

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** NORTH COTTESLOE SURF LIFE SAVING CLUB INC

**PREMISES:** NORTH COTTESLOE SURF LIFE SAVING CLUB INC

**PREMISES ADDRESS:** 151 MARINE PDE COTTESLOE WA 6011

**APPLICATION ID:** A387015798

**NATURE OF APPLICATION:** APPLICATION FOR GRANT OF A CLUB RESTRICTED LICENCE

**DATE OF DETERMINATION:** 19 SEPTEMBER 2019

**DATE OF REASONS:** 01 NOVEMBER 2019

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### **Introduction**

1. On 15 October 2018, the North Cottesloe Surf life Saving Club Inc (the applicant) lodged an application for the grant of a club restricted licence in respect of premises situated at 151 Marine Parade Cottesloe and to be known as North Cottesloe Surf Life Saving Club Inc (the applicant).
2. The application was made pursuant sections 48 and 68 of the *Liquor Control Act 1988* (the Act) and pursuant to s 67 of the Act, the application was required to be advertised by way of a notice on the site of the premises for a period of 14 days; and by way of a notice to businesses and residents located within a 200-metre radius of the premises.
3. Pursuant to sections 73 and 74 of the Act, objections to the grant of the application were lodged by Nicholas Harford; Margaret and Elizabeth Shave; Rosemary Walsh; Peta Fuhrmann; John Walsh; Margaret Chester and Allan Treloar; Patricia Carmichael; Greg and Jan Reudavey; Nelleck Jacoby; Marylyn New; Rex and Susan Longmead; Robyn Timms; Catherine Campbell; Rodney Boulden, Sarah Shulman and Dasha Longley; Marilyn McCutcheon; Peter and Jillian Freeman; John Schulz; Ashley Wilson; Leo Agnello and Ooranya Pty Ltd; James and Carmel Gugich; Grant Pearce; Sandra Boulter; Sally Pyvis; Dr Glen Koski; the Public Health Advocacy; the Town of Cottesloe; and Peter Rattigan (the objectors).
4. By letter dated 22 February 2019, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge further submissions and evidence; and any closing submissions to be taken into consideration in the determination of the application.
5. Pursuant to sections 13 and 16 of the Act the application was determined on the papers and by me under delegation pursuant to s 15 of the Act. The submissions of the parties are briefly summarised below.

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**Summary of the applicant's submissions**

6. The club has evolved over the years and is a most valuable part of the Cottesloe community providing sporting, community, cultural and social benefits associated with its beach location.
7. The primary objects of the club include the following; (provided gratuitously and without fee)
  - assisting or rescuing any person who may be in danger of drowning
  - resuscitating and reviving any person who may be apparently drowned
  - rendering first aid to any person who may be injured by accident or otherwise
  - promoting demonstrations and arranging classes of instruction in thorough knowledge of the principles of surf lifesaving and
  - maintaining efficient patrols of the beach under the club.
8. The application represents a further advancement of the club's rich history by seeking to enhance services and better cater for the modern-day membership base in contemporary society. Whilst the proposed liquor services are not to be directly associated with the primary objects of the club, they are essential to the important ancillary social activities which help to maintain and support the objects.
9. The club is a community-based operation. The liquor service is intended to complement core services, for the enjoyment of members and guests. Funds generated from the liquor services will be invested back into the club for the benefit of members and ultimately the beach going public.
10. The club seeks approval for a restricted liquor service for its members, their guests and people attending functions and special events at the club from time to time. Approval is only sought for liquor to be consumed on the premises. No packaged liquor take-away sales are proposed. The proposed liquor service would not be available to the general public at large, or as a pub style operation. A modest liquor service is proposed to be provided, ancillary to the club's main functions of surf lifesaving activities and associated facilities for members with like-minded interests.
11. The applicant provided an acoustic report, prepared by Corporate Health professionals, to provide an indication that functions held at the proposed licensed premises would meet the requirements of relevant noise legislation. The applicant also submitted a "Noise Management Plan" that provided strategies to minimise nuisance from any noise generated at the proposed licensed premises.

**Summary of the objectors' submissions**

12. The objectors oppose the grant of the application on one or more of the following grounds:

- the grant of the application would not be in the public interest (s 74(1)(a) of the Act);
  - the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor (s 74(1)(b) of the Act);
  - if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur (s 74(1)(g)(i) of the Act);
  - if the application were granted – the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be situated would in some manner be lessened (s 74(1)(g)(ii) of the Act); and
  - the grant of the application would otherwise be contrary to the Act (s 74(1)(j) of the Act).
13. The objectors, who are mostly residents of Marine Parade Cottesloe living near the premises, all raised similar concerns in respect of that part of the premises being the outdoor decking area which is open on three sides and has little sound attenuation, which they allege will result in undue offence, annoyance, disturbance or inconvenience.

