

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Applicant: Greg and Jan Reudavey
(self-represented)

Objectors Rodney Boulden
Margaret and Elizabeth Shave
Nellic Jacoby
Margaret Chester
Peter and Jillian Freeman
James and Carmel Gugich
Sandra Boulter
Ashley Wilson
Peter Rattigan
Sally Pyvis

Other Initial Objectors Nicholas Harford
Rosemary Walsh
Peter Fuhrmann
Allan Treloar
Patricia Carmichael
Marylyn New
Rex and Susan Langmead
Robyn Timms
Catherine Campbell
Sarah Shulman and Dasha Longley
Marilyn McCutcheon
John Schulz
Leo Aghello and Ooranya Pty Ltd
Grant Pearce
Glen Koski
Public Health Advocacy Institute of Western Australia
Town of Cottesloe

Respondent: North Cottesloe Surf Life Saving Club (Inc.)
(represented by Ms Jessica Patterson of Lavan)

Commission: Mr Eddie Watling (Deputy Chairperson)
Ms Pamela Hass (Member)
Ms Kirsty Stynes (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for review of a decision by the Delegate of the Director of Liquor Licensing to approve the grant of a club restricted licence.

Premises: North Cottesloe Surf Life Saving Club, 151 Marine Parade, Cottesloe

Date of Hearing: On papers

Date of Determination: 17 April 2020

Determination The application is dismissed and the decision of the delegate of the Director of Liquor Licensing to grant a Club Restricted licence is affirmed, as are the conditions to be applied to that licence as advised to the Respondent on 19 September 2019.

Authorities referred to in Determination:

- *Harold Thomas James Blakeley v Director of Liquor Licensing (LC44/2010 [47]*
- *Garrett Hotels 210 Pty Ltd and Primary Securities Pty Ltd Vs D & G McLay and ors (LC 05/2018) [73] [80]*
- *Hancock v Executive Director of Public Health [2008] WASC 224*
- *Palace Securities Pty Ltd v Director of liquor Licensing (1991) 7 WAR 241*
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing (2015) WASC 208*

Background

1. On 15 October 2018, the North Cottesloe Surf Life Saving Club Inc. (“NCSLSC”) lodged an application for the grant of a Club Restricted licence in respect of premises situated at 151 Marine Parade, Cottesloe.
2. On 22 October 2018, the Applicant was advised that the Department of Local Government, Sport and Cultural Industries (“the Department”) had determined that advertising by the Applicant for this application was not required. This determination was made on the basis that the Department views a club licence as low risk with liquor being sold primarily to members and up to 5 guests of that member.
3. Due to queries received from a number of residents in the locality of the proposed licence, the Department, on 19 November 2018, decided that the application should be advertised for a 21 day period commencing 23 November 2018 and concluding on 13 December 2018. The advertising period included the distribution of a notice to residents and business owners within 200 metres of the outer boundary of the land on which the premises are situated.
4. As a consequence of the advertising of the application, 28 objections were lodged pursuant to sections 73 and 74 of the *Liquor Control Act 1988* (“the Act”).
5. On 22 February 2019, the Department advised all parties that they had until 11 March 2019 in which to lodge any and all evidence on which they wish to rely, along with any further submissions in support of the application or objection. Commencing 12 March 2019, the parties would have 14 days in which to lodge any submissions in response to any further submissions and commencing the 26 March 2019, a further 7 days in which to make closing submissions.
6. Time extensions were subsequently granted on application.
7. Submissions and responsive submissions were received from the parties.
8. On 19 September 2019, the delegate of the Director of Liquor Licensing (“the Director”) approved the application for the grant of a Club Restricted licence with the reasons for the determination published on 1 November 2019.

Licence Application

9. The NCSLSC has sought approval to sell and supply liquor for consumption on the premises only, to NCSLSC members and their guests and people attending a pre-arranged function or a special event.

