

# Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Manningham United Blues Football Club Inc, for an internal review of a decision by a delegate to grant in part an application for a renewable limited licence for the premises located at Petty's Reserve, 61-77 Reynolds Road, Templestowe, trading as Manningham United Blues Football Club

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Mr Barry Withoos and Mrs Kerry Withoos, for an internal review of a decision by a delegate to grant in part an application for a renewable limited licence for the premises located at Petty's Reserve, 61-77 Reynolds Road, Templestowe, trading as Manningham United Blues Football Club

**Commission:**

Mr John Larkins, Deputy Chair  
Mr James O'Halloran, Deputy Chair  
Mr Steven Brnovic, Commissioner

**Appearances:**

Messrs Mike Cockburn, Nick Cimino, Nick Raptopoulos and Harry Tsindos for the Licensee  
Mr Barry Withoos and Mrs Kerry Withoos in objection  
Mr Ben Schier, Counsel Assisting the Commission

**Date of Hearing:** 21 February 2024

**Date of Decision:** 27 May 2024

**Date of Reasons:** 27 May 2024

**Decisions:**

In relation to the Licensee Review Application and the Objector Review Application, the Commission has determined to vary the decision of the Delegate and grant the renewable limited licence subject to the conditions set out in Appendix A

**Signed:**



**John Larkins, Deputy Chair**

## Background

### Original Application

1. On 10 January 2023, Manningham United Blues Football Club Inc (**Licensee**) applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*<sup>1</sup> for a renewable limited licence (**Original Application**) in respect of the premises located at Petty's Reserve, 61-77 Reynolds Road, Templestowe (**Premises**).
2. The Premises is a sporting facility owned and managed by Manningham City Council (**Council**). It consists of two soccer fields, a children's play-space, a sealed car park, rest rooms and a pavilion. The pavilion is comprised of an open-air viewing area, a kitchen and an indoor function space (**Club Room**).
3. The Licensee is a soccer club incorporated on 20 January 2015. Its 68 teams compete over a range of age groups and levels.
4. By way of the Original Application, the Licensee sought a renewable limited licence:  
*...consumption of alcohol to occur within the social [club] room, under cover viewing area and the tiered seating/steps facing the western pitch via a purpose built [sic] canteen facility on training evenings and match day Saturday/Sunday. Other calendared fundraising social events such as presidents [sic] lunch, best & fairest events, sponsors dinner evening, seniors guernsey presentations and other club support evenings.*
5. The Licensee proposed the following trading hours across a full year:  

Monday to Friday	Between 5pm and 11pm
Saturday and Sunday	Between 12pm and 11pm
6. The Licensee also sought the Commission's approval for persons under the age of 18 years to be present on the Premises.
7. On 24 February 2023, the Licensee lodged an amended application consisting of an amended plan of the proposed licensed area (**Red-Line Plan**) and the following trading hours (**Amended Application**):

Monday to Tuesday	Between 5pm and 8:30pm
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<sup>1</sup> All references to legislation are references to the LCR Act unless stated otherwise.

Wednesday	Between 5:30pm and 8pm
Thursday to Friday	Between 5:30pm and 8:30pm
Saturday to Sunday	Between 12pm and 8pm

8. In accordance with section 33(3), the Commission served a copy of the Original Application on the Chief Commissioner of Police and the Licensing Inspector<sup>2</sup> (together, **Victoria Police**) on 13 February 2023. On 3 March 2023, Victoria Police advised that they did not object to the Original Application. On 16 March 2023, a copy of the Amended Application was given to Victoria Police. On 7 April 2023, they responded with no objection.
9. In accordance with section 33(3), the Commission served a copy of the Original Application on the City of Manningham (**Council**) on 13 February 2023. On 16 March 2023, a copy of the Amended Application was given to the Council.
10. On 17 April 2023, the Council advised that, whilst it did not object to the Amended Application, the proposed trading hours across a full year did not align with the times allocated by Council, which was for a maximum of 6 months in any year. Additionally, the Council requested the Commission to seek submissions from the Licensee in regard to any proposed amenity controls, specifically in relation to how it proposed to administer patron management, monitor music noise and the provision of security at the Premises. The Commission sought those submissions from the Licensee on 28 April 2023.
11. On 21 March 2023, the Licensee advised that the Council had allocated the previous summer (October to March, inclusive) and the upcoming winter (April to September, inclusive) for use of the Premises. As such, the Licensee asserted that it effectively had continuous use of the Premises in any event and expected to retain continuous use of the Premises by virtue of renewing arrangements with the Council every 6 months.
12. The Commission received 28 letters of objection from 37 members of the public (**Objectors**) in relation to the Amended Application. In summary, the the objections were submitted on the ground that granting the Amended Application would detract from or be detrimental to the amenity of the area.<sup>3</sup>

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<sup>2</sup> As to the meaning of 'licensing inspector', see section 3(1).

