



p: (08) 6278 2788
e: phil@canford.com.au
mob: 0417 976 009
postal: PO Box 389, Guildford WA 6935

The Iluka

98 O'Mara Boulevard, Iluka WA



Application to add/vary/cancel condition 9 of
tavern liquor licence

Section 38 Submissions
Public Interest Assessment

November 2024

COPYRIGHT © Canford Hospitality Consultants Pty Ltd 2024

Copyright in this document is the property of Canford Hospitality Consultants Pty Ltd. This document may not be copied or reproduced in whole or in part without the specific prior written consent of Canford Hospitality Consultants Pty Ltd. Canford Hospitality Consultants Pty Ltd may seek both injunctive relief restraining the unauthorised use of this document (or any part thereof) and an accounting for profits action against any person or entity who so copies or reproduces this document (or any part thereof) without said prior written consent.

| | |
|--|----|
| November 2024..... | 1 |
| 1. Introduction | 3 |
| 2. History of The Iluka - Chronology of approvals | 6 |
| 3. The Locality | 9 |
| 4. Style of Operation - Subject Premises | 11 |
| 5. Objective Evidence | 14 |
| 6. Section 38(4)(a) of the Act - Harm or Ill-health | 16 |
| 7. Section 38(4)(b) of the Act - A Report on the Amenity of the Locality ... | 18 |
| 8. Section 38(4)(c) of the Act - Offence, Annoyance, Disturbance or Inconvenience | 19 |
| 9. Section 5(1)(a) of the Act - Primary Object | 20 |
| 10. Section 5(1)(b) of the Act - Primary Object | 21 |
| 11. Section 5(1)(c) of the Act - Primary Object..... | 22 |
| 12. Section 5(2)(a)(d)(e)(f) of the Act - Secondary Objects | 23 |
| 13. Conclusion | 24 |

1. Introduction

- 1.1 Daresq Hospitality Group Pty Ltd has applied to the licensing authority to amend Condition 9 of its tavern licence.
- 1.2 Currently, the condition reads;
 - 1.2.1 *Music and entertainment played at the premises must be at a background level to allow normal conversation to occur.*
- 1.3 The amendment requested reads;
 - 1.3.1 *“Music and entertainment played at the premises must comply with the Environmental Protection (Noise) Regulations 1997 at all times”*
- 1.4 This premises currently trades with a tavern liquor licence, and has done so for over 3 years now.
- 1.5 These submissions are designed to address the public interest requirements as set out in Section 38(2) of the Liquor Control Act 1988 (the “Act”).
- 1.6 These submissions are also in response to further requirements set by the Director by way of an acknowledgement letter dated 8th August, 2024;
 - 1.6.1 *Prior to setting advertising, the licensee must lodge a written ‘public interest assessment’ (PIA) submissions demonstrating how the grant of the application will still be in the public interest. In this regard, as a minimum and pursuant to s 38(4) of the Act, the licensee will need to satisfy the licensing authority that the grant of the application will not result in:*
 - 1.6.1.1 *increased harm or ill-health due to the use of liquor;*
 - 1.6.1.2 *a lessening of the amenity of the locality of the licensed premises; or*
 - 1.6.1.3 *undue offence, annoyance, disturbance or inconvenience to people who reside, or work in the vicinity of the licensed premises.*
- 1.7 **Section 38 - Public Interest requirements.**
- 1.8 Section 38(2) of the Liquor Control Act 1988 sets out the matters to be taken into account by the Licensing Authority in deciding whether or not to grant a liquor licence. Specifically, it states:
 - 1.8.1 *“An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest”.*
- 1.9 As stated above the Director has determined that section 38(2) applies to this application.
- 1.10 Section 38(4) of the Liquor Control Act 1988 states the licensing authority may have regard to the following matters when considering an application for a liquor licence;

- 1.10.1 *“the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and*
- 1.10.2 *whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened; and*
- 1.10.3 *whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and*
- 1.10.4 *any effect the granting of the application might have in relation to tourism, or community or cultural matters; and*
- 1.10.5 *any other prescribed matter”.*
- 1.11 **Primary Objects of the Liquor Control Act 1988**
- 1.12 The objects of the Act are contained in section 5, which states the primary objects of the Act are,
 - 1.12.1 *“to regulate the sale, supply and consumption of liquor; and*
 - 1.12.2 *to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, and*
 - 1.12.3 *to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”.*
- 1.13 Section 5(2) of the Act also includes the following Secondary Objects;
 - 1.13.1 *“To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and*
 - 1.13.2 *To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
 - 1.13.3 *To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, and*
 - 1.13.4 *To encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.”*
- 1.14 Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”.*
- 1.15 In the Aldi South Fremantle decision (refusing an application for a conditional grant of a liquor store licence), dated 22nd March 2019, at paragraph 26, the Director said (attachment IT01);