10. A Public Interest Assessment (“PIA”) was submitted in support of the application and included the following information:

- The Club currently has in excess of 2,000 members.
- The clubhouse has considerable licensing history, having operated as licensed premises on many occasions over the course of several years through the granting of occasional licences; providing the very same services which are the subject of the application.
- The Club already has the facilities at its premises to readily accommodate the liquor services proposed. No structural work is required.
- The Licensing Authority policy only permits a maximum of 12 occasional licences within a 12-month period and whilst this has worked extremely well, there is now an increased demand for a liquor service to be available more often.
- There is no intention to operate a liquor service seven days a week, all year round, however, there is considerable demand for a service to be available on more than 12 occasions each year.
- Once licensed, a bar service is proposed which would offer a relatively modest range of popular items including 11 different beers, 2 ciders and 16 wines (white, red and sparkling).
- Food would be available; the NCSLSC already has a fully operational commercial kitchen capable of producing snack foods, full meals and cocktail/function food.
- The trading hours proposed are from 12 midday to 12 midnight (later revised to 12 midday to 10:00pm Monday to Thursday, except for pre-arranged functions and events, and 12 midday to 12 midnight Friday, Saturday and Sunday).
- A plan was submitted indicating the proposed licensed area encompassing the upper level of the premises incorporating Training Room 1, Training Room 2 and the existing covered outdoor area.
- Documentation submitted with the PIA included:
 - NCSLSC House Management Policy;
 - NCSLSC Code of Conduct;
 - NCSLSC Management Plan (draft);
 - NCSLSC Constitution;
 - NCSLSC Membership List;
 - NCSLSC Noise Survey (Corporate Health Professionals 26/11/2017);
 - NCSLSC Noise Management Plan; and
 - Surveys and Questionnaires (57).

Submissions on Behalf of the Applicant and the Objectors (“the Objectors”)

11. The Applicant and objectors oppose the application of the following grounds:
 - a. The grant of the application would not be in the public interest (section 74(1)(a) of the Act);
 - 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 (section 74(1)(b));
 - c. That if the application were granted:
 - i. 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 (section 74(1)(g)(i); or
 - ii. 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 (section 74(1)(g)(ii); or
 - iii. the grant of the application would otherwise be contrary to the Act (section 74(1)(j)).
12. The primary concerns expressed by the majority of the Objectors are in relation to the outside decking area of the premises which is open on three sides and has little sound attenuation. It is the concern of the Objectors that should the licence be granted, this will lead to undue offence, annoyance, disturbance or inconvenience in the locality.
13. Following is a precis of the collective issues raised by the Objectors:
 - a. A permanent liquor licence is totally unnecessary for a surf club and that the existing use of occasional licences is sufficient for the club needs;
 - b. There is already offensive noise and traffic congestion at unsociable hours due to the number of existing liquor licences in the locality;
 - c. An extension of trading hours 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;
 - d. The behaviour of club members and their guests has been appalling following functions in the past, with loud music and microphone noise not allowing residents to entertain in their own gardens or on their balconies when the club is having a function;
 - e. It is inappropriate to issue a liquor licence to a club that focuses on junior members and children participating in surf lifesaving;
 - f. The availability of alcohol on a permanent basis compared to the trading hours associated with an occasional liquor licence would lead to the normalisation of alcohol in the context of sport, and further, normalise alcohol use as a necessary part of socialising;
 - g. 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;