<sup>3</sup> LCR Act section 38(1).

13. On 18 April 2023, the Licensee responded to the Objectors' submissions as follows:
  - a) the proposed trading hours in the Amended Application were not inconsistent with the Council's allocation for use of the Premises;
  - b) there will be *'a zero-tolerance policy towards any form of misconduct and there will be responsible service of alcohol'*. Staff will be *'trained to monitor the behaviour of patrons'*; and
  - c) there will be no consumption of liquor outside the Red-Line Plan and there will also be *strict measures in place to prevent alcohol from leaving the Premises*.
14. On 28 April 2023, the Commission served the Objectors with the Licensee's response, inviting them to respond either maintaining, or withdrawing their respective objections. Nine Objectors responded maintaining their objection.
15. The Licensee emailed the Commission on 30 April 2023 detailing its *'Patron Management Plan'* and *'Music Plan'*. The respective amenity controls detailed in the email were not in the form of finalised documents, but rather, two paragraphs forming the body of the Licensee's email and composed of broad statements of the means by which the Licensee would allay the amenity concerns of the Objectors and Council.
16. On 9 June 2023, the Licensee lodged a further revised red-line plan (**Amended Red-Line Plan**), limiting the proposed licensed area to the pavilion, the kitchen, the club room and the outside viewing area.

## Delegate's decision

17. The Original Application was determined as a contested application pursuant to section 47 and considered on the grounds provided in section 44(2).
18. On 11 October 2023, a delegate of the Commission (**Delegate**) granted, in part, the Amended Application (**Original Decision**). Noting the Council's concerns, the Delegate imposed the following condition:

*This licence is only in force during April to September inclusive each year.*
19. It was noted that Victoria Police had not objected to the Original Application, nor had Council, the owner of the Premises, objected to the Original Application on amenity grounds
20. The Delegate stated, *'I am not persuaded that the grant of the licence will be detrimental to the amenity of the area.'*

## Applications for Internal Review

### *Objector Review Application*

21. On 27 September 2023, Mr Barry Withoos and Mrs Kerry Withoos applied for an internal review of the Original Decision (**Objector Review Application**).
22. By way of the Objector Review Application, Mr and Mrs Withoos sought to have the Delegate's decision set aside and substituted by a decision of the Commission to refuse the Original Application.
23. Mr and Mrs Withoos provided the following reasons in support of the Objector Review Application:
  - the Premises is built in 'a sensitively zoned residential area' and therefore a licence should not be granted;
  - there are existing amenity issues at the Premises relating to noise, unruly behaviour and parking which would be exacerbated by liquor being supplied; and
  - the Licensee already has a liquor licence at its home ground and otherwise promotes itself as being family oriented.
24. Supplementary to the Objector Review Application, Mr and Mrs Withoos also applied for a stay of the Original Decision.<sup>4</sup> On 6 October 2023,<sup>5</sup> the Commission determined to refuse to stay the decision, primarily on the basis that in accordance with the principles set out in *Bell & Eager v Liquor Licensing Victoria and Swapnil Pty Ltd*,<sup>6</sup> a refusal to stay the decision would not render proceedings in relation to the Objector Review Application nugatory<sup>7</sup> as the Objector Review Application would likely be heard and determined before the Licensee would next be authorised to supply liquor under its licence in April 2024.

### *Licensee's Review Application*

25. On 17 October 2023, the Licensee lodged a review application (**Licensee Review Application**). The Licensee Review Application sought to have the Delegate's decision

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<sup>4</sup> Ibid, section 160(1)(b).

<sup>5</sup> Ibid, section 160(3) the Commission must make a decision on an application for a stay within 10 days after the application is made.

<sup>6</sup> *Bell v Eager v Liquor Licensing Victoria and Swapnil Pty Ltd* [2000] VCAT 214.

<sup>7</sup> See *Arulanantham v Medical Board of Australia* [2012] VCAT 124. [18].

varied to permit the supply of liquor 12-months of the year, as opposed to the 6-months (April to September, inclusive).

26. The Licensee provided the following reasons in support of the Licensee Review Application:
- the Council has approved the Licensee using the Premises for both winter (April to September, inclusive) and summer (October to March, inclusive); and
  - the Delegate failed to provide sufficient reason for the Original Application only being granted in part, for a 6-month period.

