

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* to the Victorian Liquor Commission (**the Commission**) for internal review of a decision to vary a renewable limited licence in respect of the premises known as Hawthorn Bowling Club, located at 1 Wood Street, Hawthorn.

Commission: Ms. Danielle Huntersmith, Chairperson
Mr. John Larkins, Deputy Chairperson
Mr. James O'Halloran, Commissioner

Date of Hearing: 2 September 2022

Date of Decision: 21 December 2022

Date of Reasons: 21 December 2022

Appearances: Mr Robert Phillpot, the first Applicant
Mr Luke Funnell, for the Licensee
Mr David Florence for the Licensee
Mr Paul Davies, Counsel Assisting the Commission

Decision: **The Commission has determined to vary the original decision and grant the application in part.**
The Commission has determined not to allow the extension of the licensed area.
The Commission has determined to allow the increase in trading hours subject to the conditions set out in Appendix A.

Signed:



Danielle Huntersmith

Chairperson

Background

1. On 7 January 2022 the Hawthorn Bowling Club Incorporated (the **Licensee**) applied to the Victorian Gambling and Casino Control Commission (the **VGCCC**) under the *Liquor Control Reform Act 1998* (the **LCR Act**)¹ to vary the Licensee's renewable liquor licence no: 36144161 (the **Licence**) held in respect of the premises (**the Premises**) known as the Hawthorn Bowling Club located at 1 Wood Street, Hawthorn (the **Original Application**).
2. The Original Application sought to vary the Licence by extending the trading hours and also by extending the licensed area covered under the Licence (the **Redline Area**).
3. On 12 April 2022 a delegate of the VGCCC (the **Delegate**) granted the Original Application and varied the Licence.
4. On 9 May 2022 Mr Phillpot on behalf of himself and eight other neighbouring residents (the **Applicants**) lodged an application to the VGCCC, pursuant to the LCR Act, seeking an internal review of the decision of the Delegate in respect of the Original Application (the **Review Application**). The Review Application requested the VGCCC to set aside the decision of the Delegate and refuse to vary the Licence.
5. The Original Application sought to increase the Premises' trading hours for consumption on the licensed premises and at a pre-booked function to:
 - Tuesday to Thursday, between 12 noon and 10pm
 - Friday and Saturday between 12 noon and 11pm
 - Sunday and public holidays between 12 noon and 7:30pm
 - Good Friday and Christmas day with prior written approval from Council
6. Essentially, the proposed increase to the trading hours applied for was:
 - for supply on the club premises; an increase by 4 hours on a Tuesday and Wednesday (commencing from 12 noon, rather than 4pm); and
 - for supply at pre-booked functions; an increase of three days, Tuesday to Thursday between 12 noon and 10pm (previously, pre-booked functions were only permitted on Friday and Saturday between 12 noon and 11pm).
7. The Original Application also sought to extend the Redline Area to include an outdoor area at the north-west corner of the premises. This area is located on the corner of Wood and Denham Streets, Hawthorn and had previously been excluded from the Redline' Area (**the North-West Corner**).

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

8. Historically, there had been a cottage on the North-West Corner that was used by the greenkeeper. This was an area that was fenced off from the bowling green. It was an area that was not previously used by the Licensee or its members or guests.
9. The greenkeeper's cottage was, a few years ago, demolished by the Boroondara Council and then replaced with an equipment shed surrounded by extensive planting of bushes and ground cover. The fence separating this area, which is the North-West Corner, from the rest of the Premises, was later removed and, in 2021, the Council removed the ground cover and laid instant turf.
10. On 7 January 2022, in accordance with section 33(1) of the LCR Act, the Delegate provided a copy of the Original Application to the Chief Commissioner of Victoria Police (**Victoria Police**) and to the Boroondara Council (the **Council**).
11. On 31 January 2022, a licensing inspector from the Victoria Police informed the VGCCC that the Victoria Police did not object to the Original Application. The Council also advised the Delegate, that it did not object to the Original Application.
12. The VGCCC received nine objections to the Original Application which were based on amenity concerns from neighbouring residents (the **Objectors**). All the Objectors live in proximity, across the road from the Premises, on Denham Street. The Objectors submitted that the granting of the Original Application would detract from or be detrimental to the amenity of their area by way of noise escaping from the Premises.
13. The Delegate granted the Original Application on 12 April 2022 and approved an increase in the trading hours and an expansion of the licensed outdoor area, to include the North-West Corner for on-premises consumption.
14. In making the decision the Delegate noted that no objections had been received from Victoria Police or the Council with respect to the grant of the application. The Delegate further noted that the Licensee was not seeking to increase the finishing times currently allowed for the supply of liquor. The Delegate proposed to endorse a condition on the licence that the North-West Corner is to be vacated by 9pm.