Nicholas Harford

14. Mr Harford, in support of his objection, stated that a permanent liquor licence was totally unnecessary for a surf club and that the existing use of occasional licences was sufficient for the needs of the club. Mr Harford further stated that patrons of the neighbouring Blue Duck restaurant already cause offence, noise and traffic congestion at unsociable hours.

Margaret Shave

15. Ms Shave opposed the granting of a licence which would permit trade 7 days per week from noon to midnight. Ms Shave stated that this was excessive to the clubs' need and would place a considerable imposition on neighbours, some of whom are within 20 metres of the club. Ms Shave stated that the club has leased a large part of its' premises to a commercial operator who runs two liquor outlets at the premises. Ms Shave stated that this resulted in traffic congestion and club members, restaurant patrons and beach goers competing for available parking spaces and blocking resident's driveways. Further, Ms Shave stated that the club has a history of poor noise and crowd control.

Patricia Carmichael

16. Ms Carmichael was concerned that extensive hours of trade at the club would result in excess noise and traffic along Marine Parade, further impacting on the lifestyle of those residents who currently suffer from anti-social behaviour. Further, Ms Carmichael stated that the trading hours applied for are excessive. Extended drinking hours in the area will

lead to an increase in drunken disorderliness, violence, abuse and other issues linked to excessive alcohol consumption.

Rosemary Walsh

17. Ms Walsh stated that the function of surf lifesaving clubs are service clubs not social clubs. This club has morphed into a social playground for members, many of whom are not residents or ratepayers of Cottesloe. Ms Walsh was concerned about the potential increase in noise and anti-social activity. Increased traffic has the potential to profoundly disrupt the local amenity.

Peta Fuhrmann

18. Ms Fuhrmann stated that the behaviour of club members and their guests has been appalling following functions in the past. Ms Fuhrmann stated that residents are unable to sleep until the loud music and microphone noise have ceased at previous functions conducted by the club. Residents are unable to entertain in their own gardens or balconies when the club is having a function because of the noise generated from the club.

Katherine Moore

19. Ms Moore opposed the application for a liquor licence with proposed trade of 12 hours per day seven days per week. Ms Moore proposed that if a licence was granted that it should not extend beyond 8 pm on weekdays and 9 pm on weekends. Ms Moore was concerned about increased noise and anti-social behaviour as well as traffic congestion. Ms Moore also stated that she found it difficult to accept that a club that focuses on junior members would need (or want) a liquor licence with extended trading hours. Ms Moore stated that it was inappropriate to exercise a liquor licence around children participating in sporting activity (surf lifesaving).

Margaret Chester

20. Ms Chester stated that the club was granted occasional licences for its' functions during the year and this was more than adequate to meet its' needs without the need for a club licence. Ms Chester was concerned about an increase in noise and anti-social behaviour as well as increased traffic congestion.

Public Health Advocacy

21. Ms Julie Stafford, Research Fellow with the Public Health Advocacy (PHA) stated that in 2017 children and adolescents made up 39% of the membership of the club. The potential for harm from alcohol extends beyond the drinker and young people do not need to consume alcohol to be at risk. Research shows that many young people experience harm caused by others' alcohol consumption. A permanent liquor licence will involve a substantial increase in trading hours for liquor at the club, compared to the trading hours associated with the occasional liquor licences granted to the club to date. Research has demonstrated consistent links between the availability of alcohol in an area and the alcohol related problems experienced there. Ms Stafford also expressed concerns that the availability of

alcohol on a regular basis at the club would lead to the normalisation of alcohol, in the context of sport, and further, normalise alcohol use as a necessary part of socialising.

Greg and Jan Reudavey

22. Mr Reudavey argued that a licence to sell alcohol 7 days per week 12 hours per day could not pass any reasonable public interest test as the club does not cater for the public at large or a significant portion of the public as it is an exclusive membership-based club. There appears to be no demonstrable social, economic or health benefits as the club has operated successfully using occasional licences for its events, which seems to be a reasonable solution in this medium to high density residential area.
23. Mr Reudavey also argued that the area was already well serviced with liquor outlets and adding another liquor outlet would only lead to further loss of the amenity of the area and an increase in anti-social behaviour. Further, Mr Reudavey was concerned about the increased traffic and lack of parking near the proposed premises causing problems for residents.
24. Mr Reudavey felt that the granting of the licence would severely impact on the local resident's ability to enjoy the quiet amenity of their home and good order of the locality. Mr Reudavey expressed concerns about granting a liquor licence to a club with so many young members leading to the normalisation of alcohol in social settings.

