Azira Merkoska appeared and represented herself and Mr Yasin Merkoski.
45. Mr Domenic Luppino appeared as the sole director of the Licensee. Mr Towey appeared on behalf of the Licensee. After the Hearing, the Licensee and the Objectors provided further submissions for the Commission to consider.

Reasons for decision

Issues for determination on review

46. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the Review Application, the key issue to be determined by the Commission in this matter is whether granting the Review Application would detract from or cause detriment to the amenity of the area in which the Premises are situated. This may give rise to a ground of refusal under sections 47(2) and 44(2).
47. In exercising its ultimate discretion to grant or refuse the Review Application, the Commission must have regard to the objects of the LCR Act, with particular regard to the primary object of harm minimisation.

Amenity

48. The sole director of the Licensee Mr Domenic Luppino gave evidence to the Commission to the effect that he intended to comply with the sound management strategy

recommended by Mr Peters of RTA (as described at paragraphs 20-22 above) (**Sound Management Strategy**). He agreed with Mr Peters' evidence that implementing this strategy would be a proportionate management response to ensure that his company conforms with the planning permit conditions¹⁴.

49. Mr Luppino also said that he intended to install a Cesva LF-200 limiter (**Limiter**) which measures/records the noise level in the room and manages music levels accordingly.¹⁵

The Commission notes that Mr Peters described this as the best practice response that could be implemented by the Licensee.¹⁶

50. The Commission also notes that the Licensee has submitted a Noise Management Plan (**NMP**) which sets out that it is implementing both the Sound Management Strategy and the Limiter. In addition, the NMP specifies that: a complaints register will be kept to record any noise complaints made in relation to the operation of the business; complainants will be provided with a relevant contact number for the Premises; and complaints will be responded to as soon as possible, including the keeping of a record of follow up actions in such a register. Compliance with the NMP (as to be amended from time to time) is proposed to be a condition of any licence issued for the Premises.

51. The Licensee has proposed that the Commission varies the Original Decision by substituting the Original Conditions imposed by the Delegate with the following licence conditions in line with its NMP:

- a. Any live music or entertainment in external areas is to be at background music levels only.
- b. Live music or entertainment above background noise levels is permitted in internal areas and must be provided through the Limiter.
- c. All amplification of Live Music or Entertainment must be provided through the House Music System that includes the Limiter.
- d. No acoustic drum kits are permitted to be used on the premises.

52. In terms of defining the live music/entertainment proposed at the Premises that is to be subject to the above conditions, the Licensee has defined this in the NMP as including (but

¹⁴ The planning permit issued by the City of Darebin provides that Noise levels emanating from the premises must not exceed those required to be met under the *Environment Protection Regulations 2021* (Part 5.3, Division 4) and the Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues (publication 1826) (Noise Protocol), control music noise from indoor entertainment venues and set rules for outdoor entertainment venues.

¹⁵ Hearing transcript, p88.

¹⁶ See paragraph 22 above.

not limited to) a DJ and small bands playing in the internal area of the Premises. The Licensee submitted that all such entertainment is to pass through the Limiter without exception.

53. Mr Towey, on behalf of the Licensee, made submissions to the effect that background music levels were those as defined in section 9A(5) which provides:

“background music level, in relation to premises, means a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial degree.”¹⁷

54. The Commission notes that the effect of the Licensee’s submissions implied that the existing condition concerning placement of signage requesting patrons to be respectful of neighbours and to leave quietly at the patron exits would remain. This was later confirmed by Mr. Towey on behalf of the Licensee.

55. Finally, the Licensee provided its assurance that it will notify the Commission when the Limiter is installed and any other acoustic works are completed, and that this would include evidence from Nick Peters of RTA that these meet the requirements of the NMP as well as the Sound Management Strategy.

View of the Objectors

View of Ms Annie Walter and Mr Cameron Mackin

56. In summary, Ms Walter and Mr Mackin submitted that they object to the Licensee being able to play music above background level, including live music, due to their previous negative experiences with noise from a different licensed premises in the same neighbourhood. They submitted that they complained about that venue for several years, including to Victoria Police, the Council and the Commission due to loud music being played when it was not sound proofed. They noted that this caused them extreme stress and anxiety. As a result, given they consider the Premises is even less sound proofed, they submit that any variation permitting noise above background level would have a similar impact on them.