- h. There would be increased traffic and lack of parking near the proposed premises causing problems for residents;
 - i. 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 youth associated with the club;
 - j. Membership of the club includes over 500 junior members;
 - k. The proposed conditions on the licence do not include:
 - 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; and
 - iii. Committing the Applicant to ensuring that noise emitted from the club premises will not breach the Regulations at any time;
 - l. A liquor outlet operating seven days per week from noon to midnight would severely affect the local property value;
 - m. The outdoor courtyard area is not an enclosed space, which does nothing to prevent the escape of noise because the sides are not enclosed;
 - n. If the licence is to be granted conditions should be applied preventing live entertainment and amplified music after 9:00pm Monday to Thursday and on Sunday and after 10:00pm Friday and Saturday;
 - o. The history of the past club functions where there is a DJ, live entertainment or a band, shows that the associated noise frequently continues past 10:00pm at unacceptable high levels;
 - p. Should the licence be granted CCTV cameras should be installed to cover the entire external areas adjacent to the licensed premises; and
 - q. The maximum number of occupants in the licensed area should be 150 persons.
14. The 11 objectors in the section 25 Review process have made subsequent submissions, generally reiterating and expanding on their earlier grounds for objection as précised at paragraph 13 above.
 15. The 17 initial objectors who have not made submissions to the section 25 review process remain parties to the proceedings based on their initial submissions and grounds for objection.
 16. The Town of Cottesloe objection states that Council initially considered the proposal on a preliminary basis prior to the NCSLSC commencing the formal liquor licensing application process. At that time Council advised that it may be supportive of a future application subject to restricted hours, and that Council does not support the maximum, wide hours of liquor service for clubs that may be permitted under the Act, for the needs of the surf club.

17. Following the number of objections generated from the public advertising of the application, Council resolved to lodge an objection. The objection is made given the local environment of the licensed premises with its history of public interest, harm and amenity impacts associated with alcohol as experienced by the Town and community over decades.
18. The Public Health Institute of Western Australia (PHIWA) objection and submission provided data relating to drinking patterns and associated harm in Cottesloe, indicating that the rates of risky drinking in the locality are high compared to the State average.
19. It was further submitted that the junior members of the NCSLSC, who form a substantial proportion of the membership, (around 39%) are in the category of being an “at risk” group as identified in the Director’s Public Interest Assessment Policy.
20. The following points were also made in the PHIWA submission:
 - a. Increasing the availability of alcohol is likely to increase harm;
 - b. A permanent liquor licence may contribute to the normalisation of alcohol;
 - c. The proposal is in conflict with water and alcohol safety messages; and
 - d. The club’s values do not align with impacts of increased availability of alcohol.

Submissions on Behalf of the Respondent

21. Details of the Respondent’s licence application have been provided at paragraphs 9 and 10.
22. It was submitted that the NCSLSC has a very long and rich history serving the local community and the application for a Club Restricted licence, albeit limited, represents a further advancement of the NCSLSC by seeking to enhance services and better cater for the modern-day membership base in contemporary society.
23. For several years the NCSLSC has been successfully providing licensed services on an ad-hoc basis pursuant to occasional licenses for specified functions and events. Those approvals operated extremely well such that the NCSLSC experienced increasing demand for a liquor service to be available more often.
24. It was submitted that the NCSLSC applied for a full Club licence in 2013, but withdrew the application before it was determined. At the time, some nearby residents voiced concerns about potential noise and disturbance that might be generated if the licence was approved. Subsequently, the NCSLSC re-assessed its position, changed the proposed manner of trade and the licence class and sought to address the concerns of residents.
25. The locality is a thriving beach front community comprising of high density, mixed land use and a wide range of activities of which the NCSLSC is a very established part.

26. It was submitted that the following finding of the Liquor Commission in *Harold Thomas James Blakeley v Director of Liquor Licensing* (LC44/2010 [47]) is highly relevant:

“Section 73(10) of the Act provides that the burden of establishing the validity of any objection lies with the objector. The objector(s) in this case have provided limited evidence in support of their grounds of objection. Whilst residents are always fearful of having licensed premises operating within the vicinity of their homes, it is not enough to rely on the general proposition that the consumption of alcohol inevitably brings with it undue offence, annoyance and disturbance to persons who reside in the vicinity. Many licensed premises operate in harmony with the local community.”

28. There is no evidence before the Licensing Authority in this case to suggest that the NCSLSC will not continue to operate in harmony with the local community of which it has been a part for around 100 years.

29. It was submitted that recently in *Garrett Hotels 210 Pty Ltd and Primary Securities Pty Ltd Vs D & G McLay and ors* (LC 05/2018 [73] to [80]), the Liquor Commission found that the Cottesloe area has very low levels of alcohol related harm or ill-health with the current levels of offence, annoyance, disturbance or inconvenience (or harm) caused is currently not ‘undue’ when considered in all the relevant circumstances including the nature of the locality being mixed residential and commercial.