Nelleck Jacoby

25. Ms Jacoby stated that there was no demonstrable public interest to grant a liquor licence to the club as it was a private member only club. There is already a cluster of liquor licences in the area and the club does not need a liquor licence to function. Between 25% – 50% of drownings are alcohol related and granting a liquor licence to a surf lifesaving service club would send the wrong message to the youth associated with the club. Ms Jacoby was concerned that noise and anti-social behaviour would increase if the licence was granted. The club is very close to residences and there are concerns that the clubs' neighbours would no longer be able to enjoy the quiet amenity of the area.

Marilyn New

26. The grant of the Application is not in the public interest because it would be likely to:
  - (a) cause an unacceptable increase in the level of alcohol related harm and ill-health in the locality harm, contrary to s.38(4)(a), Act and to the primary object of the Act provided for in s.5(1)(b);
  - (b) fail 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, contrary to the secondary object of the Act provided for s.5(2)(f);
  - (c) lessen the amenity, quiet or good order of the locality in which proposed licensed premises are to be situated, contrary to s.38(4)(b), Act; and

(d) cause offence, annoyance, disturbance or inconvenience to people who reside or work near the proposed licensed premises, contrary to s.38(4)(c), Act. The applicant and the objectors each bear an onus under the Act. An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest. There is no presumption in favour of the grant application and the applicant must therefore adduce sufficient evidence to discharge this burden.

27. Medical and behavioural research indicates that children and young people are a vulnerable group when it comes to alcohol consumption and related harm. The sale, supply and consumption of alcohol in the context of leisure activities involving children reinforces alcohol use for children and young people and can impact on future attitudes and drinking behaviours.
28. Membership of the club includes over 500 juvenile members. The application proposes making alcohol available for consumption at the Club premises in a manner that presents a message to junior members that alcohol is a key factor in the leisure activities of the club. The proximity of the proposed licensed area and areas used by juvenile members is high risk for potential for secondary supply to juveniles; concerns relating to the exposure of adults under the influence of alcohol; and normalisation of children being exposed to alcohol in leisure and sporting settings.
29. The club premises are situated near to numerous residential premises, the closest being a few metres away directly across Marine Parade. In recent years up to twelve licensed events per year have been held at the club premises under occasional licences. These events have commonly been attended by large numbers of guest and has involved the playing of loud, amplified music at the club premises. This had been the cause of undue disturbance to Ms New and her family.
30. People residing in proximity to the club premises have a reasonable expectation peaceable enjoyment in their homes. The grant of the application will negatively impact upon their quality of life and their right to enjoy a reasonable amenity in their homes.
31. The Applicant states that its proposed special trading conditions have been designed in part "to address concerns expressed by nearby residents when the NCSLSC's full club licence application was lodged in 2013". (PIA, par 3.8.4). In reality the proposed conditions fall well short of addressing likely disturbance caused by the venue. Specifically, they do not include any condition limiting the provision of amplified music on the licensed premises, specifically, no condition:
  - (i) limiting the times at which amplified music may be played on the licensed premises;
  - (ii) limiting the parts of the licensed premises on which amplified music may be played or any limitation on the provision of such entertainment in the external part of the premises;

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- (iii) committing the Applicant to ensuring that noise emitted from the Club Premises will not breach the Regulations at any time.
32. Ms New commissioned an acoustic report from Herring Storer Acoustics. Ms New also requested that Herring Storer Acoustics review the acoustic report commissioned by the applicant. According to the Herring Storer Acoustics report the acoustic report dated 26 November 2017 filed by the Applicant fails to:
- (i) adequately address the issues of likely noise impact of the operation of the proposed venue in the locality;
  - (ii) establish that noise emitted from the Club Premises will not breach the assigned levels prescribed by the Regulations; and
  - (iii) establish that the operation of the proposed venue will not cause undue disturbance to persons residing in the locality.
33. Further, the Herring Storer Acoustics considers that the noise management plan filed by the Applicant fails to adequately and effectively mitigate against likely disturbance to residents in the area. The Applicant has failed to present evidence capable of supporting a conclusion that the noise emitted from the Club Premises will be unlikely to exceed the relevant assigned levels prescribed by the Regulations nor that the proposed operation under the Licence will be unlikely to cause undue disturbance to persons residing in the locality, including the Objector.
34. The nature of the Application and the documents filed in support of it indicate that the Applicant has failed to properly and adequately consider the interests of persons residing in the vicinity of the Club Premises and the obligations prescribed by the Act relating to noise and disturbance issues.