## Legislation and the Commission's task

### The Commission's internal review power

27. Division 2 of part 9 of the LCR Act governs internal review applications. Under section152, the decision made by the Delegate in the Original Decision is a reviewable decision. Both the Applicant and the Licensee are considered eligible persons to apply for review of that decision. Mr and Mrs Withoos and the Licensee Review Application were made pursuant to section153.
28. Pursuant to section157(1), the specific task for the Commission with respect to each review application is to make a fresh decision that:
- (a) affirms or varies the Original Decision; or
  - (b) sets aside the Original Decision and substitutes another decision that the Commission on review considers appropriate.<sup>8</sup>
29. 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 Amended Application. In this case, the Commission must decide whether to:
- (a) grant the Amended Application and, if so, whether to do so subject to conditions;<sup>9</sup>
- or

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<sup>8</sup> LCR Act sections 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

<sup>9</sup> Ibid, sections 44, 49 and 157.

(b) refuse to grant the Amended Application.<sup>10</sup>

## Determination of a contested application

30. Under the LCR Act, an application for the grant of a licence may be contested or uncontested. The Amended Application was contested, as objections were received under division 5 of part 2 within the relevant period.<sup>11</sup>
31. 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.*
32. Section 47(2) provides that the Commission may refuse to grant a contested application on any of the grounds set out in section 44(2) and section 44(3) applies accordingly.
33. Pursuant to section 44(2), the Commission may refuse to grant an application on certain grounds, including that the granting of the application would detract from or be detrimental to the amenity of the area in which the premises to which the application relates are situated.<sup>12</sup>
34. For the purposes of the LCR Act, the amenity of an area is defined as being the quality that the area has of being pleasant and agreeable.<sup>13</sup> Factors that may be taken into account in determining whether granting a licence would detract from or be detrimental to the amenity of the area include:

- ...
- (d) *the possibility of nuisance or vandalism;*
  - (e) *the harmony and coherence of the environment;*
  - (f) *any other prescribed matters.*<sup>14</sup>

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<sup>10</sup> Ibid, sections 44 and 157.

<sup>11</sup> Ibid, section 3(1) (see 'contested application').

<sup>12</sup> Ibid, section 44(2)(b)(i).

<sup>13</sup> Ibid, section 3A(1).

<sup>14</sup> Ibid, section 3A(2). Until a legislative amendment in 2018, the following factors were also included as evidencing detriment to the amenity of the area: (a) the presence or absence of parking facilities; (b) traffic movement and density; (c) noise levels.



However, the definition of ‘amenity’ for the purposes of the LCR Act is not limited by these factors.<sup>15</sup>

## Exercising the internal review power

35. 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.

36. 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.*

37. Further, section 4(2) provides that:

*It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation.*<sup>16</sup>

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<sup>15</sup> Ibid, section 3A(3).

<sup>16</sup> See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

38. 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.*

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

- (a) must consider all the information, material and evidence before the original decision maker;<sup>17</sup> and
- (b) may consider further information, material or evidence.<sup>18</sup>

40. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of a contested application is ultimately to be made pursuant to sections 47(1) and 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

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

## Conduct of an inquiry

42. Section 47(3) provides that the Commission may have regard to any matter it considers relevant, make any enquiries it considers appropriate and give both applicants objectors a reasonable opportunity to be heard. Accordingly in this matter, the Licensee and Mr and Mrs Withoos were given reasonable opportunity to be heard in both being invited to give evidence on oath and make submissions before the Commission.

43. Section 172U(1) provides that the Commission must endeavour to perform its functions and exercise its powers without undue formality and as expeditiously as practicable, as the requirements of the LCR Act and proper consideration of the subject matter permit.

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<sup>17</sup> LCR Act, section 157(2).

<sup>18</sup> Ibid, section 157(3).

Accordingly, the Commission determined to hear and decide both review applications in consolidation.

44. 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

45. A limited licence may be a temporary limited licence or a renewable limited licence.<sup>19</sup> 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.<sup>20</sup>
46. 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**).

## Material before the Commission

47. 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) Objector Review Application received on 27 September 2023;
  - (b) Delegate's Reasons dated 11 October 2023;
  - (c) Licensee Review Application received on 17 October 2023
  - (d) A letter from Council to the Licensee dated 15 November 2023;
  - (e) Submissions from Mr and Mrs Withoos dated 5 December 2023;
  - (f) A further submission from Mr and Mrs Withoos dated 29 December 2023;
  - (g) A further submission from Mr and Mrs Withoos dated 15 January 2024;
  - (h) Submissions from the Licensee dated 5 February 2024;

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<sup>19</sup> Ibid, section 14(1).

<sup>20</sup> Ibid, section 14(2)(c).

- (i) A further submission from Mr and Mrs Withoos dated 19 February 2024; and
- (j) A further submission from the Licensee dated 20 February 2024.