30. Further, many surf life saving clubs in Western Australia are licensed, yet there is no evidence in the residential objections or residential submissions, or otherwise before the Licensing Authority in this case, of any of these premises causing adverse effects in the community.

31. The NCSLSC will not be a large format venue focused on vertical drinking. There will be no pool tables, TAB facility or large open public bar area for the general public to congregate in large groups. An inspection has been carried out by the Licensing Authority and no issues have been raised with the NCSLSC since that inspection. The NCSLSC has operated without incident or concern previously under occasional licenses.

32. It was submitted that very little evidence has been produced in support of the assertions and allegations contained within the residential objections and in particular, no independent evidence has been produced to support claims that the NCSLSC has caused problems in the area.

33. Collectively the particulars contained within the residential objections can be categorised as follows:

- a. Town Planning
- b. Noise
- c. Antisocial behaviour
- d. Property values
- e. Purpose of the NCSLSC
- f. Junior members
- g. Trading Hours under the licence
- h. Outlet density

Each of these categories addressed as follows:

- 1) Town Planning
 - The primary planning related issue that has been raised by the residential Objectors is that of parking.
 - There is no independent evidence of existing parking problems associated with the NCSLSC.
 - The proposed liquor services will cater mainly for members who are already, or could already potentially be, in attendance and already in the parking area.
 - The grant of the application will be most unlikely to result in any direct increased requirement for parking.
 - The Act does not require the Licensing Authority to have regard to parking.

- 2) Noise
 - The NCSLSC has obtained numerous occasional licenses over many years without any formal noise complaints being brought against it.
 - It is well within the Licensing Authority's knowledge that Club Restricted premises are not known to cause noise related issues within the local communities that they operate. This is particularly true for premises such as the NCSLSC which have already been operating in harmony with the local community for many decades.
 - The NCSLSC proposal does not involve anything which indicates a rowdy or boisterous manner of trade will occur which is likely to generate disturbing noise. Rather, the proposition is for a relatively low-key licensed service.
 - There will continue to be avenues available to residents to complain about noise if they so wish, as the Director has previously confirmed.

- 3) Anti-social Behaviour
 - There are allegations within the Residential Objections and Submissions that anti-social behaviour in the locality has been caused by the NCSLSC in the past and is likely to occur if the licence is granted. The NCSLSC strongly refutes the allegations and assertions.
 - No particulars of any such anti-social incidents have been provided.
 - Members and their guests are already subject to the rules of the NCSLSC which includes potential sanction for breaching behavioural standards.
 - In 2014 and 2015 the NCSLSC was awarded the Surf Life Saving WA Administration Club of the Year evidencing the strong level of governance and management that exists.

- 4) Property Values
 - Private vested interests of parties, such as their property values, are not relevant under the Act.

5) Purpose of the NCSLSC

- Some residential objectors have sought to argue that the granting of the licence will somehow subvert the role and function of the NCSLSC. However, it is open to the Licensing Authority to conclude that this argument cannot be upheld.
- The Licensing Authority's own records show that numerous surf life saving clubs operate as licensed premises.
- A copy of a letter from Clubs WA and provided by the Respondent, provides probative evidence as to the appropriateness and benefits of an organisation such as the NCSLSC obtaining a licence.

6) Junior Members

- Members under the age of 18 are an important part of the NCSLSC and have never previously been known to be subject to anything adverse at NCSLSC in relation to liquor. Various policies, practices and procedures can and will be implemented when liquor is available to ensure their ongoing safety.
- It is clearly common place for a surf life saving club to operate pursuant to a Club or Club Restricted licence whilst also maintaining junior programs.