#### Rex and Susan Langmead

35. The Langmead's objected on the basis that the amenity, quiet or good order of the neighbourhood would be negatively affected by the grant of the licence. The proposed trading hours of 7 days per week from 12 noon to 12 midnight would increase the number of disturbances to amenity by loud music to midnight; loud and unruly patron behaviour; increased traffic congestion and problematic parking issues.

#### Robyn Timms`

36. Ms Timms argued that the locality was already well supplied with licensed premises and there was no public interest in granting another licence. Ms Timms believed, that as a sports club the applicant should be promoting minimal/no alcohol to club members. Ms Timms was concerned that the increased trading hours of the club would lead to an increase in noise issues; traffic congestion and parking issues; and an increase in anti-social behaviour.

Catherine Campbell

37. The club is situated near residences. There is likely to be an increase in noise, drunken behaviour, traffic congestion and pedestrian traffic. Granting a liquor licence to the club is likely to negatively impact on young surf lifesavers with a likely increase in alcohol fuelled violence and anti-social behaviour.

Rodney Boulden, Sarah Shulman and Dasha Longley

38. The granting of a liquor licence to the club would have negative impact on the surrounding residences by way of increased noise and people pollution. Further, it would offer an opportunity for club members to increase their consumption of alcohol which has negative implications for the wider community. Drunken patrons of the club have (in the past) conducted themselves in a drunk and disorderly manner in public spaces outside of the club grounds.
39. Younger members of the club are in a group that are known to drink too much alcohol (18-25-year old). The extreme drinking culture at similar sporting clubs will be reflected at the club and will lead to harm through extremely high alcohol consumption. Conversely, the residents of nearby houses are likely to be harmed by lack of sleep due to late night drunken behaviour by patrons of the club. The resulting stress and concern for damage to property cause undue annoyance and disturbance to those living in nearby houses.

Marilyn McCutcheon

40. Ms McCutcheon stated that the area was already well supplied with liquor outlets and there was no need for another one. Traffic and parking problems already experienced by residents will become worse and represent undue annoyance. There is public pressure to separate sport and alcohol, particularly, as in this case, when children, young people and adults share the same site.

Peter and Jillianne Freeman

41. The Freeman's property is directly opposite the club premises. A liquor outlet operating seven days per week from noon to midnight would severely affect the local property value. The resultant increase in anti-social behaviour and noise would unduly affect the resident's ability to enjoy the current quiet lifestyle. Limited parking in the area will lead to further traffic congestion if the licence was granted. The club has many young members and is an emergency services organisation. Holding a liquor licence is sending the wrong message to young members and appears contrary to the reason for the club's existence.

Peter Rattigan

42. Mr Rattigan argued that there was no public interest in granting the application. Mr Rattigan stated that the primary purpose of the club is the provision of life saving services to the public. The grant of the licence has the potential to lessen the club's emphasis on safety for the public and the pursuit of sporting excellence. The grant of the application has the potential to change the nature of the club from an elite competitive sporting club to a social

club. There is a grave risk that the social interests of the non-active members will come to dominate the activities of the club to the detriment of its competition and life saving activities to the detriment of the public. Whilst the present management committee may not foresee this happening, the committee of the club changes yearly and the non-active members are by far in the majority.

43. The club has a very active and successful program for the introduction of young children into surf lifesaving (the nippers program). If the licence is granted the activities of the nippers is likely to be curtailed or there is likely to be a significant number of children within the licensed area whilst alcohol is being served and consumed. Finally, the proposed licensed area is extremely close to the ocean and it is a well-known fact that alcohol and water are a dangerous mix. There is a very real risk of persons entering the water when affected by alcohol and causing harm to themselves and/or any rescuers.

