

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

- Applicants:** Mr Joseph Anthony Conway and Ms Mary Theresa Conway  
Mr Joseph John Migro and Ms Senka Migro  
Ms Linda Lombardo  
Mr Michele Lombardo and Ms Freda Jess Lombardo  
Ms Nelma Lombardo  
Ms Nancy Teo  
Mr James Joseph Reader and Ms Nola Ann Reader  
Mr Malcolm Robert Doig and Ms Beverley Irene Doig  
Mr William Hines and Ms Prudence Hines  
Mr Peter Richard McLarty  
Mr Gary Ryan  
*(all applicants represented by Mr Gary Ryan)*
- Respondent:** Melville Water Polo Club Inc.  
*(represented by Dr David Neesham, Approved Manager)*
- Interveners:** The Commissioner of Police  
The City of Melville  
Executive Director of Public Health
- Objectors:** McCusker Centre for Action in Alcohol and Youth  
  
9 residential objectors as listed in paragraph 2 of the determination.
- Commission:** Mr Jim Freemantle (Chairperson)  
Mr Alistair Bryant (Member)  
Mr Eddie Watling (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988*, for a review of a decision of the Delegate of the Director of Liquor Licensing in relation to a club restricted licence.
- Premises:** Melville Water Polo Club, 5 Durdham Crescent, Bicton

**Date of Determination:** 25 September 2013  
(determined on papers)

**Determination:** The Decision of the Delegate of the Director of Liquor Licensing is affirmed and the application is refused.

**Authorities referred to in the Determination:**

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241
- *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142
- *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WACA 258

## Introduction and Background

- 1 The Melville Water Polo Club Inc. ("MWPC") holds a club restricted liquor licence number 6190027292, which prior to the decision of the Delegate of the Director of Liquor Licensing ("the Director") permitted the club to trade as set out below:

### 1 May to 30 September

Friday	6.00pm to 9.00pm
Sunday	11.00am to 2.00pm

### 1 October to 30 April

Monday	7.00pm to 10.00pm
Tuesday	7.00pm to 9.00pm
Wednesday	7.00pm to 11.00pm
Thursday	7.00pm to 8.30pm
Friday	7.00pm to 9.00pm
Saturday	2.00pm to 10.00pm
Sunday	11.00am to 9.00pm

On 14 March 2012, the MWPC applied to the Director of Liquor Licensing to vary both the licensed area immediately outside the ground floor bar and the hours of trading as under:

### All Year Round Trading Hours

Monday to Thursday	11.00am to 10.30pm
Friday to Saturday	11.00am to 11.30pm
Sunday	10.00am to 9.00pm

The application was however subsequently amended to:

Monday to Thursday	2.00pm to 10.00pm
Friday to Saturday	1.00pm to 11.30pm
Sunday	10.00am to 10.00pm

- 2 In addition to the applicants of this review application, further objections to the original application had been lodged by:
  - Mr Graham Mackie
  - Mr Craig Lawrence
  - Mr Steve Jezewski
  - Ms Herta Jezewski
  - Mr Clem and Ms Gloria Schaper
  - Mr Peter John Hands
  - Ms Sharon Anita Graham Gordon
  - Ms Anita & Mr Alan Allchin
  - Ms Andrea Roelofs
- 3 On 23 April 2013 by his decision A222170 the Director granted the following hours of trading:

## Hours:

### 1 May to 30 September

Wednesday	5.00pm to 9.00pm
Friday	5.00pm to 9.00pm
Sunday	11.00am to 5.00pm

### 1 October to 30 April

Monday	5.00pm to 9.00pm
Tuesday	5.00pm to 9.00pm
Wednesday	5.00pm to 10.00pm
Thursday	5.00pm to 9.00pm
Friday	5.00pm to 9.00pm
Saturday	1.00pm to 10.00pm
Sunday	11.00am to 9.00pm

- 4 The Director further determined that the area of the licensed premises would be increased to include a small area immediately outside the ground floor bar area.