## Preliminary Meetings

- 48. In the interest of progressing the matter in the manner required under the LCR Act,<sup>21</sup> the Commission held two virtual preliminary meetings<sup>22</sup> with the parties on 30 November 2023 and 19 December 2023.<sup>23</sup> The Deputy Chair also visited the area on Saturday 9 December 2023.
- 49. The preliminary meetings involved discussion of administrative matters with respect to the conduct of an internal review hearing and the additional material sought by the Commission from both respective parties. That additional material was ultimately received by the Commission as part of both respective parties' further submission, as referred to in paragraph 47(f)-(h), above.

## Hearing

- 50. A hearing was held in relation to the applications for internal review on 21 February 2024. The objectors Mr and Mrs Withoos appeared for the Objectors and Mr Mike Cockburn appeared with Mr Nick Cimino, Mr Nick Raptopoulos and Mr Harry Tsindos for the Licensee.
- 51. In opening remarks, Mr Cockburn, Secretary for the Licensee, clarified that the primary purpose of the licence '*is to support the senior matches*' of which there are 12 fixtures per year.<sup>24</sup> The licence would be utilised in tandem with the operation of the Licensee's canteen, which is open from approximately 1pm to 5pm on a game day. In addition, Mr Cockburn noted that the Licensee hosts a number of events each year, '*things like the president's lunch, or it might be a team dinner.*'<sup>25</sup> Mr Cockburn confirmed that the Premises must be vacated by 9pm each day consistent with the terms for the allocation of the Premises from the Council to the Licensee.

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<sup>21</sup> Ibid, sections 172U(1); 172W(3).

<sup>22</sup> Ibid, section 172X.

<sup>23</sup> Ibid, section 172Y(1).

<sup>24</sup> Hearing transcript, 21 February 2024, page 4, lines 23 to 25.

<sup>25</sup> Ibid, page 4, lines 35 to 39.

52. Mr Withoos gave evidence under oath that the Premises is *'not used for just this one club, it's used for multiple clubs'*.<sup>26</sup> He stated that introducing liquor supply at the Premises could result in *'a party atmosphere'*,<sup>27</sup> which would detract from the amenity of the area, given Petty's Reserve is bordered by residential dwellings. Further, Mr Withoos noted what he perceived to be a lack of accountability on both the part of the Licensee and the Council in what he considered to be a failure to maintain amenity at the Premises.<sup>28</sup> He also noted that the area surrounding the Premises had remained a *'dry area'*<sup>29</sup> for the period in which he and Mrs Withoos had resided in the area, being *'about 25 plus years'*.<sup>30</sup>
53. Mr Cockburn was first to give evidence under oath for the Licensee. He outlined that whilst fixtures for the club's various teams are scheduled from February to August (inclusive) each year, player trials are held from November to December (inclusive) at the Premises, whilst preseason operates from January. As a result, he stated that the club is active at the Premises for close to 12 months each year.<sup>31</sup> Further, whilst a number of *'social community groups'* and *'private enterprise clinics'*<sup>32</sup> apply through the Council for ad hoc *'early morning bookings'*<sup>33</sup> of the Premises, the Licensee is the only entity with ongoing afternoon/evening allocation, with the exception of the Chinese Football Association, which has an ongoing allocation of one of the two fields on Wednesday evenings.<sup>34</sup> As such, when asked by the Commission to characterise its *'autonomy over the area'*,<sup>35</sup> Mr Cockburn responded that the Licensee had *'a 90 per cent priority'*.<sup>36</sup> Finally, Mr Cockburn clarified that the purpose of the Licensee seeking a liquor licence was to supplement income received through the canteen and sponsorship packages by enabling *'additional fundraising activity'*<sup>37</sup> in order for the Licensee to meet

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<sup>26</sup> Ibid, page 9, lines 21 to 23.

<sup>27</sup> Ibid, page 9, line 27.

<sup>28</sup> Ibid, page 10, lines 3 to 10.

<sup>29</sup> Ibid, page 11, line 3.

<sup>30</sup> Ibid, page 11, line 2.

<sup>31</sup> Ibid, page 19, lines 36 to 44.

<sup>32</sup> Ibid, page 21, lines 28 to 34.

<sup>33</sup> Ibid, page 21, line 31.

<sup>34</sup> Ibid, page 21, lines 32 to 33.

<sup>35</sup> Ibid, page 21, lines 16 to 21.

<sup>36</sup> Ibid, page 22, line 9.

