

DECISION OF DIRECTOR OF LIQUOR LICENSING

MATTER: APPLICATION FOR VARIATION OF LICENCE
CONDITIONS

APPLICATION ID: A000211208

PARTIES: GARRETT HOTELS 2010 PTY LTD AND PRIMARY
SECURITIES LTD (LICENSEE)
DAVID MILLER (OBJECTOR)
PHILLIPPA SARAH BANT (OBJECTOR)
JIM BENNETT (OBJECTOR)
ISOBEL HERBERT (OBJECTOR)
JOHN WILLOUGHBY SADLIER AND DOROTHY
LYNETTE SADLIER (OBJECTOR)
LISA PATRICIA ENGELBRECHT (OBJECTOR)
PATRICIA CARMICHAEL (OBJECTOR)
GAIL MCLAY AND DOUGAL MCLAY (OBJECTOR)

PREMISES: COTTESLOE BEACH HOTEL, 104 MARINE PARADE,
COTTESLOE

LICENCE NUMBER: 6010001396

DECISION OF: B SNELL
DEPUTY DIRECTOR LIQUOR CONTROL AND
ARBITRATION

DATE OF DECISION: 06 JULY 2017

Preliminary

1. By application lodged on 15 August 2016, made pursuant to s 64 of the *Liquor Control Act 1988* (the Act), the Licensee applied to vary a condition (the Current Condition) of the licence to allow for the following closing times in the Beach Club (formerly known as the beer garden):
 - (a) on Sundays to Tuesdays, to 11 p.m.; and
 - (b) on Wednesdays to Saturdays, to 12 midnight.
2. The Current Condition restricts trading at 10 p.m. on any night in the Beach Club, unless it is being used for a private function, arrangements for which have been made prior to that day.
3. Accordingly, the new condition sought by the Licensee is:

“Liquor may not be sold or consumed in that part of the premises known as the Beach Club after 11 p.m. on Sundays, Mondays and Tuesdays unless the Beach Club is being used for a private function, arrangements for which have been made prior to that day.”

4. Pursuant to ss 38(1)(c) and 67(5) of the Act, the Director of Liquor Licensing (the Director) determined that the provisions of s 38(2) of the Act would apply to the application and issued instructions for the advertising of the application, which lead to the lodgement of the notices of objection by the Objectors, who are all residents of the locality.
5. On 28 October 2016, the parties were advised that, pursuant to ss 13 and 16 of the Act, a document exchange would take place, to ensure that each party was given a reasonable opportunity to present its case; and that the application would be determined on their written submissions.
6. As this is an administrative decision and not a judicial one, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. I will also outline the process of my reasoning from consideration of those material facts to conclusion. Where there has been a conflict in submissions that has been significant to the outcome, I will set out the differing positions advanced by the parties and provide reasons why I prefer one position over another.¹

The Application

7. To support its application and discharge its onus under s 38(2) of the Act, the Licensee lodged a Public Interest Assessment (PIA) and other submissions to establish that the grant of the application is in the public interest, with the Licensee also asserting that:

“It is probably a notorious fact that members of the public have an expectation and a desire to socialise at hotel venues during the normal permitted trading hours that apply to licensed premises of this kind .i.e. until midnight.”
8. It was also submitted that the Licensee has received regular and consistent feedback from patrons (incorporating a broad range of persons in terms of age and situation including young and old, local and tourist) that the 10 p.m. closing of Beach Club does not suit their leisure needs and causes considerable disappointment for a range of reasons, including that:
 - (a) consumers are seeking to start their evening’s socialising at the Beach Club relatively late in the evening;
 - (b) tourists may arrive at the Beach Club at the end of a long intrastate, interstate or international journey after booking into short stay accommodation in the area; and
 - (c) there is a consistent trend amongst many consumers to dine at non-traditional hours of the evening, which means that diners seeking dinner as late as 9 p.m.