7) Trading Hours Under the Licence

- The hours that have been sought to be approved and endorsed on the licence are considerably less than the standard permitted hours that would be applicable under section 98E of the Act in respect of a Club licence (by comparison).
- The NCSLSC had proper regard for nearby residents in amending the original applied for times to 12 midday to 10:00pm Monday to Thursday and 12 midday to 12 midnight Friday, Saturday and Sunday.
- The Residential Objections and submissions do not contain any evidentiary based reason to justify a further reduction in hours.

8) Outlet Density

- The Residential Objectors appear to have had no regard to the highly relevant facts that the class of licence sought to be approved cannot cater for the requirements of the general public and that the existing licensed premises in the area cannot accommodate the liquor needs of members and their guests at the NCSLSC.
- Adult members and their guests who wish to enjoy the particular ambience and facilities at the NCSLSC and support the NCSLSC by patronising its premises, obviously cannot enjoy liquor refreshment unless the premises is licensed.
- The concentration of existing outlets confirms that the area is designated as a hospitality precinct and adding an additional, low risk and restrictive licence will be entirely appropriate.

34. In terms of the weighing and balancing exercise which the decision maker must now apply in determining this case, it is submitted that the Residential Objections and Submissions have not added any meaningful weight to the case against the grant of the licence. As to the small amount of negative aspects which may exist, the NCSLSC has responded to those concerns.

35. It is therefore open to conclude that:
- a. The matters referred to in the Residential Objections and Residential Submissions carry little weight given the lack of independent evidence produced in support of their claims and assertions, particularly when weighed against the strongly supported application;
 - b. The Residential Objectors have not discharged their burden in accordance with section 73(10) the Act; and
 - c. The Residential Objections have not been made out.

Determination and Reasons

36. Section 25(2c) of the Act provides that when conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
37. In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director's decision, and is required to undertake a full review of the merits of the materials before the Director and make its own determination based upon those materials (*Hancock –v- Executive Director of Public Health [2008] WASC 224*).
38. Pursuant to section 25(4) of the Act the Commission may:
- a. affirm, vary or quash the decision;
 - b. make a decision in relation to any application or matter than should, in the opinion of the Commission, have been made in the first instance;
 - c. give directions as to any questions of law reviewed, or give directions to the Director, to which effect will be given; and
 - d. make any incidental or ancillary order.
39. Advancing the objects of the Act as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities Pty Ltd v Director of liquor Licensing (1991) 7 WAR 241*). The primary objects of the Act are:
- a. to regulate the sale, supply and consumption of liquor; and
 - b. to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - c. 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.
40. The Commission has considered:
- a. all of the materials before the Delegate of the Director when making the decision; and
 - b. all written submissions filed by the Applicant, the Objectors and the Respondent in the review proceedings before the Commission.

41. It is apparent that the primary basis of the objections relate to section 74(1)(g) of the Act:

“That if the application were granted –

- (i) undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from and existing or proposed place of public worship, hospital or school, would be likely to occur; or*
- (ii) the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in in some other manner be lessened.”*

42. It is recognised that the majority of Objectors are residents of Marine Parade, Cottesloe and living in close proximity of the proposed licensed premises. It is understandable that these residents would share concerns as to possible impacts on the grant of the licence.

43. On the other hand, the NCSLSC has a long history at this location including the provision of liquor services under occasional licences.

44. Generally the Residential Objectors have indicated a preparedness to accept the current arrangement whereby the NCSLSC is able, under the Director’s Policy, to apply for, and provide liquor services, for a maximum of 12 Occasional licences in a year (it is noted, however, that the Director has the option of approving more than 12 Occasional licences in a year under certain circumstances).

45. In other words, the status quo would be the preferred option.

46. Even so, the Residential Objectors have made references to past anti-social, noise and traffic issues in the area generally and also particularly in association with the licensed functions at the NCSLSC.

47. However, as has been pointed out by the Respondent there have been no formal complaints lodged on any of these matters and it is difficult for the Commission to evaluate the concerns expressed under these circumstances.