Legislation and the Commission's task

The Commission's internal review power

15. On 1 July 2022 the Victorian Liquor Commission (the **Commission**) was established under the LCR Act as the liquor regulator in Victoria. Pursuant to the legislated transitional

provisions contained in Schedule 8 of the LCR Act, the Commission assumed jurisdiction to consider, hear and determine the Review Application.

16. The Review Application is made under section 153 of the LCR Act. The Original Decision is a reviewable decision, and the Applicants (being the Objectors) are eligible persons under Division 2 of Part 9 of the LCR Act to apply for review of that 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:
 - 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 to vary a licence may be contested or uncontested. Pursuant to section 3(1) of the LCR Act, a contested application relevantly includes “*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 those objections (or that period as extended under section 174)*”².
19. As the Applicants objected to the Original Application it is treated as a contested application.
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 Original Application. The Commission must either:
 - (a) grant the application (and may do so subject to conditions)³; or
 - (b) refuse to grant the application⁴.
21. In doing so, it must consider all the information, material, and evidence before the original decision maker⁵. It may also consider further information, material, or evidence as part of making its decision⁶.

² Conversely, an “uncontested application” in the context of a Variation Application is defined in section 3(1) as being “an application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is 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).”

³ Sections 44, 49 and 157 of the LCR Act

⁴ Sections 44 and 157 of the LCR Act

⁵ Section 157(2) of the LCR Act.

⁶ See section 157(3) of the LCR Act.

Conduct of an inquiry

22. Section 44(4) of the LCR Act provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate. Section 172W of the LCR Act provides that the Commission is not bound by the rules of evidence, however, it must comply with the rules of natural justice.
23. Section 26(1) of the LCR Act 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 (the **Scale and Scope Requirement**).

Exercising the internal review power

24. Section 172U(3)(b) of the LCR Act requires the Victorian Liquor 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.

25. 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*
 - (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.*"

26. 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."

Determination of a contested application

27. 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."

28. Section 47(2) of the LCR Act provides that the Commission may refuse to grant a contested application on any of the grounds set out in section 44(2).

29. Section 44(2)(b)(1) of the LCR Act provides the following grounds for refusal –

"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;"

30. Section 3A provides that, for the purposes of the LCR Act, the amenity of an area is the quality that the area has of being pleasant and agreeable. The 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 include those listed at section 3A(2) –

- (d) the possibility of nuisance or vandalism;*
- (e) the harmony and coherence of the environment; and*
- (f) any other prescribed matters⁷.*

31. Section 3AA of the LCR Act provides a list of factors which may be taken as evidence constituting detraction from or detriment to the amenity of the area. Those factors include:

- (a) *violent behaviour;*
- (b) *drunkenness;*

⁷ Section 3A(2) previously included three additional 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) presence or absence of parking facilities, (b) traffic movement and density and (c) noise levels, until these factors were repealed by the *Liquor and Gambling Legislation Amendment Act 2018*.

- (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.*

32. Section 44(4) of the LCR Act provides that before granting or refusing a contested application under subsection (1), the Commission may:

- “(a) ...have regard to any matter the Commission considers relevant; and*
- (b) make any enquiries the Commission considers appropriate but is not required to give any person an opportunity to be heard concerning the application.”*

33. 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*”⁸. 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...*”⁹.

34. 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 44(1), 47(1) and 157(1) at the discretion of the Commission with reference to the objects of the LCR Act.

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

Material before the Commission

36. The Commission on review had before it, and considered, all materials received by the Delegate. The Commission also received and considered the following materials:

⁸ See *Kordister* [2012] VSCA 325, at [19] per Warren CJ and Osborn JA; [188] per Tate JA.

⁹ See *Kordister* [2012] VSCA 325, at [188] per Tate JA.

- a. Original Decision and reasons for decision of the Delegate, dated 12 April 2022.

From the Applicants:

- b. Submission from Mr Jock Findlay, dated 1 February 2022;
- c. Submission from Mr Mark Blackney, dated 3 February 2022;
- d. Submission from Mr Peter and Mrs Julie Dyring, dated 3 February 2022;
- e. Submission from Mr Robert and Mrs Clea Phillpot, dated 7 February 2022;
- f. Submission from Mr Peter and Mrs Katherine Van Den Berg, dated 7 February 2022;
- g. Submission from Mr David Good, dated 15 February 2022;
- h. Further submission from Mr Peter Dyring, dated 22 August 2022.