57. Ms Walter and Mr Mackin also submitted that the Sound Management Strategy could be inadequate in responding to excessive noise due to the potential for human error. As such, they submitted that the installation of the Limiter would be the best option. In addition, Ms

¹⁷ Mr Nick Peters gave evidence at the Hearing that background noise level per the LCR Act was “two people being able to undertake conversation at an arm’s length distance without having to raise their voice to a significant degree” [Transcript pg. 26].

Walter and Mr Mackin submitted that all music should be played through the sound system to ensure that it complies with the Sound Management Strategy.

View of Mr Phillip Seraiocco (on behalf of himself and Ms Lorraine Seraiocco)

58. In summary, Mr Seraiocco submitted that he objects to the Licensee being able to play live and amplified music at the Premises. He submitted that the Premises has already been the subject of noise complaints due to amplified music in both February and March 2023. Mr Seraiocco also submitted that the Premises has hosted a DJ, and that he considers that this was in breach of the Licence as it stipulated that no live music could be played. He says that the noise from the Premises has disturbed him at his home on several occasions.

59. Like Ms Walter and Mr Mackin, Mr Seraiocco submitted that the Sound Management Strategy could be inadequate in responding to excessive noise due to the potential for human error. As such, he submitted that the installation of the Limiter would be a better option. Nevertheless, Mr Seraiocco also submitted that soundproofing would be the best way for the Licensee to manage the sound at the Premises.

60. Although no acoustic consultant was called to give evidence on behalf of the objectors, Mr Seraiocco submitted acoustic advice prepared by Mr Scott Henderson of AAS dated 19 April 2023. Mr Henderson commented on the Acoustic Report of RTA, noting that the reported limits did not consider the impact of cumulative noise generated by the Premises alongside other licensed premises nearby. In addition, he noted that the Acoustic Report of RTA did not assess live music (i.e., from acoustic instruments, as opposed to controlled music sounds amplified via a sound system). While Mr Henderson of AAS considered that the installation of the Limiter is the preferred option, he also recommended that:

(a) the venue is adequately soundproofed to accommodate acoustic instruments that would bypass the Limiter and cause exceedances, including unamplified drums and horns; and

(b) that an updated acoustic report is completed based on live music.

61. Mr Seraiocco also submitted on behalf of all of the Objectors at the Hearing that there were no concerns with the current level of sound in the external areas of the Premises.

View of Ms Azira Merkoska (on behalf of herself and Mr Yasin Merkoski)

62. In summary, Ms Merkoska submitted that she objects to the Licensee being able to play live and amplified music at the Premises. Like Mr Seraiocco, she submitted that the

Premises has already been the subject of noise complaints due to excessively loud amplified music in both February and March 2023. Like Ms Walter and Mr Mackin, Ms Merkoska expressed frustration with other licensed premises in the same neighbourhood due to noise issues over a number of years. As such, she said that she was unsettled by the prospect of the Licensee seeking to play music above background levels.

63. Ms Merkoska also submitted that, when RTA conducted its assessment on 11 April 2023, she could hear the music being played through the roof of the Premises even when it was playing at 'normal levels'. She further submitted that the cumulative impact of three licensed venues (along with the Premises) playing music in the vicinity amplified the music and caused vibrations at her home.

64. Like the other objectors, Ms Merkoska agreed that using the Limiter would be the preferred way for the Licensee to manage sound at the Premises. However, like Mr Seraiocco, she considered that soundproofing the Premises would be the best approach in mitigating the impact of noise on the amenity of the neighbourhood.

View of Ms Monique Lucas

65. In summary, Ms Lucas has submitted that the Premises continued to create loud noise. Unlike the other objectors, Ms Lucas has submitted that the noise in the external area is impacting her, as the speakers are situated outside and directed towards the street where she resides. She said that she has complained to the staff at the Premises about the noise.