48. The NCSLSC commissioned the firm Corporate Health Professions to undertake an assessment of the noise levels of a “sundowner” held at the NCSLSC in November 2017, measured to the closest resident boundary from the event. The outcome being that the noise measurement from the event was recorded to not exceed the EPA levels other than at 2130 hours (after the event had finished) by patrons as they were leaving.

49. The subsequent Herring Storer Acoustics (HSA) report submitted by the Applicant’s has concluded that the Respondent’s Noise Survey is flawed in terms of:

- a. Measurement Methodology;
- b. Determination of Assigned Noise Level;
- c. Assessment in accordance with the *Environmental Protection (Noise) Regulations 1997*; and
- d. Assertion of noise impact in compliance with the “EPA Max Levels”.

50. The HSA report has incorporated its own noise modelling outcomes to determine the noise impact at the nearest noise sensitive premises and to consider what conditions the NCSLSC could potentially operate and comply with the relevant Assigned Noise Level as dictated by the *Environmental Protection (Noise) Regulations 1997*.
51. The HSA report concluded:
- (i) The holding of events of the kind referred to in the liquor licence application would involve a significant exceedance of the prescribed by the Noise Regulations – approximately 8 times louder.
 - (ii) The inclusion of music at any level within the courtyard higher than background noise results in the noise impact of the NCSLSC being in excess of that stipulated by the *Environmental Protection (Noise) Regulations 1997*.
 - (iii) Prior to 2200 hours, use of external areas of the NCSLSC with no significant music component (patron noise only) would allow for possible compliance with the Regulations.
 - (iv) After 2200 hours, use of external areas of the NCSLSC with no significant music component (patron noise only) would be likely to breach the Noise Regulations in the case of typical functions and events.
 - (v) The report does not consider likely noise impact on the use of internal areas of the NCSLSC.
52. The Commission is not in a position to evaluate the methodology of the two expert reports, however, it does note that the situation that arises should the licence be granted is speculative to a large extent, despite the modelling techniques.
53. The NCSLSC has submitted a Noise Management Plan which sets out acoustic management measures, practises, procedures and policies that will apply should the licence be granted, including:
- (i) Signs instructing patrons to leave quietly will be displayed;
 - (ii) Staff will be directed to closely monitor noise levels and during busy occasions or functions/events, will be instructed to walk outside the NCSLSC premises to near the boundaries of nearby homes to check that noise is not disturbing;
 - (iii) Music played in the outside areas of the premises must be managed so as to not unduly disturb residents;
 - (iv) Public concert type events will not be held at the premises;
 - (v) Limiting the trading hours of the premises so as to not operate late at night;
 - (vi) Amplified music is to be kept to a minimum;
 - (vii) The front doors to the premises which face towards the resident's homes are to be closed; and
 - (viii) Management of the NCSLSC will provide its contact details to neighbours and invite them to report any noise problem they experience from the operations of NCSLSC.

54. It is apparent that the NCSLSC is very aware of the noise issues that have been raised by the Objectors and has stated specifically that it will aim to ensure:
- a. That “unreasonable noise” which unreasonably interferes with the health, welfare, convenience, comfort and amenity of any person, as defined in section 3(3) of the *Environmental Protection Act 1986*, is not emitted from the premises;
 - b. That any “unreasonable emission” of noise which unreasonably interferes with the health, welfare, convenience, comfort and amenity of any person, as defined in section 49 of the *Environmental Protection Act 1986*, is not produced on the premises; and
 - c. That the level of noise emitted from the premises does not exceed the “assigned levels” as stipulated in the *Environmental Protection (Noise) Regulations 1997*.

55. It is apparent from the NSA report and the submissions by the Residential Objectors and the Town of Cottesloe, that the period after 2200 hours is the one of most concern, albeit potential issues at other times have been referred to in the objection to the application being granted.

56. The other grounds of objections have also been considered by the Commission, in particular that the grant of the application would cause undue harm and ill-health to people, or any group of people, due to the use of liquor – section 74(1)(b) of the Act.