<sup>37</sup> Ibid, page 22, lines 3 to 13.

its financial obligations relating, but not limited to the lease of the Premises from Council, fees from Football Victoria, Football Australia, coaches' salaries and equipment.<sup>38</sup>

54. After a brief adjournment, Mr Cockburn proposed the following conditions to be applied to the Licence:

Club Room only:

Monday to Thursday            6pm to 9pm

Saturday to Sunday            5pm to 8pm

Entire Red-Line Plan:

Friday                                6pm to 9pm

Saturday to Sunday            12pm to 5pm<sup>39</sup>

The above proposed hours for supply were submitted on the basis of the Licensee's access to the Premises as permitted by the Council under the terms of its allocation of the Premises, noting that access to the club room is managed by the Council and is not possible after 9pm.<sup>40</sup>

55. In addition, Mr Cockburn spoke to the Licensee's proposed patron management plan, clarifying that the club's policy is *'to offer and continue to offer... our contact details back out to the broader community to allow them to engage with [the Licensee] if they believe there's any issues or problems'*.<sup>41</sup> Mr Cockburn noted that the Licensee distributes letters amongst residents nearby the Premises, providing them notice of upcoming events and fixtures that the club anticipates will attract higher attendance rates. He also clarified that *'we believe out of the 12 [fixtures] [there] is typically about three games a year where there's a risk of a larger crowd, but we also offset that risk with increased security'*.<sup>42</sup>
56. In addressing Mr and Mrs Withoos' concerns with respect to amenity, Mr Cockburn noted that several matters raised came under the purview of Council. He noted further that the Licensee, as the majority tenant at the Premises, had a vested interest in engaging with the Council to address amenity concerns at the Premises including, but

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<sup>38</sup> Ibid, page 20, lines 7 to 14.

<sup>39</sup> Ibid, page 22, line 35, to page 24, line 5; page 26, lines 33 to 42.

<sup>40</sup> Ibid, page 29, lines 29 to 32.

<sup>41</sup> Ibid, page 24, lines 72 to 28.

<sup>42</sup> Ibid, page 24, lines 19 to 22.

not limited to, an increase in litter, a perceived prevalence of BYO alcohol, management of CCTV and parking congestion.

57. In the hearing, the Commission noted that if the renewable limited licence were to be applicable for 12-months, it would be appropriate to condition its use, such as to prohibit its being used in conjunction with non-club activities. Mr Cockburn agreed. However, he advised that liquor was only proposed to be supplied by the Licensee from the canteen when the Licensee is operating the canteen, which is the case on match days and training matches throughout the week; the 'president's lunch'<sup>43</sup> and committee meetings.<sup>44</sup>
58. Mr Tsindos, Restaurant Manager for the Licensee gave evidence under oath. He stated that in supplying liquor under previous temporary limited liquor licences,<sup>45</sup> his practice (on behalf of Licensee) has been to employ staff from his restaurant, who hold current responsible service of alcohol (**RSA**) certificates. He said that these staff enforce a strict policy with respect to requesting evidence of age documentation from patrons.<sup>46</sup> He also stated that his policy has been to restrict supply *'to about two or three drinks, depending who it was. So you can't come there and buy six schooners... so there's a limit to the amount they can have.'*<sup>47</sup> He also stated that RSA signage was currently displayed *'in four different places'* and<sup>48</sup> clarified that the lines of liquor sought to be supplied under a renewable limited licence are one lager beer, one pale ale beer, one red wine, one white wine and one scotch whiskey. Each are served in plastic cups.<sup>49</sup>
59. Mr Nick Cimino, Treasurer for the Licensee gave evidence under oath and spoke primarily to the Licensee's patron management plan. He said that in addition to the presence of ground marshals, match officials and committee members that under Football Victoria's Rules of Competition<sup>50</sup> and associated Match Day Risk Security

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<sup>43</sup> Ibid, page 25, line 7, understood to be a corporate luncheon at the Premises at which the Licensee's executive committee invite sponsors to attend.

<sup>44</sup> Ibid, page 46 line 5, to page 49 line 45.

<sup>45</sup> Temporary limited liquor licences 90175065, 90175066 and 90176072.

<sup>46</sup> Above n 24, page 53, lines 23 to 26.

<sup>47</sup> Ibid, page 53, lines 19 to 21.

<sup>48</sup> Ibid, page 54, lines 38 to 42.

<sup>49</sup> Ibid page 53, lines 33 to 38; page 57, line 27 to page 59, line 5.

<sup>50</sup> 2022 Rules of Competition, Football Victoria, cl 1.11.2.

