

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

Applicant: Sand Volley Australia Pty Ltd
(represented by Mr Mario Sequeira of Hospitality Total Services)

Intervener: Director of Liquor Licensing
(represented by Ms Emily O’Keeffe of State Solicitor’s Office)

Objectors: Colin Beckett
Rex Edward Growden and Judith Raelene Growden
Kenneth Frank Ilett and Helen Jean Ilett
Paul Keith Morgan
Robert Bruce MacPherson
Judith Maree Drummond

Commission: Mr Alex Zilkens (Presiding Member)
Dr Eric Isaachsen (Member)
Ms Emma Power (Member)

Matter: Application pursuant to section 25 of the Liquor Control Act 1988 for a review of a decision by the delegate of the Director of Liquor Licensing to refuse an application for a grant of special facility licence

Premises: Sand Sports Australia, 34 Verdun Street, Nedlands

**Date of Determination:
(on papers)** 6 June 2018

Determination The application is dismissed

Authorities referred to in Determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 16/2015)
- *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010)

Background

- 1 On 7 August 2017, Sand Volley Australia Pty Ltd (“the applicant”) lodged an application pursuant to sections 46 and 68 of the *Liquor Control Act 1988* (“the Act”) for the grant of a special facility licence (“SFL”) for the premises known as Sand Sports Australia located at 34 Verdun Street, Nedlands (“the Premises”).
- 2 The applicant complied with the statutory requirements prescribed by the Act and lodged documentation in support of the application including a Public Interest Assessment submission (“PIA”). The application was advertised in accordance with instructions issued by the licensing authority.
- 3 The applicant specifically sought a licence for the prescribed purpose of “sports arena” in accordance with regulation 9A(11) of the *Liquor Control Regulations 1989* (“the Regulations”) initially for the following hours:
 - a. on Monday to Sunday, from 6am to 12 midnight; and
 - b. trading on Christmas Day, Good Friday and Anzac Day.
- 4 On the 31 August 2017 the applicant gave notice amending the proposed trading hours to:
 - a. on Monday to Sunday from 10.00am to 10.30pm;
 - b. on Friday and Saturday from 10.00am to 11.00pm;
 - c. on Sunday from 10.00am to 10.30pm; and
 - d. trading on Christmas Day, Good Friday and Anzac Day.
- 5 A number of notices of objection to the application were lodged by the objectors listed in this determination.
- 6 The application was determined by the delegate of the Director of Liquor Licensing (“the Director”) and the application refused. The reasons for such decision were published on 2 February 2018 (Decision A000243122).
- 7 Pursuant to section 25 of the Act, the applicant has applied for a review of the decision of the Director, such decision to be made on papers.

Submissions on behalf of the applicant

- 8 The applicant asserts that a special facility licence (sports arena) is the most appropriate licence for the Premises due to the fact that the playing of netball and volleyball is the primary focus of the business located at the venue.

- 9 In its PIA and original submissions, the applicant submits that the special facility licence is in the public interest and should be granted due to the following factors:
- a. the SFL is consistent with consumer requirements as evidenced by a number of consumer surveys;
 - b. the SFL will provide an amenity, including functions, that were previously available pursuant to the licence held by the adjacent Hollywood-Subiaco Bowling Club (Inc), (Club licence number 6040005207);
 - c. the SFL will assist the attraction of local players, corporate clients, local residents, workers and visitors to the venue;
 - d. the applicant provides a sought after amenity not readily available in other localities in Western Australia; and
 - e. the SFL will facilitate the growth of the hospitality, liquor and tourism industries by providing high standard licensed premises that caters to the contemporary requirements of consumers of liquor and related services.
- 10 The applicant also asserts that:
- a. the applicant is an experienced licensed sporting venue operator committed to upholding high compliance and regulatory standards;
 - b. the harm minimisation strategies to be put in place, the nature of the proposed functions and the demographic of customers will deter the rapid consumption of alcohol, overconsumption and intoxication, and do not encourage parties to remain on site for extended periods of time;
 - c. no 18th or 21st birthday parties will be permitted;
 - d. no liquor will be able to be purchased for consumption off the Premises;
 - e. the locality is comprised on a demographic with a high SEIFA Index of Relative Socioeconomic Disadvantage score demonstrating an advantaged low-risk locality;
 - f. there will be minimal or no direct negative impact on the locality as a result of approving the application;
 - g. certain of the Objectors are aware of, and have consented to, any additional noise levels and light spill from the Premises due to the Notification J733200 under section 70A of the *Transfer of Land Act 1893* lodged on the certificate of titles of such Objectors' residences;
 - h. when liquor was previously served from the Premises (pursuant to Club Licence number 60400052070) there were no infringements or complaints relating to liquor consumption, anti-social behaviour, noise, vandalism or any other offence;
 - i. the applicant has met with the Objectors and has addressed issues and concerns regarding noise and parking;