### **Application for review**

- 5 On 23 May 2013, Mr Gary Ryan (on behalf of the eleven applicants listed above) lodged an application for review of the decision A222170 of the Director, pursuant to section 25 of the *Liquor Control Act 1988* ("the Act").

At the request of the applicant and pursuant to section 16(2)(b) of the Act, it was decided that the matter would be determined on papers.

- 6 The papers comprise all the papers considered by the Director as well as further submissions from the applicant, the respondent and the interveners, totalling in excess of 1,400 pages.

### **Submissions by the applicants**

- 7 The position of the applicants is expressed most succinctly in the comment before the Director that:

*"It is also axiomatic that as the applicant's activities grow, not just in size, but frequency, the residents are subjected to amenity degradation for longer periods and more often during trading hours as well as non trading hours. There is no respite for residents."*

- 8 It was submitted that the City of Melville ("the City") has failed to deal with the parking issue and consequent impairment of the amenity of the local residents. Furthermore, the City has failed to mediate an effective resolution of the issues.
- 9 The MWPC it is not a good neighbour as the commercial desires of the Club have overtaken its stated primary objectives related to the promotion of water polo.
- 10 The vicinity of the licensed premises has become a place where the neighbour objectors that reside in the high impact zone live with a degraded amenity, with pleas for noise reduction to the landlord being ignored. The club is dismissive of the child protection policies of its national body to raise more revenue from alcohol sales.
- 11 The applicants embrace the findings of McCusker Centre for Action on Alcohol and

Youth (“the McCusker Centre”) and the Executive Director of Public Health (“EDPH”) in relation to alcohol related harm that has been predicted through the normalisation of alcohol consumption in the presence of children.

### Submissions by the Commissioner of Police

- 12 The delegate of the Commissioner of Police (“the Police”) intervened pursuant to sections 3(6) and 69(6)(c)(ii) and (iv) of the Act.
- 13 The Commissioner does not support the application for a variance of trading conditions and redefinition of premises and expressed the following concerns:
  - a) the applicant had not met the public interest test;
  - b) the increased duration of hours of liquor consumption;
  - c) the extension of the licensed area; and
  - d) a degree of harm in the locality.
- 14 The Commissioner considered the 392 signatures of support on the petition to be of *minimal probative value*. Furthermore the public interest test failed because there was no objective evidence to support personal use as a result of increased trading hours and extension of the licensed area.
- 15 Trading hours would increase from 30.5 hours to 81 hours under the applicant’s request which the Police find concerning as it demonstrates a shift towards a more tavern styled premises and moves the focus away from sport to the consumption of alcohol.
- 16 Police were also concerned with the harmful impact on the children’s perception of their club and its association of alcohol consumption with sport.
- 17 The extension of the licensed area was not justified.
- 18 There were 98 reported crimes in the suburb of Bicton in the year ended 30 April 2012 of which 4 were attributed directly to alcohol. In the same year Police were dispatched to 286 incidents in Bicton. Although the figures relating to Police attendances in the immediate vicinity of the premises are low the data is provided to the Director to assist in making an informed decision.
- 19 In addition to the respondent, there are 9 licensed premises in Bicton comprising; 3 restaurants, 1 liquor store, 1 tavern, 1 specialty tourism facility; 2 wholesalers, and 1 club restricted licence. The grant of the application would unduly promote the sale and supply of liquor.
- 20 In the event of the application being approved, the Police recommended a range of conditions relating to CCTV, dress standards, drink standards, liquor containers, and other general conditions, including the following trading hours:

Monday to Thursday	2.00pm to 10.00pm
Friday to Saturday	1.00pm to 11.30pm
Sunday	11.00am to 10.00pm

## Submission by the City of Melville

21 The City has a proper interest in this matter and lodged its intervention pursuant to section 70 of the Act. The City is also the landlord of the property leased by the MWPC, including the licensed premises.