¹ Therefore, in accordance with the observations of Martin CJ in *Hancock -v- Executive Director of Public Health* [2008] WASC 224, these reasons are not “to be construed minutely and finely with an eye keenly attuned to the perception of error.”

are unable to be accommodated within the current trading hours of the Beach Club and these people are seeking considerable flexibility in dining opportunities.

9. The Licensee also stated that there is no intention to make any change to the services provided or the style of operation in the Beach Club due to the additional hours sought.
10. To place the application and premises in context, the Licensee submitted that Cottesloe is one of Western Australia's significant tourist attractions and is visited by large numbers of tourists every year; with the Cottesloe beachfront area containing a significant number of tourist accommodation facilities to cater for these needs, many of which are located within close proximity to the premises.
11. To further support the application, the Licensee lodged statements from six persons, who the Applicant felt constituted a representative sample of people who would be inconvenienced by the grant of the application.
12. The Licensee also explained that it had facilitated two consumer surveys of 250 persons, comprising one survey of 100 members of the general public and a second survey of 150 patrons of the Beach Club, to demonstrate the desire of its patrons to remain in the Beach Club beyond 10 p.m.
13. The Licensee submitted that the grant of the application would not cause offence, annoyance, disturbance or inconvenience to residents, business owners or persons passing through the locality, due to the issue of the impact of the premises generally and the Beach Club. It was also asserted that this issue had been recently considered in considerable detail by the licensing authority as part of a complaint lodged in 2013 by eight persons residing at six addresses in the vicinity, where all complaints were dismissed after both jurisdictions of the licensing authority independently found that neither the hotel generally nor the Beach Club in particular operated in a manner that caused undue disturbance to residents or lessened the amenity of the locality.
14. The Licensee's PIA also provided information on the surrounding locality, demographics of the locality, outlet density and generally addressed those criteria prescribed in s 38(4) as matters relevant to the public interest. In relation to impact on the amenity of the locality, it was submitted that the grant of the application would serve to improve the amenity by:
 - (a) providing an additional facility for licensed dining and beverage services for residents;
 - (b) making the area more attractive to consumers, thus contributing towards economic growth; and
 - (c) offering additional services to tourists to Western Australia who visit the locality.

15. The Licensee also lodged statements from the following persons, who reside or work in the locality and attested that they do not suffer from offence, annoyance, disturbance or inconvenience due to the operation of the premises, while also stating their support for the application:
- (a) Chyase Wynne;
 - (b) Donnelle Hestelow;
 - (c) Tim Soutar;
 - (d) Jaime Atkinson;
 - (e) Michael Hauck;
 - (f) Sarah Wier;
 - (g) Emmanuel Correia;
 - (h) Thomas Hunter;
 - (i) Jenna Quesnel;
 - (j) Meaghan White;
 - (k) Fulvio Prainito;
 - (l) Jane Wishaw;
 - (m) John Nolan;
 - (n) Gemma Beadsworth;
 - (o) Brian Godfrey;
 - (p) Cameron Coulson; and
 - (q) Vaughan Wilkinson.
16. In addition to those statements, the Licensee also lodged statements from Mr Antonio Dichiera, who is employed by the Licensee as the CEO of Prendaville Group Hotels and Mr Manny Papadoulis, an expert on tourism in Western Australia.
17. In conclusion, the Licensee submitted that the existing condition has outlived its useful life; operates to remedy a problem that no longer exists and negatively impacts on the ability of the premises to satisfy the reasonable leisure needs of locals and consumers.