- j. despite any assertions of the Objectors, no evidence has been provided that demonstrates the proposed Premises has contravened any local or State laws or regulations; and
 - k. no interveners objected to the application.
- 11 The applicant has appealed the Director's decision on the following particular grounds:
- a. the Director failed to accord sufficient weight to the nature of the operations conducted on the Premises, being the playing and viewing of outdoor netball and volleyball;
 - b. the Director erred in restricting the definition of "sports arena" and relied on personal opinion rather than the provisions of the Act;
 - c. under the Act, no particular list of amenities is required for any premises to be defined as a "sports arena" and the particular amenities prescribed by the Director as required are not supported by similar licences granted;
 - d. the applicant was denied procedural fairness in that the Director based his decision on a personal opinion of what constituted a "sports area" without giving the applicant:
 - i. notice during the application process of the possible basis of such opinion; and
 - ii. the opportunity to provide alternative plans to address such concerns;
 - e. the Premises meets the requirements of being a "sports arena" under the Act and Regulations and this view is supported by:
 - i. the lack of concerns as to the suitability of the Premises raised by the Premises Inspector during the Site Visit; and
 - ii. the Inspectors Report dated the 24 August 2017 and the limited Schedule of Requirements provided by the Premises Inspector on the 28 August 2017;
 - f. the Director erred in his categorisation of the proposed SFL as a "can bar";
 - g. the nature of any possible impact on amenity and offence, annoyance, disturbance, or inconvenience caused should be considered in light of the zoning of the land as an active recreational area;
 - h. the applicant has acted diligently and responsibly throughout the application process and considered all relevant public interest matters in relation to the SFL and the Director should have given the cogent and objective evidence provided more weight;
 - i. no objector has provided any cogent, objective evidence to support their objection; and
 - j. there is no evidence of any negative aspects of the application which could be weighed against the public interest evidence in favour of the grant of the application and the applicant has provided sufficient material for the Commission to approve the application.

Submissions on behalf of the Objectors

- 12 Six objections were received (from eight individual objectors) to the applicant's original application on various grounds under the Act. Each objector is a local resident living in close proximity to the Premises.
- 13 Rex Edward Growden and Judith Raelene Growden provided an objection on all possible grounds under the Act but made specific comments as follows:
 - a. the SFL would cause undue harm;
 - b. the SFL will only benefit very few people and is focussed only on increased profits;
 - c. the residential properties are very close to the Premises, only over the road and any existing fencing and hedging does not prevent noise travelling;
 - d. currently there is a problem with noise, illegal parking and disturbances when patrons are leaving the Premises which would be exacerbated and occur at later hours by the grant of the SFL; and
 - e. the introduction of alcohol to the facility is unnecessary and would create numerous problems.
- 14 Colin Beckett objected pursuant to section 74(1)(g)(ii) of the Act stating that the late hours of operation would impact noise levels and create a shortage of parking which will negatively impact the amenity of the local residents and good order of the street.
- 15 Kenneth Frank Ilett and Helen Jean Ilett also objected pursuant to section 74(1)(g)(ii) of the Act. In addition, they provided some photographs of the Premises and state that:
 - a. there is an existing problem with the service of alcohol at the Premises and the granting of the application would erode the amenity, quiet and good order of the neighbourhood for the residents adjacent to the Premises;
 - b. the facility is open air and there is currently frequent loud noise after 10.30pm (sometimes continuing after 12.00 midnight) in breach of the 10.30pm playing and lights curfew currently imposed by the City of Nedlands;
 - c. in winter a wood fire presents a smoke nuisance and health hazard; and
 - d. they are particularly affected as they reside only 50 metres from the Premises.
- 16 Paul Keith Morgan has objected pursuant to sections 74(1)(g)(i) and 74(1)(g)(ii) of the Act. Mr Morgan states that:
 - a. he resides only 60 metres from the Premises;
 - b. there are already frequent games, seven days a week - being especially late during spring and autumn with matches scheduled up to 9.45pm;
 - c. the Premises is open air and sound travels easily;