Policy,<sup>51</sup> the Licensee is *obliged to have three security officers* in attendance at its home games, further noting that *'we've actually doubled that up [to six security officers] we double the six [to twelve security officers]... when we have the big senior matches'*.<sup>52</sup>

60. Finally, Mr Nick Raptopoulos, President for the Licensee gave evidence under oath in support of Mr Cimino's evidence relating to the Licensee's patron management plan. He stated that if required as a licence condition, the Licensee would commit to refining existing protocols and incorporate them into an official club document.<sup>53</sup> Further, he stated the Licensee was committed to entrenching its proposed *'club music plan'*, which included a policy requiring that recorded amplified music is not played above background music level<sup>54</sup> in an official form.<sup>55</sup>

## Written submissions, 1 March 2024

61. In response to a request of the Commission on 22 February 2024, the Licensee provided (in summary) the following written submissions on 1 March 2024:

(a) in line with the Scale and Scope Requirement,<sup>56</sup> the Licensee proposed the following lines of liquor to be sold for consumption anywhere within the red-line area:

(i) beer;

- 1) 1x light beer;
- 2) 1x lager beer; and
- 3) 1x ale beer.

(ii) wine;

- 1) 2x white wine (sauvignon blanc and pinot grigio);

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<sup>51</sup> *Match Day Risk & Security Policy*, Football Victoria.

<sup>52</sup> Above n 21, page 60, lines 21 to 45.

<sup>53</sup> *Ibid*, page 63, line 19, to page 64, line 20.

<sup>54</sup> LCR Act s 9(5); also see *Whiting v Hosier Bar Pty Ltd* [2005] VCAT 814, Morris J at [14]: *'a working technical definition of background music, in the context of a licensed bar, might be where the noise level (both of the music and of patrons) does not exceed L10 db(a) 80.'*

<sup>55</sup> Above n 21, page 66, line 36 to page 67, line 18.

<sup>56</sup> LCR Act s 26(1).



- 2) 1x rose wine;
  - 3) 2x red wine (pinot noir and shiraz); and
  - 4) 1x sparkling wine (prosecco).
- (iii) spirits;
- 1) 1x premixed scotch whiskey and ginger ale;
  - 2) 1x premixed bourbon whiskey and cola;
  - 3) 1x vodka spritzer;
  - 4) 1x gin spritzer; and
  - 5) 1x tequila spritzer
- (b) the Licensee proposed that within the club room, in addition to the same lines sought above, it would seek to supply the following lines of liquor:
- (i) 3x whiskey spirits (2x scotch whiskey variants and 1x bourbon variant);
  - (ii) 1x gin spirit;
  - (iii) 1x vodka spirit;
  - (iv) 1x aperitif spirit;
  - (v) 1x digestive spirit; and
  - (vi) 1x port wine.
- (c) all liquor would be supplied for consumption in plastic cups, or cans, with the exception of *'meetings or events like [the] President's Lunch'* at which liquor would be served in glassware. Further, the Licensee stated that shots and double-shot mixed spirits would not be served on the Premises.
- (d) the Licensee also provided a document titled *'Venue Management Plan for Alcohol Consumption and Music Management at Pettys [sic] Reserve'* (**Plan**). The Plan sought to entrench the Licensee's submissions at the Hearing in relation to the following matters:
- (i) music selection and volume control;
  - (ii) complaints handling process;
  - (iii) responsible service of alcohol protocols including appropriate signage and demarcated red-line area;

- (iv) security measures;
  - (v) policy with respect to disorderly conduct and intoxication;
  - (vi) commitment to conduct post-season evaluation of the Plan; and
  - (vii) applicable trading hours.
- (e) the proposed trading hours under a renewable limited licence are:

Club Room only:

Monday to Thursday	6pm to 9pm (last drinks served 8:45pm)
Saturday to Sunday	5pm to 8pm (last drinks served 7:45pm)

Entire Red-Line Plan:

Friday	6pm to 9pm (last drinks served 8:45pm)
Saturday to Sunday	12pm to 5pm

## Site visit, 25 March 2024

62. In order to assist in its deliberation by further informing the Commission of the context in which a proposed licence would be utilised by the Licensee and the related concerns with respect to amenity raised by the Objectors, on 25 March 2024, the Commissioners attended the Premises and immediate surrounds, in the company of Mr Tsindos for the Licensee.

## Reasons for decision on review

### Issues for determination on review

63. In deciding whether to exercise its discretion to affirm, vary or set aside the Original Decision and in turn grant or refuse the Amended Application that is the subject of the Review Application, the Commission must determine the following key issues:
- (a) whether the Scale and Scope Requirement is met;<sup>57</sup>

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<sup>57</sup> Ibid.