- 1.15.1 *“None of the primary objects of the Act take precedence over each other, however, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case¹¹ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations”.*¹²
- 1.16 This means the licensing authority can attribute whatever weight it deems reasonable to competing evidence and other relevant considerations, when determining an application. Whilst this is correct, perhaps the above quote should additionally say that *‘in making such decisions, the licensing authority must act reasonably, and within the scope and purpose of the Act’*.
- 1.17 Through these submissions the licensee will demonstrate that the variation of this trading condition will have no impact on neighbouring sound sensitive venues, nor on the operations of the tavern.
- 1.18 The proposed variation replaces wording which is open to different interpretations with the robustness and force of the Noise Regulations.

2. History of The Iluka - Chronology of approvals

- 2.1 The below paragraphs detail a timeline of Council / Governing body approvals for The Iluka from its inception until its most recent Development Approval. The applicant has provided this summary to show the Director that this tavern has been thoroughly examined from an acoustic point of view over a number of years.

2.1.1. 21st May 2019 - State Administrative Tribunal Review (DR 061/2019)

2.1.1.1. Outcomes specific to noise.

14. A detailed acoustic report shall be submitted to the City's satisfaction, prior to the commencement of development. The acoustic report shall demonstrate that the design of the building can ensure that all activities, including those occurring within the gymnasium and child care, comply with the *Environmental Protection (Noise) Regulations 1997*. This is to be demonstrated through an implementation section of the report which shall identify appropriate management of the proposal, including, but not limited to, time restrictions on children in outdoor play areas and any restrictions of gymnasium activities or service vehicle movements. The acoustic report shall also consider any impacts to the adjoining residential development to the north.

16. Any proposed building plant and equipment, including air conditioning units, piping, ducting and water tanks shall be located so as to minimise any visual and noise impact on surrounding landowners, and screened from view from the street. Details shall be submitted to and approved by the City prior to the commencement of development. Development shall be in accordance with these approved details.

2.1.2. 9th September 2020 - Metro Outer JDAP - City of Joondalup - DAP Application (DA20/0452) - determination

2.1.2.1. Outcomes specific to noise.

Amended Conditions of JDAP decision dated 13 May 2019

14. A detailed acoustic report shall be submitted to the City's satisfaction, prior to the Occupation of Tenancy 1, 2 and 3. The acoustic report shall demonstrate that the design of the building can ensure that all activities, including those occurring within the gymnasium and child care, and tavern comply with the *Environmental Protection (Noise) Regulations 1997*. The acoustic report shall also consider any impacts to the adjoining residential development to the north.

Additional Advice note of JDAP decision dated 13 May 2019

9. Revised condition 14 is required to address the change of use of Tenancy 1, 2 and 3. This is to be demonstrated through an amendment to the implementation section of the report which shall identify appropriate management of the tavern, including, but not limited to, restrictions on outdoor areas (including time restrictions, prohibition of music and any openings to the indoor area) and music to be of an ambient nature with live performances to be prohibited.

New Condition

23. An Operations Management Plan shall be submitted to and approved by the City prior to commencement of the use. The Operations Management Plan shall include, but not be limited to, an internal floor plan indicating the specific function of each area within the tavern use.

All other conditions, footnotes and advice notes remain as per the decision of 13 May 2019 and 28 June 2019.

- 2.1.3. 25th June 2021 - Tavern restricted licence granted
- 2.1.4. 5th November 2021 - Stantec Acoustic Report completed 5th November 2021
- 2.1.5. 10th December 2021 - Iluka Tavern Strategic Soundproofing & Sound Absorption Roll-out plan issued
- 2.1.6. 22nd April 2022 - Metro Outer JDAP - City of Joondalup - DAP Application (DA18/1336.01) - determination
 - 2.1.6.1. Outcomes specific to noise.