- d. loud music is played which can be heard even with the windows shut;
 - e. the noise disturbs sleep, especially for children and shift workers;
 - f. the visitors to the venue do not park in the allocated areas, but along Verdun Street which is reserved for residents;
 - g. after the venue has closed, patrons still remain in the area talking loudly and often leaving rubbish and empty alcohol bottles; and
 - h. the public consumption of alcohol in the area is not suitable due to the zoning and the schedule of operations already represents a significant burden to local residents.
- 17 Judith Maree Drummond lodged an objection pursuant to section 74(1)(g)(ii) of the Act but noted that she and several other residents had a productive and pleasant meeting on 13 September 2017 with the applicant. Mrs Drummond noted that residents raised concerns as to the noise from music, cars leaving at night and the general operation of the facility, however, noted that the applicant said they would police such noise. Mrs Drummond raised additional concerns in relation to:
- a. knowing the accurate details of the time of trading of the Premises;
 - b. ensuring the residents were adequately informed as to the details of the licence; and
 - c. ensuring the application was “accurate and fair to everyone involved”.
- 18 Robert Bruce MacPherson has made objections to the application pursuant to the grounds in sections 74(1)(a), 74(1)(g)(i), 74(1)(g)(ii) and 74(1)(j) of the Act. Specifically, Mr MacPherson states that:
- a. the Consumer Surveys provided by the applicant all appear to have been taken only from people attending the Premises and not people from within the locality;
 - b. the attraction of additional patrons will add to the noise, disturbance and inconvenience to the residential area;
 - c. the use of the venue as a non-profit sporting club is acceptable to the community, however commercial ventures are not;
 - d. the Premises trades seven days a week well into the evening and this includes loud music with an amplified bass beat and vehicle noise. Allowing a SFL will only add to this disturbance;
 - e. residents are sometimes forced to sleep in the rear bedrooms of their houses to limit the impact of the noise on sleep;
 - f. there is already limited parking on Verdun Street and the amenity of residents will suffer if more parking is required;
 - g. Highview Park (the reserve upon which the Premises is located) is a venue for the local sporting clubs and primary school for passive recreational and outdoor activities. This

current use adds to the amenity of the locality but the consumption of alcohol would be inconsistent with the purposes of the A class reserve; and

- h. there are concerns as to the ongoing term of the sub-lease to the applicant of the Premises which expires on 30 May 2018, the applicant obtaining the necessary consents under the Lease and the accuracy of the trading hours applied for.

Submissions by the Intervener

19 On 19 March 2018, the Director as intervener made primary submissions and on 26 March 2018 made responsive submissions regarding the appeal by the applicant pursuant to section 25 of the Act.

20 The Director made the following submissions:

- a. the business operating from the Premises is not in the nature of a “sports arena” for the purposes of regulation 9A(11) of the Regulations. Such special facility licences are intended to service sports arena style venues rather than a sport clubs or fields;
- b. the delegate of the Director applied the correct definition of a sports arena as being ordinarily an enclosure for sports contests which may comprise the following facilities:
 - i. playing surface;
 - ii. stands;
 - iii. tiered seating/standing areas surrounding the playing surface;
 - iv. change rooms/locker rooms;
 - v. bar facilities;
 - vi. function rooms;
 - vii. canteen facilities; and
 - viii. toilet facilities;
- c. any list of facilities provided by the delegate of the Director was to exemplify what a “sports arena” may look like and was not provided as a list of mandatory requirements;
- d. the delegate of the Director was entitled to reach his own view on what constitutes a “sports arena” for the purposes of regulation 9A(11) of the Regulations, having considered the evidence as a whole;
- e. the evidence does not establish that patrons are likely to attend the Premises to view sports. The licensed area is small and only overlooks one court. Further the facilities of seating for spectators are limited and below the standard of which may be expected for the grant of a permanent liquor licence for a “sports arena” premises;
- f. the applicant has not satisfactorily demonstrated that patrons would attend the Premises to view sports, only play sports;