57. In assessing this aspect of the licence application, the Commission must adopt the approach outlined in *Carnegies Realty Pty Ltd v Director of Liquor Licensing (2015) WASC 208* requiring the Commission to:

- a) ***Make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the uses of liquor.***

There is no evidence of alcohol-related harm and ill-health in the locality beyond that which applies in many metropolitan communities.

Data provided in the PIA shows that Cottesloe experiences a Standardised Rate Ratio (SRR) for alcohol-related hospitalisations of 0.89 compared to the state rate of 1.00.

As was recently observed in *Garret Hotels 2010 Pty Ltd and Primary Securities Pty Ltd (supra)* [para 29 above] the Commission is satisfied that the locality currently has very low levels of alcohol-related harm or ill-health.

- b) ***Make findings about the likely degree of harm to result from the grant of the application.***

Club and Club Restricted licences are generally considered to be low risk in relation to alcohol-related harm and ill-health, as patrons are either members of the club or their guests, each subscribing to the rules and policies of the club. There is no general public admittance and whilst having a strong junior membership, the NCSLSC proposes strict policies in respect of juveniles at the premises. It is expected that these policies would be similar to the policies of many other licensed surf clubs with strong juvenile membership. The Commission is of the view that there is a very low risk of the grant of the licence contributing to an increase in harm in the locality.

c) Assess the likely degree of harm to result from the grant of the application against the existing degree of harm.

In accordance with a) and b) above the Commission is of the view that the grant of the license will not result in an increase of harm in the locality.

d) Weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant has satisfied the Commission that it was in the public interest to grant the licence.

The Commission is satisfied that the grant of a Club Restricted licence to the NCSLSC will not result in an increase in alcohol-related harm and ill-health and therefore would not be against the public interest in that regard.

58. The Commission therefore must turn its attention to the grounds of objection relating to section 74(1)(g) of the Act which relate to the primary concerns of the Objectors.
59. Having reviewed the submissions of all parties, including the acoustic reports, the Commission is of the view that the Objectors have not established the validity of their objections as required under section 73(10) of the Act.
60. The Objectors concerns are understood, however, they are based on speculative outcomes under circumstances where there is strong regulatory control under the *Liquor Control Act 1988*, the *Environmental Protection (Noise) Regulations 1997*, the *Environmental Protection Act 1986* and the policies and regulations of the Town of Cottesloe.
61. Because of the nature of the locality there are existing noise, traffic movements and parking related issues and that the granting of a Club Restricted licence to the NCSLSC will not exacerbate the situation beyond management control.
62. Certainly, there is potential for events involving amplified music and live bands going into the night to create noise issues if not appropriately managed.
63. The NCSLSC has submitted a Noise Management Plan which, amongst other measures, states that:
- “The licensee will diligently strive to comply with the provisions of the Environmental Protection Act 1986 (WA) and the Environmental Protection (Noise) Regulations 1997 (WA).”*
64. The Commission is satisfied that the licence application by the NCSLSC has complied with the statutory requirements for the granting of a Club Restricted licence under trading conditions that will be now be determined.
65. The issue of trading hours, particularly associated with events, is a main point of concern by the Objectors, particularly the Residential Objectors who have expressed having in the past been tolerant of the maximum 12 occasions a year when the NCSLSC have conducted events under an Occasional licence.

66. The grant of a Club Restricted licence removes the limitation on annual events, although not the responsibility to conform to the laws and regulations referred to in paragraph 60 above.
67. The Commission considers that the trading hours and conditions imposed on the grant of the licence by the Director on 19 September 2019 to be appropriate under the circumstances.
68. Should the licensee have need to vary those conditions for a particular purpose, then an Extended Trading Permit may be applied for - section 60 of the Act.
69. Should local residents feel that their amenity is being disturbed by activities associated with the NCSLSC, section 117 of the Act allows for any party to lodge a complaint with the Director relating to noise or behaviour related to licensed premises:
70. The decision of the Director to grant a Club Restricted licence is affirmed, as are the conditions to be applied to that licence as advised to the Respondent on 19 September 2019.



EDDIE WATLING
DEPUTY CHAIRPERSON