The Objections

18. Section 74(1) of the Act provides that no objection shall be made except on one or more of the following grounds:
- (a) the grant of the application would not be in the public interest (s 74(1)(a));
 - (b) 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));

- (c) if the application were granted undue offence, annoyance, disturbance or inconvenience to people who reside or work in the vicinity, or to persons travelling to or from an existing or proposed place of worship, hospital or school, would be likely to occur (s 74(1)(g)(i));
 - (d) 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 other manner be lessened (s 74(1)(g)(ii)); and
 - (e) the grant of the application would otherwise be contrary to the Act (s 74(1)(j)).
19. Mr Miller's objection is based on each ground permitted under s 74(1) of the Act, on the basis that noise, disruption, damage, litter, parking blockage and people urinating in public affects all residents in the area and that the hotel and its patrons have a horrible effect on the welfare and enjoyment of residents living nearby.
 20. Ms Bant's objection progressed on the grounds permitted in s 74(1)(g)(i) of the Act, primarily because the Beach Club is an outdoor venue and noise associated with its activities disperses, particularly with the sea breeze. Ms Bant also submitted that having to endure this "excessive noise" for additional hours each evening would be a disturbance to the quiet neighbourhood, which will also be subject to excessive street noise after 12 midnight as patrons leave the premises.
 21. Mr Bennett, who owns a house in the locality, declared a pecuniary interest in the refusal of the application, and asserted that the hotel depreciates the land values near the premises and the status of Cottesloe generally.
 22. Ms Herbert's objection progressed on the grounds permitted by ss 74(1)(a), 74(1)(b), 74(1)(g)(i) and 74(1)(j) of the Act. Reasons in support of the objection included that the grant of the application would jeopardise the quiet amenity and good order of Marine Parade; that the nature of the drinking culture often lends itself to violence and anti-social behaviour and the additional trading hours would add to these factors; in the summer months, the noise from the beer garden is intrusive and does not need to be extended; the current trading hours of the Beach Bar enhance the good order of the premises; and the people living closest to the hotel will be further inconvenienced and the family beach area will also suffer.
 23. The objection of Mr Sadlier and Ms Sadlier (the Sadliers) progressed on the grounds permitted by ss 74(1)(a) and 74(1)(g)(ii) of the Act and presumed that the change to later trading hours would attract a more boisterous type of patron to the beer garden, which would result in the same objectionable consequences that were apparent in the 1980-1990s.
 24. It was also submitted that the activities of the Cottesloe Beach Hotel results in noise levels that exceed the levels considered safe under the *Environmental Protection Noise Regulations 1997*, as evidenced by measurements taken by various acoustic

engineers, a fact that was acknowledged by the Liquor Commission.² By definition, it was submitted that excessive noise decreases the amenity of residents.

25. The objection by Ms Engelbrecht was based on the grounds permitted by ss 74(1)(a), 74(1)(b), 74(1)(g)(i) and 74(1)(g)(ii) and noted that the Applicant's submission failed to list the Ocean Beach Hotel (OBH) and Albion Hotel and that the current liquor trading hours of the Beach Club work to stagger closing times, enabling patrons to disperse prior to closing time at other venues. For example, the Beach Club liquor sales cease, effectively closing that portion of the premises at 10 p.m. providing patrons up to two hours to leave the area (generally via taxi, public transport or on foot if alcohol has been consumed), prior to closing time of the OBH or Albion Hotel.
26. Ms Engelbrecht also noted referred to the excessive noise levels already mentioned by the Sadliers (see paragraph 24 above).
27. The objection by Ms Carmichael was also made on every ground permissible under s 74(1) and related to concerns:
 - (a) that approval of the application will have a negative impact on the amenity of the area due to anti-social behaviour, noise, disruption to residents, vandalism, police callouts, traffic movement and parking issues; and
 - (b) about the cost of alcohol-related harm to the community and State, occurring both in Cottesloe and elsewhere; and
 - (c) additional trading hours promoting excessive drinking.
28. The objection by Dougal and Gail McLay also proceeded on every ground of objection by submitting that the neighbourhood would not gain any public benefit from the additional hours sought by the Licensee, due to a likely increase in noise disturbance and unruly behaviour over and above that which is currently being experienced. Mr and Mrs McLay similarly referred to the excessive noise levels already mentioned by the Sadliers (see paragraph 24 above).
29. In relation to the letters of support by consumers, Mr McLay noted that each person resided a significant distance from the premises and that none of the consumers were tourists, to support the Licensee's contention that tourists expect longer hours.
30. In further submissions, Mr McLay submitted that the Licensee's application is deficient and should not be permitted for a number of reasons, including, but not limited to:
 - (a) the additional hours are merely for the convenience of a very small minority;
 - (b) the additional hours are likely to increase crime levels in the neighbourhood;
 - (c) the Licensee relies upon a survey of limited statistical significance;

² See *Mr Dougal and Mrs Gail McLay v Garrett Hotels 2010 Pty Ltd and Primary Securities Limited* (LC14/2015).