- g. the applicant has only not sought a club licence (as it previously operated under as part of the Hollywood-Subiaco Bowling Club Inc) as this type of licence is not available to it due to the fact it is not an incorporated club;
- h. in the applicant's application to the City of Nedlands for a section 40 certificate, the applicant stated approval was sought for "post-match and social activities" which reflects the real purpose of the application being to facilitate impromptu social drinking activities at a sporting club rather than the supply of liquor to players and spectators or attendees at organised events;
- i. any concerns of residents regarding noise and disturbances should not be discounted due to the lack of official noise complaints to the City of Nedlands or the grant of a section 40 certificate;
- j. any registered Notifications on an objector's certificate of tiles does not negate the objectors' right of objection under the Act;
- k. the availability of liquor at the Premises is likely to increase the number of patrons socialising into the evening and therefore there is a real risk that the current noise and parking issues will be increased and exacerbated;
- l. the applicant has not discharged its onus to satisfy the Commission that the application is in the public interest;
- m. the Consumer Surveys provided by the applicant are of limited probative value;
- n. there is no evidence supplied which demonstrates that the grant of the application would support the proper development of the liquor industry, tourism industry or hospitality industry in the State; and
- o. the applicant was not denied procedural fairness as:
 - i. the matter requires a conclusion to be made regarding the interpretation and application of regulation 9A(11) of the Regulations;
 - ii. the Inspector's Report and the views of the Premises Inspector are relevant but not determinative;
 - iii. the applicant was on clear notice that it must establish that the Premises meets the "sports arena" requirement to obtain a licence and, further, that the Premises must be of a sufficient standard suitable for the proper conduct of the business to be carried on;
 - iv. the licensing authority did not mislead the applicant to believe the only requirements for compliance were those identified in the Schedule of Requirements; and
 - v. the delegate of the Director relied on his obvious and natural evaluation of the available material and did not rely on any additional material.

Legal and Statutory Framework

- 21 The Commission is not required to find error on the part of the Director, but rather undertakes a full review and makes a determination on the basis of the same materials as before the Director when the decision was made (*Hancock v Executive Director of Public Health* [2008] WASC 224).
- 22 On a review under section 25 of the Act, the Commission may:
- a. affirm, vary or quash the decision subject to the review; and
 - b. make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and
 - c. give directions:
 - i as to any question of law, reviewed; or
 - ii to the Director, to which effect shall be given; and
 - d. make any incidental or ancillary order.
- 23 When considering a review of a decision made by the Director, the Commission is required to have regard to only the material that was before the Director at first instance (section 25(2c) of the Act).
- 24 Section 16 of the Act prescribes that the Commission:
- a. may make its determinations on the balance of probabilities [subsection (1)]; and
 - b. is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply [subsection (7)(a)]; and
 - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; [subsection (7)(b)].
- 25 Section 46 of the Act provides that the licensing authority shall not grant a special facility licence:
- a. except for a prescribed purpose as set out in regulation 9A of the Regulations;
 - b. just because an approval, consent or exemption required under another written law in respect of a particular licence type, cannot be obtained; or
 - c. if granting or varying a licence of another class, or imposing, varying or cancelling a condition, on a licence of another class, or issuing an extended trading permit in respect of another class of licence, would achieve the purposes for which the special facility licence is sought.

26 In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, His Honour Buss JA set out the statutory framework for a determination of this nature in the following terms, namely:

- a. by section 38(2) of the Act, an applicant has to satisfy the Commission that the granting of an application is in the public interest;
- b. the expression 'in the public interest', when used in a statute, imports a discretionary value judgment (*O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210)
- c. the factual matters which the Commission is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest, are those relevant to the objects of the Act, as set out in section 5(2) of the Act;
- d. the factual matters which the Commission is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest, are those set out in section 38(4) of the Act;
- e. section 5(2) is mandatory whereas section 38(4) is permissive;
- f. on the proper construction of the Act (in particular, sections 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the Commission is obliged to take into account the public interest in:
 - i. catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
 - ii. facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.