From the Licensee

- i. Response to objections, dated 2 March 2022;

From Boroondara Council

- j. Letter – planning history of the site, dated 25 August 2022.

37. The Commission also had before it the evidence presented at the Hearing and further submissions and information provided by the parties, the Council, and Christ Church Hawthorn.

Council

38. Notwithstanding that the Council did not respond with an objection at the time of the decision of the Delegate, in correspondence to the Commission on 2 June 2022, the Council advised that it has been made aware of recent complaints from surrounding residents. The Council was of the view that the application by the Licensee to increase to the licenced area to include an external space at the corner of the site close to adjacent residential properties may result in further amenity impacts.

39. The Commission notes that whilst the Council is not a party to the Review Application and was not an objector to the Original Application, pursuant to section 47(3) of the LCR Act, the Commission has had regard to the untested submission of the Council as a matter that the Commission considers relevant, although, in the circumstances it is of little probative value.

Commissioners visit to the Premises

40. The Commissioners considering this matter attended the Premises on 27 July 2022 at 10:30am. Mr Luke Funnell, Secretary of Hawthorn Bowling Club also attended the site visit, along with Mr Peter Drying on behalf of the objectors. The visit assisted the Commissioners to observe the layout of the Premises and the location of the residences.

Public hearing

41. The Commission convened a public hearing on 2 September 2022 to consider the Review Application (**the Hearing**). Mr Robert Phillpot appeared for the Applicants and Mr Luke Funnell and Mr David Florence appeared for the Licensee.

Reasons for decision on review

Issues for determination on review

42. The Commission may vary or set aside the Original Decision and in turn grant or refuse the variation to the Licence that is the subject of the Review Application.
43. The issues to be determined by the Commission are whether the proposed variation would be conducive to or encourage misuse and abuse of alcohol and whether the proposed variation would detract from or cause detriment to the amenity of the area in which the Premises are situated. The impact of these issues may give rise to a ground of refusal under sections 47(2) and 44(2) of the LCR Act
44. As this is an application in relation to a Renewable Limited Licence, the Commission must also consider the Scale and Scope Requirement, as set out previously at paragraph 23.
45. In exercising its ultimate discretion to grant or refuse the Review Application, the Commission must have regard to the objects of the LCR Act. This includes having regard to the object of harm minimisation, including by providing adequate controls over the supply and consumption of liquor at the Premises.
46. In the circumstances of this matter, the amenity concerns of the Applicants were the central issue, particularly the potential increase in noise levels emanating from the North-West Corner, and noise issues more generally particularly at night.

Amenity

Summary of the Applicants' views

47. In summary, the Applicants submitted to the Commission that the Premises detracts from or causes detriment to the amenity of the area by noise from music and patrons in external areas, particularly at the North-West Corner. The Applicants submitted that the use of the North-West Corner is already directly impacting on the current amenity of the area since its inclusion in the Redline Area by the Delegate in April this year.
48. The Applicants submitted that the recent construction of the new outside deck area, built on the south side of the clubhouse, should be the main function area. In their view, this area provides additional capacity for members and guests of the bowling club and provides a more than adequate area for functions. It is away from the proximity of private homes in Denham Street. Extending the Redline Area to include the North-West Corner increases noise from loud music and noise from people who gather there.
49. The Applicants further submitted that the North-West Corner has never previously been included in the Licence because, firstly, it was not part of the club facilities as it was the greenkeeper's cottage and also because it was so close to other houses and the Church. They point out that after the cottage was demolished, the area was then designed and constructed by the Council as an equipment storage shed that sympathetically fitted in with the ambiance of the area, whilst also providing shade and shelter for bowlers while playing bowls.
50. Mr Philpot, on behalf of the Applicants submitted photographs to the Commission with the Review Application on 22 May 2022. The photographs showed significant numbers of people gathering in the North-West Corner and he also submitted video and audio recordings of noise emanating from the Premises heard from his residence. Mr Philpot submitted that the photographs and recordings showed large groups of people congregating, playing amplified music, making speeches and creating significant noise.

Summary of the Licensee's Views

51. In submissions to the Commission, the Licensee submitted as follows:
 - a. Hawthorn Bowling Club was established in 1880 and since re-opening has upgraded the club facilities and sought to attract new members. Apart from bowling, the Premises is used for members and others to socialise and have barbeques, as well as for pre-booked functions. Non-bowlers can gather around the deck area and clubhouse end, or the western end of the main green.