- (d) the Licensee has produced only 21 proofs of evidence that favour the additional hours from the whole of the Cottesloe population of approximately 7,900 persons;
- (e) the witness statements of Messrs Dichiera and Papadoulis should be disregarded because they appear to have a business relationship with the Licensee; and
- (f) the statement of Mr Davies should also be disregarded because he operates another business close to the premises, which appears to have a symbiotic financial relationship with the Licensee.

Determination

- 31. Section 64(1) of the Act provides that the licensing authority may impose, vary or cancel any condition at its discretion.³
- 32. As the Director has determined that s 38(2) of the Act is to apply to the application, the Licensee must satisfy the licensing authority that granting the application is in the public interest.⁴ Under ss 38(1)(c) and (2) of the Act, the Licensee bears this onus.⁵
- 33. There is not a presumption that the grant of an application will always be in the public interest.⁶ It is a matter for the Licensee to establish that the application is in the public interest by cogent and reliable evidence.⁷ Further, this evidentiary requirement cannot be achieved by merely expressing assertions or opinions about the public interest. Any assertions or opinion must be supported by an appropriate level of evidence.⁸
- 34. The licensing authority has “absolute discretion” to grant or refuse an application on any ground or for any reason it considers in the public interest. The discretion is only confined by the scope of purpose of the Act, read as a whole.⁹ Accordingly, an application may be refused, even if it meets all the statutory requirements, where refusal is consistent with the Act’s objects and purposes.¹⁰

³ *Liquor Control Act 1988* (WA) s. 64(1).

⁴ ***Kapinkoff Nominees Pty Ltd v Commissioner of Polices & Anor*** (LC 11/2017) [38].

⁵ *Liquor Control Act 1988* (WA) s. 38(2); see also ss. 38(1)(b) and 60(4) of the Act; reg. 9F of the *Liquor Control Regulations 1989* (WA); ***Liquorland (Australia) Pty Ltd v Executive Director of Public Health*** [2013] WASC 51 [34] (Edelman J); see also ***Seoul Mart City Pty Ltd v Commissioner of Police*** (LC 27/2014) [27].

⁶ ***Woolworths Ltd v Director of Liquor Licensing*** [2012] WASC 384 [41] (EM Heenan J).

⁷ ***Woolworths v Director of Liquor Licensing*** (2013) 45 WAR 446 [89] (Buss JA); ***Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police*** (LC 01/2017) [38].

⁸ ***Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*** (LC 16/2015) [62] and decisions cited therein; also ***Seoul Mart City Pty Ltd v Commissioner of Police*** (LC 27/2014) [28]; ***Busswater Pty Ltd v Director of Liquor Licensing*** (LC 17/2010) [36].

⁹ *Liquor Control Act 1988* (WA) s. 33(1); ***Woolworths Ltd v Director of Liquor Licensing*** [2012] WASC 384 [32] (EM Heenan J) citing ***Hermal Pty Ltd v Director of Liquor Licensing*** [2001] WASCA 356 [6]-[7]; ***Palace Securities Pty Ltd v Director of Liquor Licensing*** (1992) 7 WAR 241, 249, 263