27 Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:

- a. the grant of the application would not be in the public interest; or
- 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; or
- 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; 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; or
- d. that the grant of the application would otherwise be contrary to the Act.

Determination

- 28 There are two main aspects to be considered in respect of this application – the suitability of the Premises in question to meet the criteria of a special facility licence (sports arena) and demonstrating that the granting of the licence would be in the public interest.

Sports Arena Classification

- 29 The applicant submitted that the Premises meets the criteria of a sports arena in that is a venue providing for both players and spectators in relation to sand based volleyball and netball. In its Attachment E at paragraph 1.4 it referenced regulation 9A (11) of the Regulations which states:

“A special facility licence may be granted for the purpose of allowing the sale of liquor at a sports arena (being premises primarily used for playing and viewing sport) to persons playing or viewing sports, or attending any other event, at the arena.”

- 30 The facilities described (and shown in photographs) do permit individuals to play sport as well as watch players at the Premises from a limited physical area which provides a restricted view.
- 31 However, it is important to note that the Premises is not what the general member of the public would understand as constituting a “sports arena”. If that were the case, then any playing ground, oval or park where people play sport and view from the side lines could constitute an “arena”.
- 32 Generally, a classification of “sports arena” indicates a site where there is an open invitation (usually paid) for members of the public (often in large numbers) to come and view specific sports or other events and that there will be suitable amenities to facilitate such activity. However, the Premises appears to be primarily for the use of team members that pay a season fee.
- 33 Further, the fact that there is casual court hire or availability for functions does not necessarily establish facility as an arena. These are simply facilities that are available for private hire.
- 34 The list of facilities proposed by the Director are not a definitive or obligatory list of what is required for a facility to constitute an arena. However, these are items and amenities that are highly indicative of the actual use of any particular facility. It is reasonable to anticipate that at least some of these facilities would be present in any “sports arena”.
- 35 Generally, the licensed Premises will not provide an easy or organised view to the entire playing area from appropriate seating, the bathroom facilities are inadequate for what the public may generally expect and no special function facilities exist which together indicate the Premises would not ordinarily be classified as an “arena” type venue.
- 36 The specific use of the words “sports arena” (emphasis added) in conjunction with the definition set out in regulation 9A(11) of the Regulations indicates the legislative intent that the word “arena” be taken into account (and be given an appropriate weight) when interpreting the regulation.

- 37 The Commissions notes the applicant's comments as to the absence of a Club president, board, constitution, committee, by-laws and meetings however, this does not necessarily support the Premises as being categorised as an "arena".
- 38 The Act and Regulations make appropriate provision for sporting clubs to seek liquor licences subject to certain conditions and requirements. The fact that the applicant does not meet those conditions and requirements due to its internal organisation is not enough reason to grant a special facility licence of a category it does not properly fall under. Further, this appears to attempt to circumvent the purposes of the pre-requisite provisions relating to clubs in section 49 of the Act.
- 39 One of the primary objects of the Act is to "regulate the sale, supply and consumption of liquor". In many cases this regulatory purpose will necessitate a narrow or limited interpretation of the Act and Regulations.
- 40 In the Commission's view the Director was correct in taking the view that the facility containing the Premises does not constitute a "sport arena".
- 41 The applicant also submitted that their view that the Premises meets the requirements of being a "sports arena" under the Act and Regulations is supported by the lack of specific concerns as to the suitability of the Premises by the Premises Inspector during the Site Visit in August 2017 as well as the subsequent Report and limited Schedule of Requirements.
- 42 Such an inspection or the Report is in no way determinative of the Premises suitability to meet the criteria of a special facility licence (sports arena), or indicative of whether any licence will be granted. This is not the function of the Premises Inspector.
- 43 The Premises Inspector's Report did also propose that the maximum number of people permitted on the licensed Premises at any one time be limited to 80. This would be consistent with the accommodation certificate issued by the City of Nedlands. This restriction alone would make it very difficult to classify these Premises as an "arena".
- 44 The Commission has considered the background to the location and operation of the applicant's Premises and is of the view that these Premises cannot properly be classified as a sports arena either within the generally accepted definition of the word "arena" or within the intent of the legislation.