22 The City initially formed the view through its own investigations that granting the application to extend the hours and the area of the licensed premises is not in the public interest [section 74(1)(a)]. It also maintained that both the hours for service of alcohol and the increased area of the licensed premises, as proposed by the MWPC, were ‘... *excessive, unreasonable, and unsuitable for the premise at Bicton Pool.*’ Consequently, the grant of the application would likely cause undue offence, annoyance, disturbance and inconvenience to persons in the vicinity, being valid grounds for objection under section 74(1)(g)(i) and (ii) of the Act.

Subsequently, the City modified its position to one of qualified support with conditions.

23 As lessee the MWPC has a covenant with the landlord (City of Melville) to, among other things:

- *“not to use the Premises or permit the Premises to be used for any purpose other than the purposes specified in the schedule and to obey all reasonable directions of the Lessor or its authorised officers with regard to the use of the Premises and its facilities;*
- *to ensure the decent behaviour in or around the Premises of any employees, servants agents or invitees of the lessee and to take all necessary action to prevent disorderly behaviour and the use of indecent language by such persons and to prevent any disturbance or nuisance or annoyance arising from the Lessee’s use of the Premises; ...”*

24 In arriving at its position, the City conducted considerable community consultation, including a survey of 168 ratepayers to which it received 82 valid responses. Of these, 45 supported the WMPC application and 37 were opposed. Supporters endorsed the application as a means of strengthening the club and those opposed were concerned about the anti-social issues that an increase in the trading hours would bring.

25 There has been considerable angst between a group known as the Bicton Residents Action Group (BRAG) and the MWPC. The City has been unable to resolve the issues between the parties.

26 The major issue of contention between the parties has been the loss of amenity for those close to the MWPC pool through the sporting activities of the Club, not particularly its operation of a licensed facility.

27 Swimming facilities have been operating in this area since 1926.

## Submissions by the Executive Director of Public Health

28 The grounds of intervention by the EDPH are:

- the club has a strong focus on water sports (specifically water polo) with children and youth representing 82% of the current total membership;
- children and young people will experience a significant increase in exposure to adults (including parents) drinking at the premises as a result of increasing the

licensed area and extending the liquor trading hours to include times when the venue is being used for child sport. In some cases, this exposure will be an increase of 100%;

- the harm and ill-health impact on children and young people, including child safety concerns, as a result of increased exposure to adults drinking at the premises; and
- a stronger focus on alcohol in the sporting club environment is incongruent with the protective health factors that are normally associated with the participation of young people in sport.

29 The view of the delegate of the EDPH is summarised in his responsive submission dated 2 July 2013:

*“Research indicates that children are vulnerable to the influence of the environments they are exposed to, and sporting settings have particular capacity to impact on children either positively or negatively in this regard. That is, when alcohol is a visible element in a sporting setting it helps to build a connection between the two, whereby a child’s positive feelings about sport become associated with alcohol given is seen as a normal part of that setting”.*

He goes on to explain:

*“This normative process can then influence attitudes and behaviours towards alcohol that can contribute to early uptake of alcohol, risky drinking and harm. As such, my position remains that the crossover of alcohol trading hours into times when child focused sporting activity is occurring at the club, and related expansions of the licensed area, raises significant harm and ill-health concerns.”*

30 The EDPH submits that in this case the increased child safety risks and relevant harm or ill-health concerns outweigh the need for increased drinking hours and space. However in the event of the application being granted the EDPH recommends the prohibition of the sale, supply and consumption of alcohol when the pool is being used predominantly by children.

### **Submissions by the McCusker Centre for Action on Alcohol and Youth**

31 The McCusker Centre objects to the MWPC application stating that the grant of the application would not be in the public interest. Professor Daube, the Director of the McCusker Centre, points out that over 80% of the 770 members of the MWPC are children and adolescents, a group identified as being ‘at risk’ by the Director of Liquor Licensing in his Public Interest Assessment Policy.