35. The expression “in the public interest”, when used in a statute, imports a discretionary value judgment. If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of “the public interest” will ordinarily be confined only by the scope and purposes of the statute.¹¹
36. Accordingly, the factual matters that the licensing authority is bound to take into account when determining whether granting an application is “in the public interest” are those matters relevant to the objects and purposes of the Act,¹² with the primary objects as set out in s 5(1) of the Act, and the secondary objects set out in s 5(2) of the Act.
37. In determining whether it is satisfied that the granting of the application is “in the public interest”, to the extent that those matters arise on the evidence (including notorious facts), the licensing authority is:¹³
- (a) bound to take into account those matters relevant to the objects of the Acts; and
 - (b) entitled to take into account those matters set out in s. 38(4) of the Act.
38. Pursuant to s 73(10), the burden of establishing the validity of any objection lies on each Objector.
39. Further, while the rules of evidence do not apply to proceedings before the licensing authority¹⁴, decisions of the authority must be made on the balance of probabilities and be based on the evidence before it. Furthermore, notwithstanding that s 5(2)(e) of the Act requires the licensing authority to provide as little formality or technicality as may be practicable, the evidence of the parties needs to be relevant, reliable and logically probative to assist the decision-maker in assessing the probability of the existence of the facts asserted in each case.¹⁵
40. As far as I can determine, taking into consideration previous determinations of the licensing authority (both of the Director and the Liquor Commission), the licensed premises has previously been found **not** to be causing an undue degree of offence, annoyance, disturbance or inconvenience to persons who reside or work in its vicinity and there has been no evidence lead by any party to suggest that circumstances have changed since those findings.

¹⁰ *Liquor Control Act 1988* (WA) s 33(2)(a).

¹¹ ***Woolworths Ltd v Director of Liquor Licensing*** [2013] WASCA 227 [48] (Buss JA).

¹² *Liquor Control Act 1988* (WA) s 5(2); ***Woolworths Ltd v Director of Liquor Licensing*** [2013] WASCA 227 [49], [52] (Buss JA).

¹³ ***Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*** [2017] WASC 88 [16] (Banks-Smith J) citing ***Woolworths Ltd v Director of Liquor Licensing*** (2013) 45 WAR 446; ***Carnegies Realty Pty Ltd v Director of Liquor Licensing*** [2015] WASC 208 [22] (Allanson J).

¹⁴ *Liquor Control Act 1988* (WA) s. 16(7).

¹⁵ Refer ***Busswater Pty Ltd v Director of Liquor Licensing*** (LC 17 of 2010).

41. As part of the Licensee's response to the s 117 complaint¹⁶ it was submitted and accepted that the hotel licence restricted the sale of liquor in the Beach Club after 10 p.m. on any night. Therefore, a relevant question to be resolved in these proceedings is whether the additional trading hours sought in the Beach Club would elevate the degree of noise emanating from the premises to a level "which exceeds the degree reasonably to be expected from the licensed premises."¹⁷
42. In the s 117 proceedings, the Commission stated that:
- "It is clear from all of the acoustic reports that the *Environmental Protection (Noise Regulations) 1997* is being exceeded. This is clearly a relevant consideration, but it is not determinative."
43. In my view, the possibility of noise emanating from the premises at a level that exceeds the *Environmental Protection (Noise Regulations) 1997* after 10 p.m. may be more determinative in these proceedings; although this potentiality would also need to be considered in the context of the relevant case law, including those cited by the Liquor Commission in its aforementioned determination, namely:
- (a) the observations of Sharkey J¹⁸ that the word "undue" had to be determined and qualified according to the nature of the neighbourhood, so that what might constitute "undue" noise in one neighbourhood may not constitute undue noise in another; and
 - (b) where Wells J¹⁹ held that "Any resident who lives nearby a hotel must expect a certain amount of necessary or usual noise from people either arriving at, or, more likely, departing from the premises. From time to time one or more of the patrons might be expected to be noisier than the others – calling out, even yelling and screaming might occur. In extreme cases a fight or two. These are, in my experience, the types of disorder and inconvenience that might be realistically expected by nearby residents".
44. Accordingly, the Licensee has lodged submissions to outline the character of locality, in which it was submitted that:
- (a) Cottesloe Beach is an iconic Australian Beach;
 - (b) the Cottesloe beachfront area attracts significant numbers of persons, particularly over summer months, both locals and tourists;
 - (c) the area contains a number of licensed and unlicensed hospitality venues to cater to those persons including several that operate at night;

¹⁶ Refer *Mr Dougal and Mrs Gail McLay v Garrett Hotels 2010 Pty Ltd and Primary Securities Limited* (LC14/2015)

¹⁷ See King CJ (with whom Legoe J and Prior J were in agreement) in *Vandeleur v Delbra Pty Ltd* (1988) 48 SASR 156.