John Schulz

44. Mr Schulz objects to the grant of the restricted club licence without a condition preventing live entertainment and amplified music after 9:00 pm on Monday to Thursday and on Sunday and after 10:00 pm on Friday and Saturday. In the past, functions at the NCSLSC have often continued past 11:00pm with noise from live bands or other entertainment and guests occurring at unacceptable levels which creates disturbance for myself and family. This has not decreased with occasional permits operated since the Club withdrew its prior application.
45. The level of annoyance, disturbance or inconvenience is undue because it interferes with and prevents sleep, and the ability to relax when live music or amplified music is played at the premises or guests are intoxicated.
46. Functions are held in the club function room (described on the plan at page 12 as "training room 1" and "training room 2") the adjacent outdoor courtyard. During these functions, the glass doors which separate the club function room from the outdoor courtyard are normally raised/open and noise escapes from the premises because the outdoor courtyard is open to the west, north and east. Music is usually amplified through speakers located in the outdoor courtyard. Even if the band or speakers are located inside the training/function room area, noise escapes unless the glass doors are lowered in the closed position.
47. During the summer months, when the NCSLSC is experiencing its busiest period of the year, the problem of annoyance and disturbance by noise is increased, as the whole area is opened to the courtyard. The outdoor courtyard is not an enclosed space, which does nothing to prevent the escape of noise because the sides are not enclosed. There is no noise management plan in place that keeps noise at reasonable levels at all times.
48. There has been a historical failure to close functions down and stop music being played at previously advertised end of function times. Typically, when a function is due to finish at 11.00 pm or midnight it has been allowed to continue and amplified music has been clearly audible inside my residence after the advertised function time, then followed by the noise created by people leaving on foot and by car or waiting for taxis or ride share services.

49. Mr Schulz does not object to the club holding functions until 10.00 pm on Friday or Saturday and until 9.00 pm on any other day. I do object to the midnight close sought for every day, especially on Sunday which exceeds even the trading hours permitted for a hotel. I do object to the ability to hold functions after 10.00 pm Monday to Thursday inclusive and on Sunday as the noise from these functions unreasonably interferes with my own and other family members ability to sleep and relax.

Ashley Wilson, Leo Agnello, Ooranya Pty Ltd

50. These three objectors object to the grant of the restricted club licence without a condition preventing live entertainment and amplified music in the courtyard area after 9:00 pm on Monday, Tuesday, Wednesday, Thursday and Sunday, and after 10:00 pm on Friday and Saturday.
51. These three objectors have frequently been disturbed by the sound of functions undertaken with an occasional licence at the NCSLSC whenever live music or amplified music has been played. This has not decreased with occasional permits operated since the Club withdrew its prior application. The history of past club functions where there is a DJ, live entertainment or a band shows that the associated noise frequently continues past 10.00 pm at unacceptably high levels. The level of annoyance, disturbance or inconvenience is undue because it interferes with the amenity of residents and prevents sleep when live music or amplified music is played at the premises.
52. The areas described as "training room 1" and "training room 2" on the plan at page 12 of the PIA are separated from the outdoor area by the glass doors pictured in the pictures on page 13 of the PIA. I will refer to these areas as the club function room. These glass doors can be raised or lowered in a similar fashion to a garage door, thus opening the function area out to the outdoor courtyard area. Adjacent to these windows are the two hinged glass doors to the right/West.
53. Functions are held in the club function room and the adjacent outdoor courtyard. During these functions, the glass doors which separate the club function room from the outdoor courtyard (pictured at page 13 of the PIA) are normally raised/open and noise escapes from the premises because the outdoor courtyard is open to the west, north and east. Whether the source of the music is a DJ, amplified music or a live band, the music is usually amplified through speakers which are situated in the outdoor courtyard. Even if the band or speakers are located inside the training/function room area, noise escapes unless the glass doors pictured on page 13 of the PIA are lowered and remain in the closed position.
54. Occasionally, when the function is held in winter (or when there is inclement weather) and the glass doors between the function room and the courtyard are lowered/closed so that there is no music source in the courtyard noise emissions are contained and the noise level is acceptable. However, if the music is played in the outdoor area there is no acceptable containment of noise.
55. The problem of annoyance and disturbance by noise is particularly exacerbated in summer when logically, the whole of the area including the club function room is opened to the

outdoor courtyard and the music source is not contained or enclosed. The outdoor courtyard is not an enclosed space although sometimes there is a shade sail roof erected. This does nothing to prevent the escape of noise because the sides are not enclosed. Simply put there is no noise attenuation measure and no noise management plan in place which prevents the escape of noise at unreasonable levels at unreasonable times.

56. There has been a historical failure to close functions down and stop music being played at previously advertised end of function times. Typically, when a function is due to finish at 11.00 pm or midnight it has been allowed to continue and amplified music has been clearly audible inside the objector's residences after the advertised function time then followed by the noise created by people leaving on foot or by car or while waiting for taxis or ride share services. The local ranger is not available after hours and calls to the Cottesloe Ranger are diverted to an answering machine which is not checked until the next business day.
57. These three objectors do not object to the club holding functions until 10:00 pm on Friday or Saturday and until 9.00 pm on any other day. These three objectors object to the midnight close sought for everyday especially on Sunday which exceeds even the trading hours permitted for a hotel. These three objectors object to the ability to hold functions after 9 pm Monday to Thursday inclusive and on Sunday and after 10 PM on the Friday and Saturday as the noise from these functions unreasonably interferes with resident's amenity and ability to sleep.