Public Interest

- 45 The expression "the public interest" imports a discretionary value judgment, confined only by the scope and purposes of the statute (*Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208).
- 46 Subsections 38(1)(b) and (2) of the Act, and regulation 9F(b) of the Regulations, place the onus on the applicant to satisfy the Commission that the grant of the application is in the public interest. To discharge its onus under section 38(2) of the Act, the applicant must address both the positive and negative impacts that the grant of the application will have on the local community.

- 47 The PIA refers to the Consumer Survey and submitted 42 samples – four of whom reside in the suburbs of Nedlands and Shenton Park, the two suburbs referenced in the ABS statistics. The responses are solely drawn from the users of the facility and are supportive of the application. The Commission affords little weight to such a survey as it is limited probative value in considering the sentiment of the general public.
- 48 The claim that the SFL will facilitate the growth of the hospitality, liquor and tourism industries by providing high standard licensed premises that caters to the contemporary requirements of consumers of liquor and related services is not backed by any evidence.
- 49 Mere assertions or opinions are not enough and must be supported by appropriate evidence (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 16/2015)).
- 50 It is within the Commission’s discretion to decide what weight to give to certain evidence. The evidence provided by either party must 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” (*Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010)).
- 51 The applicant has demonstrated that the current members of Sand Sports Australia would be inconvenienced by the availability of a licensed area and that there is support for the same. However, there is a lack of evidence that shows the licence will aid the “*proper development of the liquor industry, the tourism industry and other hospitality industries in the State*”.
- 52 The applicant maintains that corporate functions and events are a “popular activity” but does not supply evidence as to how often such function events have occurred in the past or how many are expected to occur. It is difficult on the basis of these mere assertions to make any clear finding as to the value of the SFL to the hospitality industry.
- 53 Further, there is no evidence or assertion in the PIA that indicates that the tourism industry would be particularly benefited by the grant of the SFL or that tourists make up any of the applicant’s current or proposed patrons.
- 54 Consideration of the issue of harm and ill-health due to the use of alcohol related products in the locality is clearly restricted by the ‘destination’ aspect of the venue stated at Attachment E at paragraph 5.17 and also seen in the diversity of residential addresses of those surveyed.
- 55 It is a matter of record that the locality comprises a demographic with a high SEIFA Index of Relative Socioeconomic Disadvantage score demonstrating an advantaged low-risk status.
- 56 In any event, the locality appears to be generally low risk in respect to harm and ill health.
- 57 The fact that the applicant previously operated successfully under the Hollywood-Subiaco Bowling Club (Inc) Club licence number 60400052070 is of limited assistance to the Commission. It is noted that such licence:
- a. covered the entirety of the area occupied by the applicant (not the limited area now proposed to be licensed); and

b. is a Club licence, not a special facility licence,
and, therefore, the SFL would be of a different character.

58 Given the above, the PIA has not demonstrated to a satisfactory degree that the granting of this application is in the public interest.

Offence, Annoyance, Disturbance and Inconvenience

59 In relation to possible offence, annoyance, disturbance or inconvenience, there were six objections, from eight local residents who are affected by the operations of the applicant's business.

60 Whilst there are registered Notifications on some objector's certificates of title, that does not negate the objectors' right of objection under the Act.

61 It appears clear there are noise levels during play, particularly during the evening, upon the departure of players and due to the music played during the hours of operation and that the grant of a SFL may well exacerbate these issues.

62 However, as the applicant has not discharged its onus, the objections and whether any increase in offence, annoyance, disturbance and inconvenience would be considered undue are not required to be further discussed in any detail.

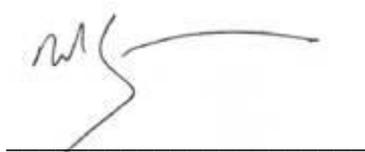
Summary

63 In summary, the Commission is of the view that:

- a. the facility in which the Premises are to be located do not constitute a "sport arena" and to grant a special facility licence of that type would not be appropriate; and
- b. the PIA has not demonstrated to a satisfactory degree that the granting of this application is in the public interest.

64 The applicant has failed to discharge the onus required by section 38(2) of the Act.

65 Accordingly, the application is refused.



ALEX ZILKENS
PRESIDING MEMBER