- (b) secondly, whether the grant of a renewable limited licence would detract from or be detrimental to the amenity of the area in which the Premises are situated;<sup>58</sup> and
- (c) whether the grant of the Review Application would be contrary to the objects of the LCR Act, in particular the object of harm minimisation.<sup>59</sup>

## Whether the Scale and Scope Requirement is met

- 64. 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.<sup>60</sup>
- 65. There are no statutory signposts prescribing 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.<sup>61</sup>
- 66. The Commission notes that the supply of liquor is proposed to be limited to be in connection with the operations of the club, consisting of training sessions, match days, sponsorship events and ad hoc team and committee meetings. Further, supply is limited by the Licensee's ability to access the Premises in accordance with the terms of its Council allocation of the Premises. The Licensee's proposed trading hours reflect this connection.
- 67. The Commission does not consider the proposed 12-month applicability of a renewable limited licence would render the licence inconsistent with the Scale and Scope Requirement.
- 68. The Commission also considers the proposed lines of liquor sought to be supplied are appropriately limited in scale and scope.
- 69. Overall, the Commission is satisfied that the Scale and Scope Requirement is satisfied.

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<sup>58</sup> Ibid, sections 44(2)(b)(i) and 47(2).

<sup>59</sup> Ibid, sections 4 and 172D(3).

<sup>60</sup> Ibid, section 26(1).

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

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

70. An application may be refused under sections 47(2) and 44(2) if the grant of the licence would detract from or be detrimental to the amenity of the area in which the premises are situated.
71. Mr and Mrs Witnoos objected on the basis of amenity concerns, particularly with respect to concerns that parking congestion on residential streets surrounding the Premises and noise from patrons at the Premises, including disruptive behaviour and aggressive language, could increase as a result of alcohol consumption at the Premises.
72. Mr and Mrs Withoos noted that noise at matches and training sessions at the Premises was *'astronomical on weeknights and weekends'* and considered *'adding alcohol to this already huge disruption would be nothing but disastrous'*.
73. They also asserted:
- 'The swearing, the screaming, the banging of fencings [sic] when goals are made, the parking on residents' nature strips, the clogging of local streets, the verbal abuse hurled at residents regarding parking is already causing a huge disruption to local residents... adding alcohol to this already raucous behaviour is going to end in disaster'*.
74. On 5 December 2023, Mrs Withoos submitted copies of correspondence from the Council dated between 25 May 2022 and 10 July 2023. The letters detail efforts by Mr and Mrs Withoos to resolve existing concerns relating to fencing, the soccer goal nets and lighting. The Council advised that in response to the concerns of Mr and Mrs Withoos (in summary) the Council had taken the following actions:
- it had reduced permitted hours of use of the Premises;
  - lights at the Premises were controlled by the Council, not allocated entities;
  - signage had been erected at the Premises advising patrons to avoid impacts to the amenity of the area;
  - traffic and parking impacts on the surrounding area on match days are monitored by Council officers; and
  - allocated entities at the Premises continue to be engaged by the Council in relation to their responsibilities to maintain amenity when using the Premises.

75. On 29 December 2023, Ms Withoos submitted copies of further correspondence between itself and the Council, which included a letter dated 22 December 2023 from the mayor for Manningham Council. The content of the letter indicated that the Council was continuing to work with the Licensee to ensure facilities at the Premises sufficiently met the demands of a club competing in the Northern Premier League and had consulted with residents in relation to development at the Premises, receiving *'positive feedback... from residents and the club in response to these strategies'* which would inform the Council's ongoing approach into the 2024 season. .
76. The Commission, whilst sympathetic to the concerns raised by Mr and Mrs Withoos in relation to the historic and ongoing development of the Premises in connection with Council's allocation of the use of the Premises, is not satisfied on the evidence presented by Mr and Mrs Withoos, that granting the licence application would have the impact on the area's amenity which they submit would occur. Rather, the correspondence referred to in paragraphs 71 and 72 between Mr and Mrs Withoos and Council detailed historic amenity concerns the purview of Council, in connection with use of the Premises, generally, as opposed to its use by the Licensee, specifically in relation to a liquor licence.
77. Whilst the Commission accepts that there has been an impact on residents' experience in relation to amenity in connection with use of the Premises as a sporting venue, the Commission is required under the LCR Act to consider specifically, whether or not granting the application to permit supply and consumption of liquor as proposed by the Licensee, would detract from or be detrimental to the amenity of the area.<sup>62</sup> The evidence before the Commission was not persuasive of a potential for the proposed variation to the licence to result in a detrimental effect on the amenity of the area.
78. The Commission also notes that between 1 December 2023 and 16 March 2024, the Licensee supplied liquor in connection with events at the Premises on eight occasions, as permitted under three temporary limited liquor licences.<sup>63</sup> No complaints were received by the Commission in connection with these events. Further, with the introduction of the Plan lodged by the Licensee with the Commission on 1 March 2024, as outlined at paragraph 59, the Commission considers the Licensee to have introduced appropriate and enforceable controls in relation to maintaining the amenity

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<sup>62</sup> LCR Act sections 4(1)(a)(ii); 3A; 3AA.