Amended Advice notes

Advice note 13 shall read:

The Operational Management Plan and Noise Management Plan as submitted are considered acceptable subject to the following modifications:

- a) *Operational Management Plan – Include appropriate noise mitigation measures related with the movement of kegs relating to the Tavern with specific attention to any movements required outside of 10.00am and 7.00pm.*
- b) *Operational Management Plan – Update 'Objectives of Management Plan' section to reference operating hours to 12.00am on Fridays and Saturdays only.*
- c) *Noise Management Plan - Section 6 shall include any speakers within the function room. Any speaker's setting shall be required to be documented in the same manner as the main bar.*
- d) *Noise Management Plan – Include commentary regarding the management of the collection of glasses, cans and bottles including times this will occur. The Noise Management Plan can replicate similar statements within the Operational Management Plan.*

- 2.1.7. March 2023 - Herring Storer Noise impact assessment created
- 2.1.8. March 2023 - Iluka Operational Management plan created
- 2.1.9. 24th May 2023 - State Administrative Tribunal Review Outcome (75/2022)
 - 2.1.9.1. Outcomes specific to noise.

Additional Conditions

24. An updated Noise Management Plan shall be submitted to and approved by the City within 60 days from the date of approval. The Noise Management Plan shall include, but not be limited to, specific requirements in relation to the site including layout, staff training requirements, ongoing maintenance and physical levels to be set on each piece of equipment. The operations of the Tavern are to be conducted in accordance with this plan to the satisfaction of the City.

Additional Advice Note

13. The Operational Management Plan and Noise Management Plan as submitted are considered acceptable subject to the following modifications:
- a) Operational Management Plan – Include appropriate noise mitigation measures related with the movement of kegs relating to the Tavern with specific attention to any movements required outside of 10.00am and 7.00pm.
 - b) Noise Management Plan - Section 6 shall include any speakers within the function room. Any speaker's setting shall be required to be documented in the same manner as the main bar.
 - c) Noise Management Plan – Include commentary regarding the management of the collection of glasses, cans and bottles including times this will occur. The Noise Management Plan can replicate similar statements within the Operational Management Plan.

2.1.10. May 2023 - Herring Storer created a noise management plan

2.1.11. 18th August 2023 - State Administrative Tribunal review outcome (75/2022)

2.1.11.1. Outcomes specific to noise.

Amended Advice notes

Advice note 13 shall read:

The Operational Management Plan and Noise Management Plan as submitted are considered acceptable subject to the following modifications:

- a) *Operational Management Plan – Include appropriate noise mitigation measures related with the movement of kegs relating to the Tavern with specific attention to any movements required outside of 10.00am and 7.00pm.*
- b) *Operational Management Plan – Update 'Objectives of Management Plan' section to reference operating hours to 12.00am on Fridays and Saturdays only.*
- c) *Noise Management Plan - Section 6 shall include any speakers within the function room. Any speaker's setting shall be required to be documented in the same manner as the main bar.*
- d) *Noise Management Plan – Include commentary regarding the management of the collection of glasses, cans and bottles including times this will occur. The Noise Management Plan can replicate similar statements within the Operational Management Plan.*

Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) or local government approval under regulation 17A of the Planning and Development (Development Assessment Panels) Regulations 2011.

2.2 The prevailing noise assessment from March of 2023 is still valid as none of the factors which would trigger a new assessment have occurred. The subsequent operational and noise management plans were accepted and the final changes requested in the SAT review document have been made and implemented.

2.3 Therefore, the venue complies with the existing JDAP approval, and the Noise regulations.

3. The Locality

- 3.1 In defining the “locality” affected by the application, guidance has been provided by “Public Interest Assessment - A Policy of the Director of Liquor Licensing”.
- 3.2 The Director’s policy states that:
- 3.2.1 *“As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality.*
- 3.2.2 *The term “locality” in this instance refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues.*
- 3.2.3 *....in terms of addressing objects 5(1)(b) and 5(1)(c) of the Act, an applicant may need to consider an area which is much broader than the ‘locality’ used for consideration of amenity issues. For example, an application for a destination liquor store, which may draw its clientele from a large geographic area, would need to address 5(1)(b) and 5(1)(c) of the Act in a much broader context”.*
- 3.3 In relation to location appropriate for this application the licensee advises;
- 3.3.1 The nearest hospitality premises is over 450m away (in a straight line) - Sista’s Café & Restaurant Burns Beach.
- 3.3.2 Immediately surrounding the premises is;
- 3.3.2.1 dunes, ocean and bushland to the west,
- 3.3.2.2 the rest of the shopping and retail complex to the north and east,
- 3.3.2.3 Vacant land to the South, and
- 3.3.2.4 An apartment development to the North.
- 3.3.3 The premises exists within a ‘Urban Development’ zoning per the City of Joondalup local town planning scheme.