- b. The North-West Corner is an area for bowlers to sometimes take a break, to have something to eat or talk with each other.¹⁰ It is by inclusion of this North-West outdoor area that the Original Application sought to extend the licensed outdoor area to allow for the consumption of alcohol.
- c. Lawn bowling is a relatively expensive sport to maintain and revenue is generally derived from membership fees green fees and general fundraising activities. A significant percentage of the Licensee's revenue is generated from sales of drinks to members and guests attending barefoot bowling events.
- d. These events include social gatherings of friends and families to celebrate birthdays, company Christmas break-ups and, occasionally, weddings, memorials, bucks, and hen's parties.
- e. The external functions are mostly held during the four summer months of December to February and are necessary for the Licensee's continued viability.
- f. The Redline Area did not previously include this small area of land, which the club's greenkeeper cottage occupied, however the club had thought the Redline Area should extend to include this area when the cottage was demolished.
- g. The application to extend the geographical boundary of the licensed area was seen by the club as a necessary next step to continue to improve lawn bowling opportunities and facilities to both our members and guests.¹¹

Evidence at the Hearing:

Mr Robert Phillpot for the Applicants ¹²

52. Mr Phillpot's evidence on behalf of the Applicants included the following:

- a. The Applicants principally objected to the use of the North-West Corner as a function space, where people are congregating when they are not bowling.
- b. Mr Phillpot gave evidence that the Applicants are supportive of the Licensee and that nobody wants the club to fail. He stated that in fact the club is a great part of the

¹⁰ Venue Management Plan – Hawthorn Bowling Club.

¹¹ Hawthorn Bowling Club. Response to Objections. 2 March 2022.

¹² Note – there was an equipment malfunction and there is no transcript of Mr. Phillpot's evidence.

community that everyone wants it to succeed, thrive and survive and the Licence is a part of that.

- c. From the Applicant's point of view, their objection is to the scope and extent of the operations of the Licensee.
- d. While the North-West Corner may be connected with bowling, Mr. Phillipot gave evidence that it often ends up that the primary use of the area is actually functions. In his view, this is especially so when there is a barbeque present, as people congregate, and they end up bringing drinks over there from the clubhouse and many people then congregate in this small area.
- e. He further explained that the noise comes from groups who come along for a social bowl and the bowling is then almost the secondary thing they do. Mr. Phillipot asserted that at such social functions people end up congregating in the North-West Corner and it becomes a hub of activity in a small area, which is the closest area to the Applicants' residences
- f. Mr Phillipot also gave evidence that there had been a portable outdoor speaker used at the Premises, which meant there was loud noise travelling to the residences in addition to the noise from patrons.
- g. Mr Phillipot submitted that the newly built deck is the perfect spot for functions, and he did not understand why the club does not use that area and not the North-West Corner at all for its functions given it would be an ideal area.
- h. Mr Philpot explained that there is a big difference between bowlers who are bowling on the green and step off the end of the green into the North-West Corner and that space being used for 20, 30, 40, 50 people as a function area where they congregate over a barbeque and drinking alcohol.

Mr Luke Funnell for the Licensee

53. Mr Funnell's evidence on behalf of the Licensee included the following:

- a. The functions held in the North-West Corner will always include bowling activities. Currently the functions held in the North-West Corner run until 9:00pm and he

gave evidence that ‘...that’s when we start moving them out of that area for the evening...’¹³

- b. The Variation Application to increase the Premises’ trading hours was two-fold;
 - i. the extension of hours for supply on the club premises was an extension on the start time on Tuesdays and Wednesdays, which is to allow bowlers to have a drink while they’re bowling and socialise with teammates and opponents after the game; and
 - ii. The extension of hours for functions, is to allow the Licensee to hold functions throughout the week, particularly in December.
- c. He stated that there are no external speakers on the building for playing music. The only source of music that comes from the club is with portable speakers. During functions portable speakers are allowed, although Mr Funnell submitted that in the past, he has informed people to either turn the music down or turn the music off.
- d. Mr Funnell said he had no knowledge of any promise made by the Licensee (in an email sent from the Licensee to one of the Applicants in 2018) that they will only play music inside the clubhouse. However, he confirmed that the Licensee is not proposing to have speakers outside going forward and, in relation to music escaping from inside the clubroom, ‘...we will have to end up closing the window...’¹⁴
- e. Mr Funnell explained that music noise is supervised by one or two bar staff walking around and monitoring the noise levels, every 10, 15, or 20 minutes.
- f. In response to the concerns of the Applicants about the Licensee’s ability to protect amenity through supervision, Mr Funnell acknowledged that, due to the volunteer nature of the organisation, the club has limited capacity to oversee patrons. Therefore, generally only one or two volunteers on duty for the whole venue “...currently at the moment it is left up to one or two people to try and manage the overall running of the venue... it is hard getting those volunteers in to help...”¹⁵,
- g. In response to concerns that people will gather in the North-West Corner, Mr Funnell said that if the extension to the licensed area granted by the Delegate

¹³ Page 5, line 5, transcript of internal review hearing. Hawthorn Bowling Club 2.9.2022.