<sup>63</sup> Temporary limited liquor licences 90175065, 90175066 and 90176072.

of the area in connection with the proposed supply of liquor under a renewable limited licence.

79. The Commission further notes that the Licensee has been consultative with Mr and Mrs Withoos. At the hearing, the Licensee also invited guidance from the Commission on how it might maintain good standing in the community in which it operates, whilst satisfying its obligations under its Licence. It has stated that it is committed to continued engagement with the Council and the local community in an attempt to maintain good standing and has entrenched this practice as part of the Plan in conducting *'post-season evaluations to assess the effectiveness of the alcohol and music management plan'* involving the gathering of *'feedback from attendees, [and] neighbouring residents to identify any areas for improvement'*. The Commission accepts that the aforementioned actions indicate good faith on the part of the Licensee and a genuine commitment to minimising the potential for the supply of liquor under the Licence to result in a detriment to the amenity of the area.
80. Notwithstanding the considerations above, the Commission considers it appropriate to impose additional conditions on the Licence as set out in Appendix A. The Commission notes that a common concern shared by the Objectors related to the potential for patrons to consume liquor in areas of Petty's Reserve outside the licensed area and closer to residential areas, such as the car park at the rear of the Premises. The additional conditions seek to reduce the proposed licensed area so as to align with the seated viewing area outside the club room and create a greater distance from residential buildings. The conditions will assist to better enable the Licensee to comply with its obligation to monitor its patrons in improving sight-lines from the canteen, specifically in relation to the club room and the outside viewing area.
81. Additionally, the Commission considers it appropriate to impose a further condition requiring that the Licensee install physical signage clearly indicating the demarcation of the boundaries relating to the licensed area. Specifically, the signage will ensure that patrons are cognisant of the areas in which they are permitted to consume liquor, allowing for the Licensee to better monitor its patrons.
82. The site inspection of the Premises referred to at paragraph 60 assisted the Commission in its deliberations and fortified its view as to the utility of imposing the additional conditions on the Licence as set out in Appendix A.

## Whether granting the application would be contrary to the objects of the LCR Act

83. Although the Commission is satisfied that no grounds for refusal exist under sections 47(2) and 44(2), the Commission must still exercise its discretion whether or not to grant a limited licence. Such a discretion must be exercised by the Commission with regard to any other relevant considerations, as well as with regard to the objects of the LCR Act, particularly the primary object of harm minimisation.<sup>64</sup>
84. With the imposition of the conditions set out in Appendix A herein, in connection with the Licensee's commitment to the responsible service of alcohol, supervision of the Premises and the circumstances in which it proposes to supply liquor, the Commission is satisfied that adequate controls exist over the supply and consumption of liquor at the Premises and that the risk of harm, particularly in these circumstances in relation to supplying minors, is effectively minimised. Accordingly, the Commission considers that the grant of a licence in this instance would not be contrary to the LCR Act's object concerning harm minimisation.

## Decision on review

85. Based on the reasons set out above, the Commission is satisfied that, subject to the conditions set out in Appendix A herein, the granting of a renewable limited licence is appropriate in the circumstances.
86. Accordingly, the Commission has determined to vary the Original Decision and grant the renewable limited subject to the conditions set out in Appendix A.
87. In doing so, the Commission has determined to approve the Licensee Review Application and refuse the Objector Review Application.

***The preceding 87 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Mr James O'Halloran (Deputy Chair) and Mr Steven Brnovic (Commissioner)***

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<sup>64</sup> LCR Act, sections 4, 47(3) and 172D(3).

## 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.

### Club Requirements

The rules of the club shall comply with Schedule 1 of the Liquor Control Reform Act 1998.

### Special conditions

Physical signage must be erected at the accessible borders of both the outside licensed area and the club room clearly identifying that no liquor is to be consumed beyond the borders of the outside licensed area and the club room, in accordance with the trading hours under this licence.

### Trading hours

#### CLUB ROOM ONLY:

Monday to Thursday                      6pm to 9pm (last drinks served 8:45pm)

Saturday to Sunday                      5pm to 8pm (last drinks served 7:45pm)

#### ENTIRE RED-LINE AREA:

Friday    6pm to 9pm (last drinks served 8:45pm)

Saturday to Sunday                      12pm to 5pm



## Approvals/Consents

Section 120(2)(e). Persons under the age of 18 years are not permitted on the licensed premises other than in the company of a responsible adult in relation to preparation for and participation in sporting activities only. This approval does not include social activities but does include presentation functions. The approval applies during the trading hours specified above but no later than 10pm on any day.