| | |
|-------------------|--|
| Urban Development | <ul style="list-style-type: none">• To provide an intention of future land use and a basis for more detailed structure planning in accordance with the provisions of this Scheme.• To provide for a range of residential densities to encourage a variety of residential accommodation.• To provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development. |
|-------------------|--|

- 3.3.4 The premises finds itself situated amongst other businesses within the Iluka Plaza complex, including;

- 3.3.4.1 Iluka Fitness 24/7,
- 3.3.4.2 Porters Liquor Iluka,
- 3.3.4.3 Iluka Medical Facilities - inclusive of dentist,
physio, pharmacy, general,
- 3.3.4.4 Tucker Fresh IGA Iluka,
- 3.3.4.5 Montys Barbershop, and
- 3.3.4.6 NIDO Early School Iluka.

4. Style of Operation - Subject Premises

- 4.1 The tavern is a food, family and local community focused venue targeted at local residents, and other people who work in, visit, shop or otherwise resort to the locality.
- 4.2 It must be noted that there will be no physical changes to the existing premises, and no change to the way in which the place operates and no change to the entertainment provided.
- 4.3 Removal of this trading condition does not materially change anything, as the venue still must comply with the Noise Regulations.
- 4.4 These premises have housed a licensed tavern for the past 4+ years. The current licensee has operated this venue since opening.



- 4.5 Taking from their website;
 - 4.5.1 *“Welcome to The Iluka, where coastal charm meets culinary excellence, inviting you to unwind and create cherished moments with friends and family by the ocean.”*
 - 4.5.2 *The Iluka is one of the biggest venues in the northern suburbs and boasts amazing live entertainment, 5-star hospitality and food which always delivers to a gastro pub level, reminding guests of those great nights out on the town in the UK and Ireland.”*

- 4.6 The Iluka tavern is made up of a main bar, Italian Restaurant, the Temple Irish Bar and Grafton Street coffee kiosk.



- 4.7 Wes D'Arcy, of the licensee, owns and operates other licensed venues along the Perth northern coast, including Jarrah at Hillarys Boat Harbour, Mr. D'Arcy in North Beach, and the unlicensed Grafton Street Coffee.
- 4.8 The Iluka is similarly a food focused venue, which caters to families and tourists. Wes is proud to say that in this current environment of a tight labour market most of his staff have been with him for many years. This leads to a consistency of product and service, and familiar faces for patrons, and makes the venue and its staff very approachable for customers and neighbours alike.

- 4.9 The Applicant has a strong harm minimisation plan which will continue to be in place should this application be granted.



5. Objective Evidence

- 5.1. On Wednesday 18th September 2024 the licensee of The Iluka Tavern held a public open day (community forum) for the local community.
- 5.2. The licensee put on refreshments for all people who attended, and there was a strong turnout.
- 5.1. This was an open forum with Wes D'Arcy, of the licensee present. There were 38 residents at the meeting. The minutes are attached (attachment IT03)
- 5.3. Issues discussed included;
 - 5.1.1. Harm minimisation,
 - 5.1.2. Job opportunities and local recruitment,
 - 5.1.3. Community cleanliness and overall presentation of the Iluka,
 - 5.1.4. Providing designated pick up and drop off points for Uber so as to optimise flow of traffic along the boulevard and stop any potential for a build-up of cars,
 - 5.1.5. Driveway lighting,
 - 5.1.6. Noise control,
 - 5.1.7. Ideas for new events at the tavern - both family friendly and zero alcohol, and
 - 5.1.8. General improvement on business offerings
- 5.2. Participants were able to raise any issue of concern during this open forum. Despite this music or entertainment at the tavern was not raised by anyone. The licensee presents this as evidence that the local community does not have an issue with the current noise levels of music and entertainment at the Iluka Tavern.
- 5.3. Below are images of signage the licensee has installed advising people to keep the noise down when leaving, see images below.