¹⁴ Page 11, line 15, transcript of internal review hearing. Hawthorn Bowling Club 2.9.2022.

¹⁵ Page 20, line 15, transcript of internal review hearing. Hawthorn Bowling Club 2.9.2022.

continues, he confirmed that a portable barbeque is located in the north-west corner of the Premises and agreed that it will become a focal point of functions for bowlers as well as non-bowlers for up to 50 people. He gave evidence that: ‘... Yes, *I would agree that...during the daytime probably even go up to, say 50 people...*’¹⁶.

- h. When asked if he thought it would adversely affect amenity if there were 30 or 40 people in the North-West Corner drinking until 9:00pm, he said , ‘...*To me personally it wouldn’t affect me, but I can see how it would affect others...*’.¹⁷
- i. Mr Funnell submitted that it was the club’s internal condition that only groups who have bowlers use the North-West Corner.
- j. Mr Funnell estimated the maximum number of people as 120 bowlers who can bowl at one time, but considering inside the clubrooms as well, possibly up to 200, depending on the booking.

Mr David Florence, for the Licensee

54. Mr Florence’s evidence included the following:

- a. To survive, the club needs to run functions. When considering the green keeping costs, the cost per member at the club is \$2,000. A club membership costs \$180, which means there is a big shortfall. The club is aware of other clubs who have gone under.
- b. Hawthorn Bowling Club is doing the opposite by attracting a lot of social members who pay a lesser fee and enjoy the benefits of being at the club. This includes buying drinks at reasonable prices and having a casual bowl with friends.
- c. Mr Florence stated that the club does not normally put large groups over in the North-West Corner. ‘... *there would normally be a number of bowlers, like, 15 or 20 or something...normally wouldn’t lump 50 or 60 people across into that little area.*’¹⁸
- d. Mr Florence added that ‘...*we purposefully don’t book functions that are going to have to be pushed over to there to get them out of the way...we might just have a*

¹⁶ Page 17, line 22, transcript of internal review hearing. Hawthorn Bowling Club 2.9.2022.

¹⁷ Page 18, line 20, transcript of internal review hearing. Hawthorn Bowling Club 2.9.2022.

¹⁸ Page 41, line15, transcript of internal review hearing, Hawthorn Bowling Club 22.9.2022.

tail end on Saturday later in the day...'¹⁹

Submissions made after the Hearing

Licensee

55. On 15 September 2022, the Licensee submitted by email to the Commission.

- (a) A letter of post-hearing submissions.
- (b) A venue management plan (**the Venue Management Plan**).
- (c) A strategic direction / business plan;
- (d) A copy of a hire agreement for Hawthorn Bowling Club (**the Hire Agreement**);
- (e) A copy of a position description for Neighbour Liaison Officer; and
- (f) A summary document.

56. In the post-Hearing material, the Licensee submitted that the recently completed deck will go a long way to improving the placement of functions. Larger functions of around 40 plus people, will be positioned on the main green in front of the clubhouse and on the new deck south of the clubhouse, larger groups (who are not bowling) will be booked into the clubhouse.

57. The Licensee emphasised that it wished to be friends not enemies with its neighbours in Denham Street.

58. In relation to the extension of the Redline Area to include the North-West Corner, the Licensee noted that it has already put in place signage indicating that it is a quiet area and that its neighbours are close and to be respected, with a 9pm finish time.

59. The Licensee proposed that the North-West Corner not be booked for a function for non-bowlers and that groups should only be there until 9 pm with a 15 minute grace period.

60. The Licensee proposed to implement the Venue Management Plan that was provided to the Commission, in the next month in full. The Licensee stated that currently the booking officers are working with this plan in mind when booking functions. The Licensee noted that its new strategic plan is waiting to be signed off and implemented next month.

¹⁹ ¹⁹ Page 41, lines 26-31, transcript of internal review hearing, Hawthorn Bowling Club 22.9.2022.