32 The risk of alcohol related harm is also identified through the potential normalisation of alcohol amongst young people by adults drinking in environments where young people are present. Other alcohol related harm referred to includes drink driving and the danger of consuming alcohol around water.

33 The McCusker Centre points to the apparent inconsistency between the values and core business of the MWPC and the application to increase the availability of alcohol on its premises.

*“Granting the application would compromise the work done by many organisations and individuals working to reduce harms from alcohol among young people and the wider community in Australia”*



## Responsive submissions by the Melville Water Polo Club

34 Dr David Neesham OAM is the approved manager for the Melville Water Polo Club Inc. and is a well credentialed health professional.

35 The MWPC states that:

*“Had they [EDPH and the McCusker Centre] better understood the youth programs implemented by the club, they would then appreciate the disciplined environment provided and realise its contribution to positive prevention of alcohol related problems in our young adults.”*

36 MWPC, like the applicants, is also dissatisfied with the decision of the Director.

37 The Club does not propose extending its trading hours such that they would include times when the child focussed activity like flippaball is occurring at the club, where it previously did not. The Club has flippaball sessions on Friday evenings and Saturday mornings. The current licence already covers the Friday evening session and the Saturday morning time would occur prior to the requested time for extending the licence on that day.

38 The area outside the lower bar area has always been part of the licensed area and therefore does not constitute an extension of area but rather recognition of the status quo.

39 The incorrect facts relating to the time of flippaball activities, proposed licensing times and the current licensed area asserted by the EDPH have misled the Director and should now be discounted.

40 The conditions imposed in the determination are too onerous and unnecessary.

41 The Club membership comprises 800 adults and 700 juniors and the club requests that its revised application be granted in full.

42 In the section 117 review, the Director found that the Restricted Club Licence did not impact on the amenity of locals and dismissed the complaint. The Club maintains that its application to increase the hours and extend the area of the licensed premises will have no adverse impact on the amenity of the locality.

43 380 persons, predominantly parents, supported the application to extend the area and increase the hours of trading, thus demonstrating their confidence in the environment for children.

44 The MWPC disputes the conclusions drawn by the McCusker Centre arguing that

*“... because of the culture, discipline and guidance they [youth that participate at the Club] receive [they] would fit into the 76% who did not drink at all...”*

45 The assertion by the McCusker Centre relating to water and alcohol is refuted on the basis that it is not applicable to class 1 pools such as the Bicton pool because of the strict protocols in place and the high level of supervision.

46 Contrary to the view of EDPH, based on professor Tombourou’s research, the licensee

*“takes children / youth with few [if any] “at risk” factors affecting their life and engaged them in a positive lifetime experience of significant training, discipline, and*

*respect among others. This results in a low-risk child developing into a functional adult”.*

- 47 The permitted trading hours proposed in the submission from the Commissioner of Police, would provide reasonable flexibility for the Club to operate effectively.
- 48 The finding by the Police that the operation of the licensed premises by the MWPC is impacting on the amenity of the neighbourhood is neither supported by the evidence nor the direct investigation by Director into a section 117 complaint from aggrieved residents.
- 49 MWPC accepts the City’s view that the lower bar should not be used at times when the pool is open for public swimming. However, it maintains that the upstairs bar should not be so constrained.
- 50 The MWPC operates year round and therefore should not have seasonally adjusted operating times as it would prevent the club from properly servicing its membership.
- 51 Undue weight has been accorded to Mr and Mrs Lombardo’s objection by the Director and is inconsistent with the section 117 review findings and would unnecessarily restrain the activities of the Club.
- 52 The allegations of the applicants are refuted. The Club has not in 40 years of holding a licence had any complaint or incident involving the Police and only 1 complaint, a section 117 [by the objector] to the Director, which was dismissed.
- 53 The Director stated in his consideration of the section 117 complaint, *“To support my findings, I note that at the final conciliation meeting..., the complainants agreed that the disturbances that they are experiencing are not related to the club restricted licence.”*
- 54 Officials of Australian Water Polo Inc. have attended the MWPC and not raised any concern in relation to the management of its alcohol policy and have confirmed that the policy referred to by the objectors is a general policy and not a regulation.