6. Section 38(4)(a) of the Act - Harm or Ill-health

- 6.1. Section 38(4)(a) of the Liquor Control Act (1988) asks the Applicant to consider “*the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor.*”
- 6.2. In this section the Applicant assesses the risk with respect to the harm or ill-health that might be caused to people, or groups of people within the locality should this licence be granted.
- 6.3. As the applicant mentions throughout these submissions, the way in which the premises operates will not change. For example;
 - 6.3.1. There will no change in the provision of entertainment. Where amplified or live music is played, the windows will be completely closed after 10pm, per Condition 10 of their liquor licence.
 - 6.3.2. Music or entertainment played within the building will be played at such a level that patrons in the external areas are permitted to converse at normal levels of conversation.
 - 6.3.3. The fit out, comfort of the venue, and the quality of food and beverage will remain unchanged.
- 6.4. This venue is already licensed and successfully operating under the Iluka Tavern banner since 2021.
- 6.5. Given all of the above, it is open for the Director to conclude the potential for harm or ill-health is no higher than the potential there already is.
- 6.6. The experience of the licensee also puts them in good stead to work with the venue manager and staff on mitigating and deescalating any incidents that may occur.

Premises Name: Iluka Beach Bar & Kitchen
Premises Address: Iluka Plaza Shopping Centre, 98 O'Mara Boulevard, Iluka
Licensee: Daresq Hospitality Group Pty Ltd

The licensee named above is authorised to sell liquor at the licensed premises described above, in accordance with the *Liquor Control Act 1988* ("the Act"). The licensee must comply with all requirements and conditions imposed by the Act, any conditions or authorisations published by notice under s 31 of the Act, and any conditions or requirements set out below. The licence continues in force until surrendered or cancelled under the Act.

TRADING HOURS

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

TRADING CONDITIONS

1. The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern restricted licence.
2. The sale of packaged liquor for consumption off the licensed premises is prohibited.
3. During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
4. The maximum occupancy of the premises is not to exceed 399 persons at any one time.
5. Food must be available during trading hours.
6. The licensee shall not promote, advertise or employ incentives which encourage the excessive consumption of liquor by virtue of their 'emotive' titles such as (but not exclusive to) 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
7. Drink options that contain low alcohol liquor content as well as a range of non-alcoholic drink options must be available during trading hours.
8. Seating must be provided at all times, except when the licensee is hosting a pre-booked function or event.
9. Music and entertainment played at the premises must be at a background level to allow normal conversation to occur.
10. All external doors and windows are to be closed after 10 p.m.
11. No external speakers are permitted.
12. The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.
13. If upon future premises inspections being carried out, it is found that the untiled sealed brick walls are not being maintained in a satisfactory condition, the Licensee will be issued a work order to comply with a requirement to cover the walls to 1.8 metres high with ceramic tiles or similar smooth covering.

7. Section 38(4)(b) of the Act - A Report on the Amenity of the Locality

- 7.1. Section 38(4)(b) of the Liquor Control Act, asks the Applicant to consider *“whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened”*.
- 7.2. Numerous acoustic reports and noise management plans have been commissioned for the Iluka, see below.
 - 7.2.1. 5th November 2021 - Stantec Acoustic Report completed 5th November 2021
 - 7.2.2. 10th December 2021 - Iluka Tavern Strategic Soundproofing & Sound Absorption Roll-out plan issued
 - 7.2.3. March 2023 - Herring Storer Noise impact assessment created
 - 7.2.4. March 2023 - Iluka Operational Management plan created
 - 7.2.5. May 2023 - Herring Storer created a noise management plan
- 7.3. The premises has not received any noise complaints.
- 7.4. Importantly the Licensee reiterates that a licensed venue has operated out of this building for 3+ years now. This is not a new venture in the community, it is something residents in the area have long been aware of / become accustomed to.
- 7.5. Ultimately, this tavern continues to provide the local community with a venue they can enjoy responsibly without negatively impacting the amenity.

8. Section 38(4)(c) of the Act - Offence, Annoyance, Disturbance or Inconvenience

- 8.1. Section 38(4)(c) of the Liquor Control Act (1988) asks the Applicant to consider “*whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises*”.
- 8.2. The Iluka does not have a history of any noise complaints being received.
- 8.3. Recently, they held late night extended trading permits for the EURO 2024 Football matches in the middle of the night, with no issues reported regarding noise, or general disturbance.
- 8.4. The change being sought with this liquor licence condition is very minor. Given the premises is seeking to bring their noise condition in line with the noise regulations, there is no reason to believe that this will increase the potential for offence, annoyance, disturbance or inconvenience to the local Iluka community.

9. Section 5(1)(a) of the Act - Primary Object

- 9.1. Section 5(1)(a) states that a primary object of the Act is;
 - 14.1.1. *“to regulate the sale, supply and consumption of liquor”*.
- 9.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 9.3. To regulate means;
 - 14.1.2. *“to control or direct according to rule, principle, or law”* or
 - 14.1.3. *“to put or maintain in order”*
- 9.4. As clearly shown in these submissions The Iluka provides a licensed service which is much in demand in the locality.
- 9.5. It is very material to this application and these submissions that;
 - 9.5.1. The licensee proposes no change to the way the venue operates should this application be granted, and
 - 9.5.2. The licensee proposes no new upright drinking spaces will be created as part of this application,
- 9.6. Whether or not this application is granted, a licensed venue trading in the same manner will remain at these premises.

10. Section 5(1)(b) of the Act - Primary Object

- 10.1. Section 5(1)(b) states that a primary object of the Act is;
 - 15.1.1. *“to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor”*;
- 10.2. Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 10.3. In paragraph 46 of *Carnegies v Director of Liquor Licensing [2015] WASCA 208* (“**Carnegies decision**”) in respect of the National Hotel, Fremantle (attachment IT02), the following conclusion is found.
 - 10.3.1. *“It is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.”*
- 10.4. Paragraph 62 of that same decision reads;
 - 10.4.1. *“the reasons of the Commission reveal that it considered the application was not in the public interest, but not:*
 - 15.1.1.1. *(a) the positive aspects of the application that were weighed;*
 - 15.1.1.2. *(b) how the Commission reached the conclusion there was a likelihood of increased harm and ill-health if the application was granted; or*
 - 15.1.1.3. *(c) the degree of increased harm or ill-health that was likely to have resulted if the application was granted.”*
- 10.5. In this application the licensee is seeking to replace one noise related trading condition with another. The replacement condition requires the venue to comply with the Noise Regulations, which are a robust and strong regulatory tool which can be trusted to protect nearby residents from undue noise disturbance.

11. Section 5(1)(c) of the Act - Primary Object

11.1. Section 5(1)(c) states that a primary object of the Act is;

11.1.1. *“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”;*

11.2. Being a primary object means that it is of equal importance to the other two primary objects of the Act.

11.3. In other words, it is just as important for the Director to cater for the requirements of consumers, as stated above, as it is to minimise the potential for harm or ill-health due to the use of liquor.

11.4. In the end it is a weighing and balancing of these equal objects which will determine whether a liquor licence should be granted or not.

11.5. In this application, it has been shown there is little to no potential for increased harm or ill health that could potentially result from the granting of this application.

12. Section 5(2)(a)(d)(e)(f) of the Act - Secondary Objects

- 12.1. In carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and also to the following secondary objects -
 - 12.1.1. (a) *“To facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State”*; and
 - 12.1.2. (d) *“To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor”*; and
 - 12.1.3. (e) *“To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act”*: and
 - 12.1.4. (f) *to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.*
- 12.2. Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”*.
- 12.3. Through the granting of this application the licensing authority will be facilitating the further development of a much loved and popular licensed hospitality premises. The applicant, being a local and long-time resident to the area has created a very popular venue for the benefit of the local community.
- 12.4. Additionally, the licensing authority can be assured that the operator is a seasoned, and responsible licensee.
- 12.5. Therefore, in the opinion of the Applicant, in granting this licence the Director of Liquor Licensing will be fulfilling his obligations under section 5(2) of the Act.

13. Conclusion

- 13.1. The proposed variation of trading conditions will have no impact on neighbours, but instead will impact very positively on patrons of The Iluka, and will encourage and enable more local music acts to be engaged at the venue.
- 13.2. The venue will still be subject to strict compliance with the Environmental Protection (Noise) Regulations 1997, and Section 117 of the Liquor Control Act, and its full provisions provide the Director with wide powers of enforcement should they be required.
- 13.3. The Director, of course, seeks to not have to use the powers of Section 117, it is obviously better to avoid complaints than to have to deal with them.
- 13.4. In this case the licensed premises have been trading for some years without complaint and have gone through a rigorous assessment process in respect of noise emissions.
- 13.5. We therefore say that the Director may have confidence that this application can be approved in the public interest, as, in a practical, on the ground sense, the venue, after this variation, will have no greater impact on the locality than it has right now.

Drafted for and on behalf of Daresq Hospitality Group Pty Ltd;

Phil Cockman
Canford Hospitality Consultants Pty Ltd

ATTACHMENTS

| | |
|------|--|
| IT01 | ALDI South Fremantle Decision |
| IT02 | Carnegies vs Director of Liquor Licensing Decision |
| IT03 | Iluka Community Forum Minutes |