61. In the Venue Management Plan an option proposed by the Licensee was that the North-West Corner patrons be moved to the clubhouse at 8pm during the busy months of October to January and the rest of the year the North-West Corner only be used at lunch times.
62. The Licensee, in its Venue Management Plan, also proposed capacity limits for various areas including a maximum of 30 in the North-West Corner and an overall capacity of 300.
63. In relation to the question of noise from music, in the Venue Management Plan, the Licensee outlined various options of days and times that music may be allowed externally. For example, the Licensee proposed that external background music be limited to Tuesday pennant days, 10 am to 4 pm, and Saturday pennant days, 12noon to 7 pm, along with club run competitions. The Licensee also proposed various options regarding closing the windows and doors of the clubhouse to about extra noise and to clear the outside by 10 pm at the latest.
64. The Venue Management Plan advised that Licensee would be conscious of the volume and location of the portable speakers. However, it was unclear from the Licensee's post-hearing material whether they propose to allow portable speakers to ever be placed externally or to just allow music to escape from speakers placed in the clubhouse during certain hours whilst the windows are open.
65. The Licensee proposed to require visitors to agree to the terms of entry and behaviour via the Hire Agreement and to create a closer working relationship with neighbours, through the appointment of a Neighbour Liaison Officer.
66. The Licensee submitted that some signage had already been installed regarding respecting neighbours and that more signs would be put up around the Premises that politely ask members and guests to respect neighbours when leaving, along with as etiquette and safety notices posted for visitors and members to view.

Applicants

Mr Peter Dyring

67. On 6 October 2022, in response to the Licensee's post-hearing submissions, Mr Dyring made further submissions by email to the Commission on behalf of the Applicants.

68. He confirmed the Applicants' ongoing objection to allowing the Redline Area to include the North-West Corner.
69. He submitted that the amenity of the local area would be seriously compromised if socialising groups in the North-West Corner are allowed to consume alcohol and noisily disturb the neighbouring properties.
70. In summary, Mr Dyring submitted the area in dispute on the corner of Denham & Wood Street should remain an 'Alcohol Exclusion Zone'. Therefore, the Redline Area should not be extended to include this area.

Mr Robert Phillpot

71. On 7 October 2022, in response to the Licensee's submissions, Mr Phillpot made further submissions by email to the Commission on behalf of the Applicants.
72. Mr Phillpot was of the view that the Licensee had not sufficiently addressed scale and scope issues as there had been no reduction in patron numbers, hours of operation or effective hours of music. Mr. Phillpot was also of the view that while some documents have been produced, they appeared vague.
73. Mr. Phillpot further submitted that in his view it was unclear what was meant by a bowler versus non-bowler in the context of a function that may have some bowlers at some times but otherwise they have a social function as well.
74. In relation to music noise, Mr Phillpot stated that the Licensee's summary document sets out that the only music that would be played outside is for pennant and tournament days. However, he pointed out that the Casual Hire Agreement states "*The Hirer will not bring in its own amplified music. The Club will provide this service in line with the liquor licence.*" He questioned if this meant that the Licensee will provide music for functions outside of the music for the pennant and tournament days.
75. Mr Phillpot also noted that the Licensee submitted that, "*The playing of background music is an integral part of both competitive and social lawn bowling and is played at a majority of bowling clubs across Australia.*". Mr Phillpot stated that background music is not an integral part of competitive and social lawn bowling. He noted that there are clubs

that do not have, or want, music at their clubs and even at Hawthorn Bowling Club there are many members who do not want music played.

76. Mr Phillipot was concerned that the Licensee appears to have “*walked back*” on the issue of playing music. He reiterated that a previous representation was made by the President of the club in 2018, that music would only be played inside and a window of the clubrooms may be opened to provide a little background music. Mr Phillipot also noted that at the Hearing the Licensee indicated to the Commission there would only be external music played on Saturdays between 12 noon and 7pm. He pointed out that, in the Licensee’s submissions, after the Hearing, the Licensee is proposing the playing of external music be extended to “pennant and tournament days” (not only on Saturday) plus Tuesday and possibly during functions at other times and noted that the Licensee’s summary document states: “... *we are unwilling to remove music from outside all together...*”²⁰
77. With respect to music, Mr Phillipot further submitted that many members do not want music; and that the club has already made a commitment in 2018 to residents that there would be no outside amplified music He added that the Club has historically demonstrated an unwillingness or have been unable to control noise levels.
78. Mr Phillipot submitted that the North-West Corner is an inappropriate location for functions and that the Boroondara council had the same view when they first redeveloped the old greenkeeper’s cottage.
79. He noted that some of the objectors have a very strong opinion that there should be absolutely no extension of the Redline Area; that there should be no activity in that corner at all and all functions should be in the clubhouse, areas around the club house and the new purpose-built barbeque area next to the clubhouse.
80. Mr Phillipot stated that the Applicants are willing to compromise and one element of such a compromise might be that the North-West Corner have a “limit of 15 people who must be actively engaged in bowling”. He also suggested several other conditions that would be part of such a compromise to control noise and amenity concerns (Without going into the detail of these proposed conditions the Commission does not consider that the conditions proposed were practical or workable.)