¹⁸ Refer *Re McHenry* [1987] 4 SR (WA) 31.

¹⁹ Refer *Hackney Tavern Nominees Pty Ltd -v- McLeod* (1983) 34 SASR 207.

- (d) the premises is one of those venues (and in fact the largest in size) which provides dining and licensed beverage services to the public visiting the locality; and
- (e) the area has a mixed residential and commercial character.
45. The Licensee also suggested that this is an unusual application in that it is not seeking to extend trading hours beyond those normally permitted trading hours for hotels, submitting that the restriction was imposed by the licensing authority whilst the hotel was operated by another licensee and under the particular circumstances that applied at that time. While it also noted that it inherited the condition when it took over the operation of the premises in 2010, the Licensee further submitted that the condition:
- (a) is impacting on the ability of the premises to meet consumer needs;
- (b) intensifies a disconnect between the expectations and requirements of the public and the ability of the Licensee to meet those expectations and requirements; and
- (c) exacerbates the contrast between the trading hours of the Beach Club²⁰ and those of other hotel and tavern venues throughout the Perth metropolitan area.
46. The Licensee further submitted that localities evolve over time, as do the requirements of consumers for particular liquor and related services. In this case, the Licensee submitted that "...the Hotel generally and the Beach Club specifically have undergone dramatic changes subsequent to the original imposition of the Existing Condition."
47. The Licensee further noted that despite the application being widely advertised and reported in the local press, objections were filed by persons residing at eight different addresses in the locality.
48. To demonstrate that the hotel does not generate any more noise or disturbance over and above what should be expected by any resident who lives nearby a hotel, the Licensee lodged numerous statements from residents of the locality, including from persons who reside or work in very close proximity to the premises, particularly in John Street, Warnham Road, Marine Parade and Overton Gardens.
49. In this regard, I have taken particular note of the Statement of Mr Brian Godfrey, who has resided at 2/7 John Street, Cottesloe since 1987.
50. Mr Godfrey's statement also noted that he resides with his children; that his residence is located approximately 6 metres from the premises and that he can see directly into the hotel beer garden from his bedroom window. In relation to the operation of the premises generally and the Beach Club, Mr Godfrey stated that:
- "Since the 'Beach Club' re-opened I cannot recall a single incident of disturbance in the streets such as loud shouting, fighting or arguing.

²⁰ In relation to this comment, it should be noted that the Beach Bar is not a separate licensed premises in itself, but rather forms a part of the services offered by the Licensee in respect of the whole of the premises.

I have not suffered or seen any evidence of vandalism in the street since the 'Beach Club' re-opened.

I have seen the occasional empty drink containers on the verge or in people's front gardens but this is fairly rare.

In terms of sound from the hotel itself (including the Beach Club) despite the fact my bedroom window has a direct line of site to the 'Beach Club' I never hear any music...

On hot summer evenings when I have my bedroom window open I can hear the low sound of conversation from the 'Beach Club' but the volume is well below the level that I would consider disturbing.

This low 'hum' of conversational noise is [the] sort of sound that anyone could expect living next to a large and popular hotel and I don't consider it is disturbing.

In summary, neither the operations of the Hotel nor the behaviour of its patrons cause me or my children any disturbance at all."

51. Mr Godfrey also stated that as a long-term resident of the area, he does not oppose the additional hours sought in the application and that he has no social or financial connection with the hotel or any person associated with the hotel.