James and Carmel Gugich

58. Mr Gugich stated that the club has a past history of excessive noise and lack of crowd control with people spilling out of the licensed area onto the grassed area outside the club. Extending the liquor licence will enhance this problem. Further, there is limited parking in the area and we have experienced people blocking our driveway. Extending the liquor licence will enhance this problem. Also, the local area has been exposed to anti-social behaviour from the hotel licences in the area. Granting another licence until midnight will further exacerbate this problem.

Grant Pearce

59. Mr Pearce stated that the premises is in a residential area that is well serviced by liquor outlets. The addition of as further venue will have a direct impact in increasing the disturbance to residents because of the behaviour of patrons affected by alcohol and noise generated. The area has long suffered anti-social behaviour by patrons of the existing licensed premises. The granting of this licence is may see patrons moving between the applicant's venue and other licensed premises in the area thereby creating a nuisance to residents. The granting of the licence will see an increase in traffic congestion in the area.
60. The applicant's venue is not purpose built for the serving of alcohol and the accompanying entertainment and general noise from people. The applicant's venue includes open areas that would not enable the containment of noise generated by the activities, thereby impacting residents more than purpose venues like hotels or restaurants.

Sandra Boulter

61. Ms Boulter was concerned about the potential for harm to the many children that participate in the club's activities. The licensed area would be close to children participating in the club's activities increasing the risk of harm to these children. Increasing the availability of alcohol, at a surf club at the beach sends conflicting messages to young people about the risks of consuming alcohol, especially around water. There is also potential for further normalisation of alcohol among young people and further normalisation of drinking environments where young people are present. The sale, supply and consumption of alcohol should be prohibited at all times that the club is being used for child focused activity.
62. The proposed licensed area appears to be more outside on a balcony or a covered outdoor area. This will mean higher noise levels to the community. This will have a negative impact on the amenity of the area and the residents' ability to enjoy the ambience of their own homes. Residents already report noise and anti-social behaviour; traffic and parking issues within the neighbourhood. An extension of licensed hours at other premises will only make this situation worse.
63. In the event that the Application is granted it should be granted on the basis that the club provides CCTV surveillance as proposed but also the immediate locality external to the premises, and that all CCTV is functioning during the hours of the liquor licence, and recorded and saved for later access, and that footage should be supplied to the Town of Cottesloe on request.
64. The liquor licence should not extend beyond 7pm on weekday and Sunday nights, and 9pm on Friday and Saturday nights only, and start only after the cessation of life saving and associated activities. The bar should not be open when juvenile club activities are on, or juvenile life savours on duty. Membership identification must be shown to the bartender to obtain a liquor service.
65. There should be a prohibition any form of alcohol advertising on the outside of the licensed premises within 400m of the venue (because the premises are frequented by young people under the age of 18 years).

Sally Pyvis

66. Ms Pyvis stated that there is growing concern about the drinking culture in Australia, and particularly about the drinking patterns of young people. Granting the application in a surf sporting club environment frequented by young people would compromise the work being done by many organisations working to reduce alcohol related harm amongst young people and the wider community. The sale, supply and consumption of alcohol should be prohibited at all times when the club is being used for child focussed activity.
67. The application is inappropriate opposite a residential area and could add to the harm already experienced by residents from nearby licensed premises. In addition, there is no dedicated car parking associated with the club and demand for car parking has had an adverse impact on residents and beach users.

68. The grant of the application will lead to an increase in noise and anti-social behaviour. This will have an adverse impact on the amenity of the area and the quiet enjoyment of their home by residents.

Dr Koski

69. Dr Koski believes that the various government and statutory agencies such as police and liquor licensing do not appear to enforce the current liquor regulations and laws with respect to the existing licensed premises. Granting another licence will exacerbate this situation.
70. On weekends at night there are many intoxicated individuals yelling and screaming and otherwise making lots of noise that even our recently installed double glazing cannot negate. Motor vehicle horns constantly blare out and vehicles with modified mufflers make a huge amount of noise. Some of these vehicles are operated in a reckless manner with wheels spinning and taking off at great speed.
71. There have been people consuming alcohol in the street and in car parks after the closure of the current licensed premises. The parking of vehicles is a huge problem. Council Rangers cease patrols at 7 pm. After that time people park where they want often on the verge, or in driveways, or blocking driveways.