### **Determination**

- 55 Under section 25(2c) of the Act, when considering a review of the decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 56 On a review under section 25 of the Act, the Commission may –
- a. *affirm, vary or quash the decision subject to the review;*
  - 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;*
  - 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.*
- 57 In conducting a review under section 25, the Commission is not constrained by a finding of error on part of the Director, but is to undertake a full review of the material

before the Director and make its own decision on the basis of those materials (refer *Hancock v Executive Director of Public Health [2008] WASC 224*).

- 58 Pursuant to section 38(2) of the Act, an applicant for the grant of a licence must satisfy the licensing authority that granting the application is in the public interest.
- 59 To discharge its onus under section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.
- 60 Determining whether the grant of an application is “in the public interest” requires the Commission to exercise a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd [2007] WACA 175* and *Palace Securities Pty Ltd v Director of Liquor Licensing (1992) 7 WAR 241*). The Commission notes the words of Tamberlin J in *McKinnon v Secretary, Department of Treasury [2005] FCAFC 142* where he said:

*“The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.”*

- 61 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities Ltd supra*). 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 of liquor and related services with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

- 62 Section 33(1) of the Act gives the Commission an absolute discretion to grant or refuse an application on any ground or for any reason that it considers to be in the public interest. The scope of this discretion was recently considered by EM Heenan J in *Woolworths Ltd v Director of Liquor Licensing [2012] WASC 384 [32]*:

*“[Section] 33(1) is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole. Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest to make those objects the*

*exclusive consideration nor the sole determinants of the public interest”.*

- 63 Each application must be considered on its merits and determined on the balance of probabilities pursuant to section 16 of the Act. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WACA 258*).
- 64 By virtue of decision number A222170 the Director granted an application for variation of trading conditions and a redefinition of the licensed area at the MWPC premises.
- 65 There was and still remains a strong body of opposition from local residents who argue that the increased hours will lead to a further loss of amenity of the residential area in which these premises are located. Some of the individual objectors have banded together and nominated Mr Gary Ryan, as their representative in their application for review before the Commission.
- 66 The applicants argues that the potential for alcohol related harm will be enhanced by the extended hours and extended licensed area particularly in respect of the number of young people for whom the respondent caters.
- 67 The position of applicants on alcohol related harm was supported by the McCusker Centre as an objector and the Executive Director of Public Health as an intervener.
- 68 Both of these bodies made the point that there is significant concern in the health sector about the association of alcohol with sport and increasing the exposure of young people to alcohol in this environment must be considered. As an objector, the McCusker Centre was obliged to meet the requirements of section 73(10) of the Act and the Commission held that it had done so.
- 69 The position of applicants in respect of loss of amenity as a result of likely increase in traffic and lack of parking, noise levels generated as people come and go, particularly as they leave the premises at night, is easy to sustain.
- 70 The Commission is of the view that there are real difficulties in respect of parking and traffic currently extant and which will get worse if membership continues to increase.
- 71 However in the Commission’s view the applicants have failed to establish any nexus between the licensing decision to increase trading hours and extend the licensed area and loss of amenity. The very obvious problems in the vicinity of the premises are a result of the volume of cars and people and have little causal relationship with whether the premises are licensed to trade during the hours the respondent sought in its original application or not.
- 72 Objector Mr M R Doig points to the cause of the dispute between residents and the MWPC as:
- “Even with the best intention members, guests and staff cannot arrive or leave this venue without disturbing residents. The site is a natural amphitheatre (sic).”*
- 73 Little additional information is provided by other objectors and it is clear the major cause of concern is the activity of the pool with no evidence of the licensed premises per se being the cause of any loss of amenity.