²⁰ Summary. Hawthorn Bowling Club. Submitted 15/09/2022.

Christ Church Hawthorn

81. On 7 October, 2022, the Commission received a letter from Andrew Dircks, Senior Minister at Christ Church, 2 Denham Street, Hawthorn. The Commission did not regard the submission as an objection, under section 153 of the Liquor Control Reform Act 1998 ('the Act'), as the submission was received outside the time period required by the Act. However, under section 47(3) of the LCR Act, the Commission may have regard to any matter the Commission considers relevant, and this extends to the submission received from Senior Minister Andrew Dircks.

82. In the letter, Senior Minister Dircks submitted;

"...It is the church's view that the square of land north of the Equipment Storage Shed should not be used for club social activities – and so the Liquor Licence should not provide for such use. This land should be a landscaped buffer zone between the Bowling Club's social activities and the public residential community / pedestrians etc. This land should be returned to the landscaped condition first instated when the Equipment Storage Shed was built in 2020..."

83. The submission from Christ Church was provided to the Licensee who was invited to make a response to the Commission. In response to the submission, the Licensee submitted in summary that:

- a. approximately 70% of the land in Wood Street that is owned by the Church is already adjacent to the existing red line of the bowling Club. Our members and guests are permitted to eat and drink along that fence line to the entry gate as it stands now.
- b. although bar sales are important, they are one of many revenue streams for the Club. Hiring our facilities for social bowling or functions are more important however most people who attend for bowling events like to eat and drink while bowling. The sport of lawn bowling is the first and foremost activity of the Club.
- c. the Boroondara Council created the partly sheltered and landscaped recreation area in the northwest corner of our site for socialising by visitors to the Club who are mostly from the local community. Although it is a relatively busy street corner, this area has been designated as a 'Quiet Area' by the Club and we believe extending the red line it will have minimal or no effect on the Church.

84. The Commission has had regard to this submission from Christ Church, but in the circumstances finds this untested submission of limited probative value.

Issues for determination on review

Amenity

85. The central issue to be determined by the Commission in this matter is whether the proposed variation would detract from or cause detriment to the amenity of the area in which the Premises are situated, which may give rise to a ground of refusal under sections 47(2) and 44(2).

86. The evidence presented to the Commission, by the Applicant identifies the key negative impacts on amenity arise from:

- i. the noise of bowlers, who are bowling on the green and then step off the end of the green to be part of a group, in the North-West Corner;
- ii. the noise generated from a group of people congregating at a pre-booked function on the North-West Corner; and
- iii. the playing of background music by portable speakers in external areas and noise generally particularly at night (both music and patron noise).

87. The Commission acknowledges there will always be a potential for negative impact on amenity arising out of the operation of liquor licensed premises. However, the Commission is particularly concerned about the impact on amenity of allowing the extension of the licensed area to include the North-West Corner.

88. It is undisputed that it is intended to continue to use the North-West Corner as an additional function space, with a barbeque present. In the past (since the Delegate's original decision to include this area in the licensed area) up to 50 patrons have been present at functions in the North-West Corner.

89. The Commission notes the close proximity of the North-West Corner to the residents and that this area was not ever used by the Licensee until the internal fence, which separated the North- West Corner, was recently demolished.

90. It is noted that the Licensee has proposed if the extension to the licensed area is confirmed on review, to limit the number of patrons in the North-West Corner to 30 people, and other various limitations and supervision arrangements as part of the Venue Management Plan.