View of the Commission

66. The Commission considers the key issues that may adversely impact the amenity of the area in which the Premises are located to be:

- (a) the noise of music in the internal area of the Premises; and
- (b) what licence conditions may be appropriate to impose to mitigate those risks.

67. The Commission recognises that the Premises is located within a commercial zone. Therefore, a fair balance must be struck between the needs of the Licensee and the Objectors, having regard to the nature of the area.

68. The Commission notes the evidence of the Licensee agreeing to take responsibility for dealing with any contact made by the Objectors and other local residents relating to the operation of the Premises and to address any detrimental impact it may be having on the amenity of the area. Moreover, the Licensee's director, Mr Luppino, has confirmed that he understands that he will operate his business in a manner that respects his neighbours'

amenity. Furthermore, he confirmed that he also understands that this obligation rests with him as the licence holder to ensure that the licence conditions are not breached.¹⁸

69. The Commission considers that the implementation of an appropriate sound management system as recommended by RTA (together with the installation of the Limiter) are important factors in limiting to an appropriate level any potential for an adverse impact on amenity that may result from the operation of the Premises.

70. Having regard to all the matters listed above, the Commission considers that the Licensee's adherence to the four proposed conditions (as specified in paragraph 50 above) together with the installation of the Limiter under the supervision of Mr Peters would sufficiently minimise the potential for negative impacts on the amenity of the area in which the Premises are situated.

71. The Commission expects that the conditions of the Licence and the NMP will be complied with by the Licensee. In particular, the Commission expects that there will be regular monitoring of the internal area for noise escape and that due consideration will be given to carefully managing the potential for negative impacts on the amenity of the area when operating the Premises.

72. In summary, the Commission finds that, subject to the conditions outlined in Appendix A, the grant of the variation to the Licence will not, on balance, detract from, or be detrimental to, the amenity of the area. The Commission also considers that the conditions outlined in Appendix A relating to the use of the Premises mitigate and minimise any potential negative impact with respect to amenity. The Commission expects that the conditions outlined in Appendix A will be strictly adhered to by the Licensee.

Decision on review

73. Based on the reasons detailed above, and having regard to the objects of the LCR Act, the Commission has determined to vary the Original Decision and grant the Review Application subject to the conditions set out in Appendix A.

The preceding 73 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins, Deputy Chair, Mr James O'Halloran, Commissioner, and Ms Deirdre O'Donnell, Commissioner.

¹⁸ Hearing transcript, p58 and 68.

Appendix A

Type of licence

This licence is a general licence and authorises the licensee to supply liquor on the licensed premises for consumption on and off the licensed premises during the trading hours specified below. This licence does not authorise the licensee to only supply liquor for consumption off the licensed premises.

Amenity

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

Special conditions

To the extent that the matter is not already dealt with in this licence, the licensee is to comply with the Noise Management Plan as provided by the licensee to the Commission on 27 April 2023 and as amended from time to time.

The licensee must install a Cesva LF-200 limiter (or similar) which measures/records the noise level in the room and manages music levels. This also includes compliance with the following conditions:

- Live music or entertainment above background noise levels is permitted in internal areas and must be provided through the noise limiter.
- All amplification of live music or entertainment must be provided through the House Music System that includes the noise limiter.
- No acoustic drum kits are permitted to be used on the premises.

Live music/entertainment includes, but is not limited to, a DJ and small bands playing in the internal area of the premises. All such entertainment is to pass through the noise limiter without exception.

Any live music or entertainment in external areas is to be at background music levels only.

The licensee must have signs placed in prominent positions in the outdoor areas and near patron exits requesting patrons to be respectful of neighbours, and to leave quietly at the patron exits.

The licensee must maintain a complaints register to be kept in the office on the premises and must be made available when requested by a member of Victoria Police or Inspector authorised by Liquor Control Victoria. The requirements and operation of the register are specified in the Noise Management Plan.

Maximum capacities

120 patrons

Trading hours

For consumption off the licensed premises –

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

For consumption on the licensed premises –

Sunday	Between 10am and 1am the following morning
Good Friday & ANZAC Day	Between 12 noon and 1am the following morning
On any other day	Between 7am and 1am the following morning