Town of Cottesloe

72. There are already ample venues in the immediate vicinity of the club for members to drink alcohol if they so choose.
73. There is more alcohol related harm in Australia than harm from all other recreational drugs combined. Frequent exposure to alcohol in sporting clubs normalises and misconstrues the relationship between alcohol consumption, sport and health. This relationship needs to be uncoupled in the same way that the relationship between cigarettes and sport was uncoupled last century. Governments have an important leadership role, this is an example where leadership is required.
74. Should a licence be granted it is appropriate to limit the terms of operation to provide confidence to the community regarding their amenity. The operating hours of the license should be restricted to Friday, Saturday and Sunday only between 4 pm and 10 pm. The maximum number of occupants in the licensed area be restricted to 150 persons. The club to install CCTV cameras to cover the entire external areas adjacent to the licensed premises. The licensed area to comprise of the upper ground floor only including the courtyard.

**Determination**

75. The applicant is seeking the grant of a club restricted licence. It is therefore important from the outset to understand the nature of the application and what is authorised under a club restricted licence. A club restricted licence (in accordance with s 48(2) of the Act) only authorises the sale of liquor, during permitted hours, to a member of the club and to the guest of that member in the company of that member, for consumption on the premises

only. A club restricted licence is not a commercial licence which authorises the sale of liquor to the public or to the wider community and this important distinction must be borne in mind for the purposes of this application. The sale of liquor would be restricted to club members and their guests only and for this reason would not necessarily apply to that section of the community that may be considered "at risk" from alcohol related harm.

76. An applicant for a club (or club restricted) licence is not required to meet the provisions of section 38(2) of the Act and satisfy the licensing authority that the grant of the licence is in the public interest
77. Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.
78. Pursuant to s 73(10) of the Act, the burden of establishing the validity of any objection lies on the objector.
79. In determining whether an application should be granted I must afford consideration to the objects of the Act as specified in s 5.
80. The primary objects of the Act are:
  - to regulate the sale, supply and consumption of liquor;
  - to minimise harm caused to people, or any group of people, due to the use of liquor; and
  - 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.
81. The secondary objects of the Act are:
  - 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;
  - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
82. Most objectors raised concerns that the grant of the application may negatively impact on the amenity of the locality. Specifically, the objectors were concerned that noise from amplified music would cause undue offence and annoyance to residents near the proposed licensed premises.
83. Acoustic reports were provided both by the applicant and Marilyn New. The report provided by the applicant was prepared by Corporate Health Professionals and was based on the

acoustic examination of one event (a sundowner) held at the North Cottesloe Surf Lifesaving Club. The report concluded that the event under examination did not cause a breach the *Environmental Protection (Noise) Regulations 1997* (Regulations). The report subsequently did not provide any recommendations to assist the applicant to ensure that the noise emitted from the premises during functions did not breach the Regulations or cause undue disturbance to residents near the proposed licensed premises.

84. The acoustic report provided by Ms New was prepared by Herring Storer Acoustics using computer modelling techniques to simulate scenarios like functions held previously at the proposed licensed premises. The report concluded;
- functions like the “Sundowner Event” reported in the Corporate Health Professionals report has a noise impact significantly higher than the allowable assigned noise levels during the “night” period (after 10 pm) estimated at 8 times louder than what is acceptable in accordance with the Regulations.
  - the inclusion of music at any noise level within the courtyard, such that music forms a significant portion of the noise emanating from the results in the noise impact of the North Cottesloe Surf Lifesaving Club being more than that stipulated by the Regulations
  - restriction of the courtyard to patrons only (i.e. no music other than background music) would result in compliance with the relevant assigned noise levels prior to 10 pm. However, after 10 pm such use would be likely to breach the Regulations due to patron noise typically associated with functions and events.
85. In consideration of potential noise issues, I place more weight on the report provided by Marilyn New and prepared by Herring Storer Acoustics than the report provided by the applicant and prepared by Corporate Health Professionals. The applicant’s report was prepared based on an examination of one function held at the proposed licensed premises that ceased at 9:30 p.m. The report therefore did not consider the impact of music played at a function that continued after 10 p.m. at the proposed licensed premises. The Regulations provide for lower noise levels after 10 p.m. In my view the applicant’s report failed to provide an adequate assessment of potential noise issues by not providing an assessment of noise post 10 p.m..
86. The Herring Storer Acoustics report provided computer modelling for functions at various times of the day and night and for various scenarios of where music might originate from on the premises and the type of function held at the premises. I concur with the Herring Storer Acoustics report that it would be almost impossible to sound attenuate the open-air balcony area.
87. However, I believe that potential noise problems can be mitigated by the imposition of trading conditions that limit the effect of amplified music. In this regard, ensuring that doors and windows facing the residents’ homes are closed when music is played at the proposed licensed premises and requiring music played after 10 p.m. to be played at a volume that

enables normal conversation to occur should assist to ensure that any noise nuisance is not undue. The Regulations require lower noise values after 10 p.m..

88. In response to concerns expressed by the Objectors in respect of both juveniles and the potential negative impact that the grant of the licence generally may have on the community, the Applicant proposes to ensure that liquor is only sold and supplied in a responsible manner, once again to its membership only, and consistent with the obligations of a licensee under the Act.
89. Section 120(1)(a) of the Act does not prohibit juveniles from being permitted entry to, or remaining on, a place where the sale or supply of liquor is authorised, if the place is on premises to which a club licence applies and the presence of the juvenile in question does not contravene the constitution or rules of the club; and is permitted, expressly or by implication, by the committee of the club; and does not contravene a condition of the licence. It is clear on reading the provisions of s 120(1)(a) that Parliament intended that club licences are treated differently to other classes of liquor licences with regards to provisions relating to juveniles. This is a response to the role of clubs as a means of facilitating community involvement for individuals within the locality.
90. Similarly, whilst there was information provided by the Objectors in support of their contention that the granting of a club licence was not in the public interest or indeed that the grant of the licence would only exacerbate alcohol related harms, there was no evidence of consequence to convince me on the balance of probabilities that any associated impacts of such harm were applicable specifically to the township of Cottesloe.
91. In considering all the information before me, I believe the Applicant has complied with all necessary statutory criteria requirements specified in s49 of the Act and conditions precedent to the application being granted. I accept the residents concerns that noise from amplified music could be an issue and negatively affect the amenity of the locality. However, I believe relevant trading conditions can mitigate the potential noise issues so that it could not be considered to create undue annoyance or disturbance. As such, I am prepared to exercise my discretion under s 33 of the Act and grant the application subject to the following conditions:

#### **TRADING CONDITIONS**

1. The licensee is authorised to sell and supply liquor in accordance with the provisions of section 48 of the Act.
2. During the permitted trading hours specified above, the licensee is authorised to sell and supply liquor for consumption on the licensed premises.
3. The sale of packaged liquor for consumption off the licensed premises is prohibited.
4. The licensee is authorised to sell liquor to the guests of a member, in the company of that member, for consumption on the licensed premises only. The maximum number of

guests to be introduced by a member on any day, is five, or such lesser number as permitted by the rules of the club.

5. When music is played at the premises the front entrance doors to the premises which face towards resident's homes are to be closed.
6. After 10 p.m. all music played in or broadcast to the outdoor area must be background in nature at a volume low enough to enable normal conversation to occur.
7. After 10 p.m. all music played in the internal training rooms must be background in nature enabling normal conversation to occur unless all windows and doors to the training rooms are closed.
8. The club may hold one function per calendar month where conditions 6 and 7 do not apply. The club must notify neighbours on Marine Parade within three hundred metres of the premises 7 day prior to the proposed function.

#### **ENTERTAINMENT CONDITION**

(a) A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not:

- i. be immodestly or indecently dressed on the licensed premises, and/or
- ii. take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

(b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:

- i. exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any "R 18+", "X 18+" or "RC" classified film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, or extract therefrom; or
- ii. causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises; or
- iii. causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

(c) In this condition "licensed premises" includes any premises, place or area:

- i. which is appurtenant to the licensed premises; or
- ii. in respect of which an extended trading permit granted to the licensee is for the time being in force but does not include any part of the premises which is reserved for the

private use of the licensee, manager or employees of the licensee and to which the public does not have access.

**COMPLIANCE WITH HARM MINIMISATION POLICY**

The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive the written reasons for this Decision.

This matter has been determined by me under delegation pursuant to s 15 of the Act.



Nick Toyne

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

01 November 2019



Department of  
**Local Government, Sport  
and Cultural Industries**

Your Ref:

Our Ref: A387015798

Enquiries: Nick Toyne  
☎ (08) 6551 4947

Lavan  
North Cottesloe Surf Life Saving Club Inc  
GPO Box F338  
PERTH WA 6841

Dear Ms Patterson

**APPLICATION FOR THE GRANT OF A CLUB RESTRICTED LICENCE: NORTH COTTESLOE  
SURF LIFE SAVING CLUB INC**

I refer to the application lodged by North Cottesloe Surf Life Saving Club Inc on 15 October 2018.

Please find enclosed a copy of the decision in respect of the above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N Toyne'.

Nick Toyne  
ASSISTANT DIRECTOR - LIQUOR CONTROL AND ARBITRATION BRANCH

1 November 2019