- 74 This view of the Commission is further substantiated by the submissions made by James and Nola Reader to the City enclosing a diary kept during the periods 28 February to 12 March 2011 and 8 November to 1 December 2011. During these periods whilst there were many instances of noise and disruption to their peace there was no mention of the licensed premises as being the cause.
- 75 It is very apparent to the Commission from the tone of the applicants and respondent's submissions that this has become a very emotive issue.
- 76 Submissions were marred by generalisation, exaggeration and accusations of misrepresentation.
- 77 The Commission requires cogent evidence to support a party's case and whilst the personal experience of the applicants falls into that category, too much of the applicants submissions were unsubstantiated surmise rather than supported by cogent evidence relating to issues within the jurisdiction of the *Liquor Control Act 1988*.
- 78 The respondent lodged a Public Interest Assessment in support of its original application which, whilst relatively brief, covered the essential requirements of section 38 of the Act.
- 79 The original application related to a restricted club licence which the Commission would regard as a low risk environment for the consumption of liquor.
- 80 In its submission as the respondent in this review, MWPC stated it was also dissatisfied with the Director's decision and wanted the hours of trading originally sought.
- 81 It did not lodge an application for review of the Director's decision but as a party to the application has the opportunity to argue its case and a decision to grant the hours sought is open to the Commission having reviewed the evidence before the Director.
- 82 The Commission is not persuaded, however, that there should be any variance in the trading hours approved by the Director in determination A 222170, particularly as they are consistent with the hours supported by the City of Melville following considerable community consultation.
- 83 The original application was supported by a petition and a substantial number of letters of support and the Commission does not see anything sinister in the fact these letters of support may have been orchestrated by the respondent notwithstanding this being called into question by the applicant. It is a matter of whether the Commission might give them less weight in such circumstances.
- 84 The intervention by the Police was at best puzzling and at worst contradictory. Having raised concerns about the increase in trading hours sought by the applicant, the Police then suggested that should the application be granted, a set of trading hours only marginally different from, but at least as generous as that sought by the respondent, should be set by the Commission.
- 85 Furthermore, it raised concerns about the degree of harm in the locality yet its own statistical evidence lodged strongly suggests that the level of harm in the locality is extremely low i.e. only 4 of the 98 crimes committed in Bicton were related to alcohol and Police attendances in the immediate vicinity were stated to be low.
- 86 The Commissioner of Police suggested a number of conditions be imposed if the extended trading hours were granted however the Commission does not accept that these are necessary given the low risk associated with this class of licence and the

circumstances in which it is conducted.

- 87 The position as an intervener by the City was later modified to a position of support with conditions suggested.
- 88 The City's submission dated 31 May 2012 comprehensively set out the issues of amenity and gave the impression that the traffic and parking issues were not as bad as the applicant makes out (save and except for the period during which the Tom Hoad Cup was being conducted and which is not relevant to this application).
- 89 The Commission is satisfied that the management practices and proposed modus operandi of the amended licensed area are adequate to mitigate the risk of exposure of minors to a "drinking environment".
- 90 Whilst giving weight to the evidence of an experienced, knowledgeable objector (the McCusker Centre and the EDPH evidence) the Commission does not perceive there is any real risk of alcohol related harm of the type set out by these health authorities.
- 91 The redefined licensed area maintains separation from the pool area and contrary to the view expressed by the applicant, the Commission holds that the configuration of the redefined licensed area does not give rise to any particular difficulty in management or enforcement of licence conditions.
- 92 The applicants have not established any demonstrable nexus between the licensing decision and the loss of amenity. The Commission is of the view that the problems of the amenity raised by the applicant would not be improved if the premises were unlicensed given the volume of people using the facility and the Bicton Baths.
- 93 The decision of the Director is affirmed and the application is refused.



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**MR JIM FREEMANTLE**  
**CHAIRPERSON**