52. The tenor of these comments is largely reiterated in the Statement by Mr Cameron Grant Coulson, who has resided at 1/7 John Street, Cottesloe for six years. Mr Coulson stated:

"I am not disturbed by noise from the Beach Club at all. In fact on Summer evenings when the Beach Club is busy, all I can hear from my place when the windows are open is the low hum of people talking normally...

...In terms of activity on the street I can say that the Hotel's patrons do not cause any trouble at all.

Since the Beach Club opened I have not heard or seen any incidents of fighting littering, vandalism, or other forms of antisocial behaviour such as loud shouting, arguing and swearing by patrons...

...As far as I'm concerned since the 'Beach Club' re-opened, the Hotel has caused no significant problems in the local community at all."

53. Mr Coulson likewise supported the additional trading hours sought in the Beach Club and stated that he has no social or financial connection with the hotel or any person associated with the hotel.

54. These sentiments were also echoed by Mr Fulvio Prainito, who has resided at 7/94 Marine Parade, Cottesloe for the past 25 years and Mr Laurie Scanlan, who has resided at 20 Warhham Road, Cottesloe for 40 years.

55. Additionally, I have also noted the statement by Mr Glenn Davies, who has owned and managed short-term accommodation apartments in and around the premises since 1994. Mr Davies stated that he currently manages:

- (a) 17 chalets at 6 – 8 John Street, Cottesloe, which are located directly adjacent to the eastern boundary of the Beach Club, running from Warnham Road to John Street;
- (b) 16 units at 94 Marine Parade, situated to the south of the hotel, across John Street, where many of the units have balconies directly facing the Beach Club; and
- (c) one executive apartment at 12 John Street, which is located about 50 metres from the Beach Club,

which all cater to the short-term accommodation market, with stays ranging from a few days to several weeks and in rare cases, months.

56. Mr Davies' statement also asserted that together the chalets, units and executive apartment cater for up to 30,000 guests per year and serve either family groups or corporate guests; that he is a 'hands-on' owner/operator and attends the business regularly and the success of his accommodation business depends on providing guests with an enjoyable and comfortable stay and a good night's sleep. Therefore, complaints from guests are treated seriously and all employees are under strict instructions to report any guest complaints immediately. In this regard, Mr Davies submitted that:

"I measure the impact of the Hotel on the neighbourhood by the feedback from our guests. The change in this regard has been dramatic.

Prior to the renovations of the Hotel we would receive an average of the guest complaints per week relating to either noise from the Hotel of [sic] the behaviour of Hotel patrons. Since the renovations we have not received one complaint relating to the Hotel.

Now the only guest feedback relating to the Hotel is positive. Since the renovations, the Hotel, particularly the Beach Club, has become one of the popular destinations for our guests for meals and/or drinks."

57. In relation to the present closing time of the Beach Club, Mr Davies explained that he has received feedback from guests, generally expressed as puzzlement at the closing time being much earlier than they expected and/or annoyance at having to leave the venue before they are ready to. Accordingly, he supports the change to the trading times, which he considers would alleviate dissatisfaction amongst his patrons and help provide a better experience for them. Mr Davies further submitted that he has no social or financial connection with the hotel or any person associated with the hotel.
58. In my view, the statements lodged by the Licensee from residents and people who work in the vicinity of the premises are compelling. Not only do they establish that they are not disturbed by the activities of the Beach Club and its clients, but they also support the additional hours sought by the Licensee.