91. However, the Commission is satisfied from all the evidence and other information before it that including the North-West Corner in the licensed area has caused negative amenity impacts for the neighbours and would continue to negatively impact the amenity of the area in which the Premises are situated if the Commission were to confirm the Delegate's decision to include the North-West Corner in the Redline Area.
92. In relation to the extension of the hours requested by the Licensee in the Original Application, the Commission is satisfied that placing appropriate conditions on the Licence (including prohibiting any external speakers, closing the windows at night, and erecting signage) together with the implementation by the Licensee of the Venue Management Plan would sufficiently protect the amenity of the area in which the Premises are situated.
93. The Commission notes and supports the submission of Mr Funnell, for the Licensee, after the hearing, that the Licensee intends to create a closer working relationship with its neighbours, through the appointment of a Neighbour Liaison Officer, to manage any complaint made by the Applicants or other local residents relating to the operation of the Premises and the impact it may be having on the amenity of the area.
94. The Commission is encouraged that the Licensee is committed to operating the business in a manner that respects its neighbours' amenity and understands that this obligation rests with the Licensee to ensure that the Licence conditions are not breached. This commitment, along with appropriate conditions, can provide the opportunity for an increased level of cooperation between Licensee and residents.
95. The Commission considers that no external speakers should be allowed at any time (whether portable or fixed) and that music escaping to external areas should be limited by ensuring that the windows to the clubhouse are kept closed after 9.30pm and the doors to the Clubhouse are kept closed after 9.30pm other than for entry and exit.
96. The Commission notes that the extension of hours requested does not involve the Licensee trading any later than current hours. The Commission is satisfied that the Licensee will be able to ensure they prevent negative impacts on the amenity of the area when operating the Premises during these extended operating hours including during pre-booked functions.
97. The Commission expects that the Licensee will give due attention to carefully managing these potential amenity impacts and will comply with the conditions of their licence and in

addition work cooperatively with their neighbours to resolve amenity issues or other complaints should they arise.

98. In summary, the Commission finds that, subject to the conditions outlined in **Appendix A**, the granting of the variation to the hours of Licence will not, on balance, detract from or be detrimental to the amenity of the area in which the Premises operates. The Commission also considers that the conditions outlined in Appendix A relating to the use of the Premises mitigate and minimise the risk of potential negative impact with respect to amenity.

Scale and Scope

99. The Commission is satisfied that the Review Application is sufficiently limited in this instance to meet the Scale and Scope Requirement. The Commission notes factors limiting the supply of liquor include that supply is limited to members and guests during bowling, and to patrons at pre-booked functions, which are mostly held during the four summer months of December to February. In addition, the hours of supply permitted are significantly less than ordinary trading hours.

Other considerations

100. In determining this Review Application, the Commission has had regard to the objects of the LCR Act, in particular harm minimisation. The Commission has also considered whether granting the Licence would be conducive to, or encourage, the misuse or abuse of alcohol²¹. The Commission notes the Licensee's evidence that there has been no responsible service of alcohol incidents at the Premises.

Decision on review

101. 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 in part. The Commission has determined not to allow the extension of the licensed area, and the Commission has determined to allow the increase in trading hours subject to the conditions set out in Appendix A.

The preceding 101 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith, Chairperson, Mr John Larkins, Deputy Chairperson, and Mr James O'Halloran, Commissioner.

²¹ Section 44(2)(b)(ii).

Appendix A

Type of licence

This licence is a renewable limited licence and authorises the Licensee to supply liquor;-

- on the licensed premises to a member of the club or a guest of the member for consumption on the licensed premises.
- on part or parts of the licensed premises to a person attending a pre-booked function for consumption in the area where the function is being conducted

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

Supply Of Liquor At A Pre-Booked Function

The Licensee is authorised to supply liquor at a pre-booked function organised by an outside organisation and conducted at the premises, subject to the licensee:

- maintaining a register of the pre-booked functions to which this licence applies with the register detailing the date, time, area and name of the function organiser;
- displaying a sign identifying that the room/area of the premises is operating under this approval for a pre-booked function.

Maximum capacity

External	200 patrons
Overall maximum	300 patrons

Special conditions

Supply or consumption of liquor is not permitted in the area on the north-west corner of the premises (which is excluded from the licensed area on the approved plan).

No external speakers are permitted on the premises (whether permanent or portable).

Windows to the clubhouse must remain closed after 9.30 pm whilst any music is being played in the clubhouse.

The doors to the clubhouse must remain closed after 9.30 pm other than for entry and exit whilst any music is being played in the clubhouse.

The Licensee shall display signs that are prominent on the premises requesting patrons to keep noise to a minimum and to respect neighbours including when leaving the premises.

Trading hours

FOR SUPPLY ON THE CLUB PREMISES

Tuesday to Thursday	Between 12 noon – 10 pm
Friday and Saturday	Between 12 noon and 11pm
Sunday and Public Holidays	Between 12 noon and 7:30pm
Good Friday and Christmas Day	With prior written approval from Council

FOR SUPPLY AT A PRE-BOOKED FUNCTION

Tuesday to Thursday	Between 12 noon – 10 pm
Friday and Saturday	Between 12 noon and 11pm
Sunday and ANZAC Day	Between 12 noon and 7:30pm
Good Friday and Christmas Day	With prior written approval from Council

Approval Consents

Section 120(2)(e). Persons under the age of 18 years are 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.