59. The evidence of the Licensee must be contrasted with that of the Objectors, which I consider to be more conceptual than evidence based. Naturally, many of the objections raised are concerned with the potential negative implications of granting the application, with the Objectors either:
- (a) fearing that approval of the application will jeopardise the quiet amenity and good order of the locality or have a negative impact due to anti-social behaviour, noise, disruption to residents, vandalism, police callouts, traffic movement and parking issues;
 - (b) presuming that:
 - (i) a more boisterous type of patron would be attracted to the beer garden, which will result in the same objectionable consequences that were apparent in the 1980-1990s;
 - (ii) increasing trading hours at the “Beach Club” would promote excessive consumption of alcohol; or
 - (c) merely make assertions about noise, disruption, damage, litter, parking blockage and people urinating in public.
60. In considering the objections, it also seems apparent to me that some Objectors have simply failed to accept the previous findings of the licensing authority in the s 117 proceedings and have continued to reiterate concerns that have already been fully ventilated before the authority.
61. Other reasons for objection, such as the hotel depreciating land values are simply not valid grounds of objection.
62. I have also noted that the Current Condition does not impose an automatic ceasing of trade at 10 p.m., but permits trade in the Beach Club for a private function, arrangements for which have been made prior to that day.
63. However notwithstanding this, approval of the application would lead to a general increase of 11 additional hours of trade per week, post 10 p.m. Given that the activities of the Beach Club and the behaviour of its patrons in the time before 10 p.m. have been found to not be unduly disturbing residents and the unqualified support of persons who either work or reside in very close proximity to the premises, I consider that it is open to me to conclude that some additional trading hours at the premises is warranted.
64. In my view, if the activities of the premises were causing undue offence, annoyance, disturbance or inconvenience to people who reside or work in the vicinity, there would not have been as much support from local residents and certainly more objections. In forming this view, I have also observed that many of the persons who support the application either live closer to the premises than some of the Objectors or are

neighbours of the Objectors, which also adds to uncertainty over the level of disturbance caused by the premises.

65. I am therefore satisfied that additional trading hours in the Beach Club will cater to 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. However, in forming this view, I have also noted the Licensee's submission that the hotel is a relatively high impact venue in terms of "the reasonable level of disturbance" that residents should be expected to tolerate, particularly that the hotel:
- (a) is large in terms of both physical size and maximum capacity; and
 - (b) includes a large open air licensed area with a capacity of 840 persons.
66. In accepting the Licensee's submissions as to the nature of the locality, particularly that Cottesloe Beach is an iconic Australian Beach and that the area has a mixed residential and commercial character, I return to my earlier question regarding what the impact post 10 p.m. trading may have on the amenity of the locality, given that noise emanating from the premises has been found to exceed the *Environmental Protection (Noise Regulations) 1997*.
67. In further considering this matter, I have observed the Licensee's submissions that at comparable iconic beaches around Australia (such as Bondi Beach, St Kilda and Surfers Paradise), licensed bar and dining venues on the beachfront trade until 11 p.m. or midnight.
68. Heenan J²¹ noted that when determining applications under the Act, it is important to observe not only the object set out in s 5(1)(c), but that:
- "... it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with a measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of the requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it."
69. Therefore, in finding that the:
- (a) Objectors have not made out the validity of their objections, as required by s 73(10) of the Act;
 - (b) Licensee has established that additional trading hours at the premises would cater to the requirements of consumers for liquor and related services in a

²¹ *Woolworths Limited -v- Director of Liquor Licensing* [2012] WASC 384.

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manner that is consistent with the public's expectations of an iconic beach-side premises; and

(c) hotel is a relatively high impact venue,

I would take a measured approach to introducing changes to the trading hours of the Beach Club.

70. Accordingly, I am prepared to approve the variation of the Existing Condition as follows:

"Liquor may not be sold or consumed in that part of the premises known as the Beach Club (beer garden) after:

(a) 10 p.m. on Sundays (generally) to Wednesdays; and

(b) 11 p.m. on Thursdays to Saturdays and on Sundays preceding a public holiday,

unless the Beach Club is being used for a private function, arrangements for which have been made prior to that day."

71. All other conditions of the licence will remain in force.

72. In reaching this decision, I am mindful that the restriction on trading at the Beach Club has been in place for many years and was imposed specifically to address amenity issues. However, I accept the Licensee's submissions that management practices at the premises, under the new licensee, have changed and that the customer profile of the Beach Club has likewise changed. Accordingly, this incremental variation will allow all parties the opportunity to measure the impact of the additional trading hours in the Beach Club on the amenity of the locality.

73. 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 notice of this Decision.

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


DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING