



Government of **Western Australia**  
Department of **Environment Regulation**

GUIDELINE

# **Guide to management of noise from motor sport venues**

*Environmental Protection (Noise) Regulations 1997*

DER2014/001628

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## Purpose

The *Environmental Protection (Noise) Regulations 1997* (the Regulations) were amended in 2013 to introduce, among other things, specific management provisions for motor sport venues, shooting venues, major concert venues and waste collection and other works. The proposed amendment regulations went through a substantial public consultation in 2011, and have benefited from the input of local governments, key industry stakeholders and community members.

This document forms part of a series of guidelines prepared by the Department of Environment Regulation (DER) to assist users of the Regulations to implement them effectively.

These particular guidelines deal with Division 3 of the Regulations – motor sport venues.

Division 3 provides an ‘opt in’ approvals process that allows noise emissions to exceed the assigned noise levels in the Regulations provided motor racing activities in motor sport venues are carried out in accordance with an approved noise management plan for that venue.

In the vast majority of cases these approvals are to be granted by local government chief executive officers acting under delegation, the intention being that these decisions will be made at the local level. The Regulations set up a robust approval process designed to ensure transparency and accountability in the decision-making.

These guidelines on motor sport venues are intended for use by motor sport clubs, local governments and community members to aid in understanding the regulatory provisions; and to assist a venue in preparing its noise management plan and working through the approvals and appeals processes.

These guidelines have been developed with input from the following stakeholders:

- Confederation of Australian Motor Sport Ltd (CAMS);
- Department of Sport and Recreation;
- Kwinana Motorplex;
- Motorcycling Western Australia; and
- WA Speedway Commission Inc.

## Introduction

These guidelines have been prepared for use by local governments, motor sport venues and the community in the implementation of Division 3 – Motor sport venues, of the *Environmental Protection (Noise) Regulations 1997* (the Regulations).

The Regulations set assigned (allowable) noise levels for various types of premises that receive noise from other premises. Those levels are set to provide a good level of protection for the noise receiver. There are many activities that occur in the community that cannot, however, reasonably and practicably meet those assigned levels, but retain a degree of acceptance, either because of the temporary nature of the activity or the perceived community benefit.

The Regulations make special provision for such activities, including construction noise, motor sports, recreational shooting, outdoor events and others.

In the case of a motor sport venue, good land use planning may be able to avoid noise problems in the first place – this may involve selection of a site for a new venue that is well away from sensitive receivers, or preventing encroachment by new residences into the noise-affected area around the venue.

Where a motor sport venue cannot practicably comply with the assigned noise levels, Division 3 of the Regulations allows the venue occupier to apply for a special approval. Under this approval the noise emissions from the venue are permitted to exceed the assigned levels in the Regulations provided the venue operates in accordance with an approved noise management plan (NMP) for the venue.

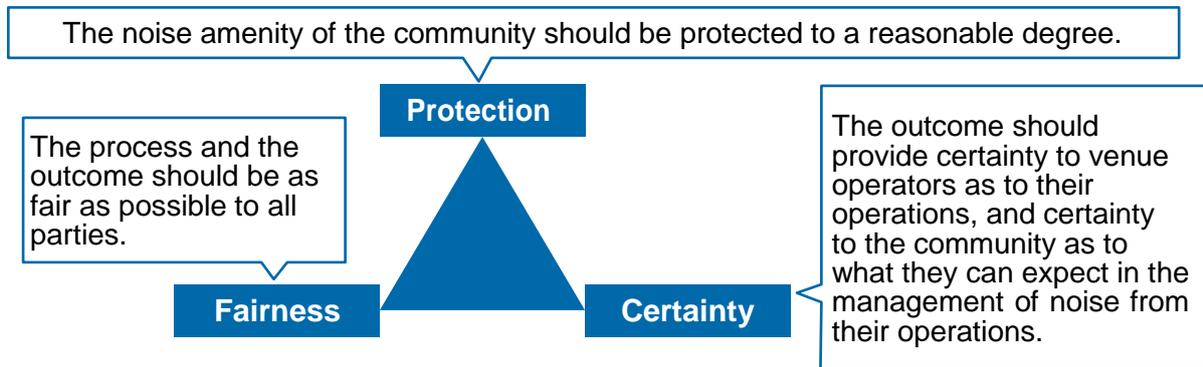
The NMP would be approved by the ‘delegate chief executive officer (CEO)’ – this means either the CEO of the Department of Environment Regulation (DER CEO), or the CEO of the local government (LG CEO), acting under delegated authority from the DER CEO. This delegation of authority was gazetted on 20 December 2013.

In general it is expected that applications under Division 3 would be made to the LG CEO, in order that the decision be made at the local level. Where an issue is of state significance the decision may be made by the DER CEO, however such decision would be made in consultation with the LG CEO. In this guideline, the term ‘delegate CEO’ will be used to refer to either the DER CEO or his delegate, the LG CEO, on the expectation that most issues will be dealt with by the LG CEO.

Division 3 contains several regulations within it that establish the process by which the approval is given, and the appeal provisions that allow for review of the delegate CEO’s decisions. These guidelines explain the various provisions within Division 3 and provide practical guidance on the implementation of the process.

The guidelines are not mandatory, but are intended to provide an effective approach to the process.

One possible framework for consideration when working through the approval process is as follows:



## 1. Applying for approval of a noise management plan

### Regulation 16AA(1)

The occupier of a motor sport venue may apply to the CEO for approval of —

- (a) a noise management plan for the venue; or
- (b) an amendment of an approved noise management plan for the venue.

### 1.1. Who may apply?

The person who applies for approval must be the occupier of a ‘motor sport venue’, which is defined in regulation 16A to mean ‘premises approved or recognised by a motor sport organisation as premises at which motor vehicles or motor vessels may be raced’.

The venue must be a *bona fide* motor sport venue, approved or recognised by a ‘motor sport organisation’, if it is to qualify to have its noise management plan (NMP) approved. A list of motor sport organisations is included in regulation 16A (see [Appendix 1](#)).

The list of organisations also includes ‘any other motor sport organisation approved by the CEO for the purposes of this regulation’. This makes it possible for other relevant motor sport organisations not on the list to seek approval, in order that their affiliated venues may qualify to have their NMP’s approved. The ‘CEO’ who approves such an organisation must be the DER CEO, as the LG CEO does not have delegated power for this function.

A motor sport organisation seeking to use this provision is advised to contact DER in the first instance. The organisation would need to show evidence of its status as a *bona fide* motor sport organisation. When the DER CEO has approved a motor sport organisation, a motor sport venue that is approved or recognised by the organisation would be eligible to apply for approval of its NMP.

### 1.2. Is a venue required to apply?

No, the regulation states that a venue may apply, so it is the venue’s choice whether or not to avail themselves of this provision. A venue may be keen to apply if they feel it will assist in managing noise emissions within the overall scope of the Regulations.

The venues most likely to apply for approval of an NMP are those whose noise emissions are likely to exceed the assigned levels in the Regulations. This may (for example) become apparent through noise complaints, followed by noise monitoring by the local government. At this stage, the venue would become aware that it is vulnerable to potential enforcement action for breach of the assigned levels, and may see the need to seek the greater certainty offered by the Division 3 provisions.

### 1.3. Who does a venue apply to?

The application is made to the delegate CEO, who will generally be the CEO of the local government of the municipality where the venue is located (LG CEO); this person has delegated power to approve the application.

In the first instance the motor sport club would be well advised to contact their governing body to seek its guidance and support. The club (and perhaps the governing body representative) could arrange to meet with the delegate CEO and/or the environmental health section of the local government, and relevant local councillors, about making an application. The club could also consider contacting its neighbours who may experience noise, to seek their support.

### 1.4. Making an application

The application must be made by the venue occupier. Regulation 16AA does not require that an application be made on a specific form.

An application could include a draft NMP (see [4. Noise management plans](#)) and a covering letter from the applicant motor sport club. The application should confirm the affiliation with the governing body, and could include a letter of support from that body.

#### **Regulation 16AA(2)**

An application for approval under subregulation (1) is to be accompanied by an application fee of \$500, but the CEO may, in his or her discretion, waive or reduce the fee.

The application must be accompanied by an application fee of \$500. The intent is to provide for partial cost recovery for the resources that the local government will expend in processing the application; however, the fee has been set at a modest level to recognise the limited resources of many motor sport clubs.

The delegate CEO has discretion to waive or reduce the fee.

## 2. Consulting on the application

### **Regulation 16AA(4)**

Before making a decision under subregulation (3) the CEO —

- (a) must give the following a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved —
  - (i) the occupier of any noise sensitive premises within 1 km of the motor sport venue;
  - (ii) the local government of each district in which noise emissions received from the venue are likely to fail to comply with the standard prescribed under regulation 7;

and

- (b) may give any other person the CEO considers appropriate in the circumstances a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved.

Before the delegate CEO makes a decision to approve, refuse or amend the application he or she must consult occupiers of neighbouring noise sensitive premises and affected neighbouring local governments. The delegate CEO may also consult other parties he or she considers appropriate in the circumstances.

### **2.1 Noise sensitive premises within one kilometre must be consulted**

The delegate CEO is required to consult the occupier of any noise sensitive premises within one kilometre of the motor sport venue – the list of premises that are classed as noise sensitive premises is contained within Schedule 1 of the Regulations, and includes rural properties, residences, hospitals with fewer than 150 beds, educational premises, etc.

One way to ensure all relevant occupiers are consulted would be to draw a map with a line at one kilometre from the boundary of the motor sport venue premises; the occupiers of noise sensitive premises with land within the line would be consulted.

### **2.2 Affected neighbouring local governments must be consulted**

The delegate CEO is required to consult ‘the local government of each district in which noise emissions from the venue are likely to fail to comply’ – this means that neighbouring local governments are to be consulted if the noise from the venue is likely to impact on their ratepayers. Noise measurements may be used to identify whether or not a neighbouring local government is affected; however, if it is not practicable to conduct measurements, the neighbouring local government could be consulted to gauge if the noise from the venue is clearly audible in the neighbouring shire. If unsure, it is sensible to err on the side of caution and consult.

### 2.3 The CEO may consult others as appropriate

Consultation with the occupiers of noise sensitive premises within one kilometre can be considered to be a minimum, and it is open to the delegate CEO to consult a wider group of interested persons. This wider group may include the owners and the occupiers of any commercial or industrial premises within the one kilometre line, and interested community members beyond.

It is also advisable that the LG CEO consult the CEO DER, who has oversight of the department's noise regulation function. The intent here is to utilise the department's noise expertise to ensure consistency of decisions and to assist in resolving difficult issues with the approval. Submissions could be sought from the relevant motor sport organisation and any other motor sport organisations with a direct interest. The delegate CEO may also give some thought as to whether there are others who should be consulted.

### 2.4 What form of consultation might be appropriate?

While regulation 16AA(4) requires that the delegate CEO seek submissions on 'whether or not the plan or amendment should be approved', this may be seen as a minimum standard; and consideration may be given to extending the consultation beyond the minimum, in order to provide an open process through which the community can have meaningful input into the decision on the NMP.

This open type of process is important in ensuring that issues are identified and articulated before a decision is made. These issues are best addressed at the local level, and indeed this is the clear intent of this regulatory system. Where the issues can be addressed in the NMP the outcomes are likely to be more positive than where the issues are put aside to be addressed through the appeals process.

### 2.5 Doing the consultation

It is common practice that the parties required to be consulted (see above), and others with a known interest, are contacted in writing. The consultation could also be advertised in a local newspaper and the relevant information placed on the local government's website and made available at their offices.

The delegate CEO could consider providing, or making available, a copy of the draft NMP for the venue and relevant supporting information such as an area map, summary of any noise monitoring results, and so on. Only an NMP which is complete, that is including all of the information required by regulation 16AA(7), would normally be referred for comment (see [4. Noise management plans](#)).

The various parties must be given 'a reasonable opportunity' to prepare their submissions. This may typically involve a period of at least four weeks (some local governments may need additional time in order to allow for council meeting dates).

The delegate CEO would be expected to consider all submissions carefully; a summary of submissions and responses could be prepared in order to provide feedback to submitters. It may also be appropriate to hold meetings with concerned

submitters in order to resolve issues and if necessary negotiate changes to the NMP that are workable for the venue occupier. It may also be appropriate to send out a revised NMP for further comment.

It is also important to document the steps in the consultation process, the issues addressed and any changes to the NMP.

### 3. Determining the application

#### **Regulation 16AA(3)**

The CEO may, in writing —

- (a) if the application is for the approval of a noise management plan — approve, or refuse to approve, the noise management plan for the motor sport venue; or
- (b) if the application is for an amendment of an approved noise management plan — approve, or refuse to approve, the amendment.

The decision will be made by the delegate CEO, generally the LG CEO acting under delegated powers. The decision will be confirmed in writing.

#### 3.1 Approval may be granted subject to conditions

#### **Regulation 16AA(5)**

An approval of a noise management plan under subregulation (3) —

- (a) may be granted subject to conditions imposed by the CEO; and
- (b) subject to subregulation (6) and regulation 16AC, has effect for the period specified in the approval.

In granting an approval the delegate CEO may set conditions that the approval is subject to. Where practicable, it is advisable to avoid such conditions and instead include these as measures in the NMP. Where an approval is granted subject to conditions, it is important in the interests of clarity that these conditions not impinge on or contradict the NMP, but that they instead relate to matters peripheral to the NMP. An example of a condition that the delegate CEO might set at the time of approval may be a condition requiring that the NMP be made publicly available at a specified location.

The delegate CEO may wish to seek legal advice in relation to proposed conditions to which the approval may be subject.

### 3.2 Length of approval

The notice of approval must specify the period for which the approval has effect. In setting this period the delegate CEO may give consideration to setting a period that is long enough to provide certainty of occupancy of the premises but not so long that the approval becomes obsolete.

By way of general guidance, the delegate CEO may consider setting an approval period of not less than five years and not more than 15 years. In the case of a venue's first approval, a period towards the shorter end of the range may be considered, thereby triggering a review of the NMP after a shorter initial period of operation. Where the premises on which the motor sport venue is situated are leased from the local government, the delegate CEO may consider setting the length of the approval to match the duration of the lease.

### 3.3 Ancillary measures

#### **Regulation 16AB(1) and (2)**

- (1) If the CEO approves or amends a noise management plan under regulation 16AA, the CEO may, by written notice given to the person whose plan was approved or amended, designate a measure in the plan to be an ancillary measure if the measure does not directly influence the level, duration or time of day of a noise emission.
- (2) An occupier of a motor sport venue must ensure that any ancillary measure relating to the venue is implemented.

Penalty: a fine of \$5 000.

The delegate CEO may also use the approval notice to designate a measure in the NMP as an 'ancillary measure' if the measure does not directly influence the level, duration or time of day of the noise emission. Examples of possible ancillary measures include the distribution of the program for race meetings and the operation of a complaints line – these measures do not influence the noise emission itself but are important in the management of the noise emissions.

It should be noted that only measures that are in the NMP can be designated as ancillary measures – for example the delegate CEO cannot designate a condition in his or her approval notice as an ancillary measure.

Ancillary measures are discussed further under [4. Noise management plans](#). A sample approval notice is at [Appendix 2](#).

### 3.4 Extension/renewal of a noise management plan

#### Regulation 16AA(6)

If the occupier of a motor sport venue for which an approved noise management plan (the **current plan**) has effect applies for approval of a new noise management plan for the venue not later than 3 months before the current plan would, apart from this regulation, cease to have effect (the **expiry day**), the current plan is taken to continue in effect from the expiry day until —

- (c) if the CEO approves the new noise management plan — the day on which the new plan has effect; or
- (d) if —
  - (i) the CEO refuses to approve the new noise management plan; and
  - (ii) at the end of the period within which an appeal against the decision may be lodged under regulation 16AE, no appeal has been lodged,the day after that period ends; or
- (e) if —
  - (i) the CEO refuses to approve the new noise management plan; and
  - (ii) an appeal is lodged under regulation 16AE against the decision to refuse to approve the new noise management plan,the day the appeal is concluded.

The period of approval can extend beyond the date set in the original approval, provided the venue applies for a new approval not later than three months before the current NMP ceases. In this case the approval will continue in effect until a decision is made on the new NMP, thus providing continuity. Venue occupiers who wish to apply for a new NMP approval should therefore note this date and ensure that the application for a further approval is made in good time.

### 3.5 Giving notice of approval or refusal

#### **Regulation 16AD(1) and (2)**

- (1) In this regulation —  
***appellable decision*** has the meaning given in regulation 16AE(1).
- (2) The CEO —
  - (a) must give a written notice of an appellable decision in respect of a noise management plan for a motor sport venue to the occupier of the motor sport venue; and
  - (b) may give written notice of the appellable decision to such other persons as the CEO thinks fit; and
  - (c) must cause notice, and such particulars as the CEO thinks fit, of the appellable decision to be published in the *Gazette*.

Many of the delegate CEO's decisions are open to appeal – these are called 'appellable decisions', and the delegate CEO is required to give written notice of these decisions.

Written notice must be given to the occupier of the motor sport venue and may be given to other such persons as the delegate CEO thinks fit. These persons could include those who made submissions on the NMP as part of the consultation process.

Particulars of the appellable decision must also be published in the *WA Government Gazette* – this sets the date for the start of the appeals period.

A sample *Gazette* notice advising of an appellable decision is in [Appendix 3](#).

Further guidance on appeals is presented under [6. Appeals](#).

## 4. Noise management plans

### 4.1 Preparing a noise management plan

#### Regulations 16AA(7) and (8)

- (7) The CEO must not approve a noise management plan for a motor sport venue unless the plan —
- (a) contains a map (current at the time of the application) showing the motor sport venue, including the area where motor vehicles or motor vessels are raced or prepared for racing and car parks used by competitors in races at and visitors to the venue; and
  - (b) contains a description of the types of racing activities that can reasonably be expected to be conducted at the venue and classes of vehicles or vessels that can reasonably be expected to race at the venue; and
  - (c) sets out limitations on the racing activities to be conducted and the times during which racing activities may be conducted; and
  - (d) contains details of reasonable and practicable measures to be implemented to control noise emissions from the venue during the conduct of a racing activity at the venue; and
  - (e) contains details of when and the manner in which notice of racing activities at the venue is to be published or distributed to members of the public; and
  - (f) specifies the persons who will be responsible for implementing the approved noise management plan and sets out each person's responsibilities; and
  - (g) contains a complaint response procedure.
- (8) For the purposes of subregulation (7)(f), the plan may —
- (a) specify a person by name; or
  - (b) specify a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

The content that is required in an NMP is set out above, and the NMP can not be approved unless it addresses all seven items listed in regulation 16AA(7).

A sample NMP for a motor sport venue is included at [Appendix 4](#). Note that this is only an example, and the NMP should be developed so as to be specific to the venue.

In identifying the activities that the NMP will cover, note the broad definition of 'racing activity' in regulation 16A (see [Appendix 1](#)). Others may be able to assist in the drafting of the NMP, including the motor sport governing body, an acoustic consultant, the local government or DER.

Where a motor sport venue operates under an industry code for the noise certification of race vehicles, the NMP could refer to the code in item (d) under 'reasonable and practicable measures to control noise emissions', and to the procedures for implementing the code. A copy of the code could be attached to the NMP so it is clear which code and version of the code is being followed when the NMP is approved.

Item (d) could also refer to other noise controls, e.g. for the public address system, for the arrival and departure of patrons and competitors, as relevant in the situation.

The NMP may also contain a procedure for informing club members of the NMP and their responsibilities in ensuring it is complied with.

## 4.2 Compliance with the noise management plan

### Regulation 16AA(9)

Regulation 7 does not apply to noise emitted from a motor sport venue during the conduct of a racing activity at the venue if the racing activity is conducted in accordance with an approved noise management plan, excluding any ancillary measure, for the venue.

When the venue is operated in accordance with an approved NMP, the normal assigned noise levels in the Regulations do not apply to the noise emission. The NMP provides a form of exemption from the requirement to comply with the normal assigned levels.

If, however, the NMP is not being complied with – for example if a race meeting goes over the finishing time specified in the NMP – the exemption ceases to have effect and the assigned levels apply to the noise emission. The venue occupier would then be open to possible enforcement action for causing noise emissions that exceed the assigned levels. Similarly, if an activity takes place on a day that is not a nominated practice or meeting day, the assigned noise levels would apply.

It is therefore critical that the venue has the procedures in place to ensure that racing activities are conducted in accordance with the NMP.

## 4.3 Ancillary measures

If the delegate CEO has used the approval notice to designate a measure in the NMP as an 'ancillary measure' (i.e. a measure that does not directly influence the level, duration or time of day of the noise emission), the venue occupier must ensure that the measure is implemented (see [3.3 Ancillary measures](#)).

For example if an ancillary measure requires the distribution of the program for race meetings by a set date, then the club must ensure that the program is distributed by that date.

Ancillary measures differ from the other measures in the NMP. A breach of an ancillary measure may result in a direct penalty, but does not remove the exemption

provided by the approval of the NMP. On the other hand, as noted above, a breach of measure that relates directly to the noise emission removes the exemption provided by regulation 16AA(9) and allows the application of enforcement actions related to exceedence of the assigned levels.

## 5. Amendment and revocation of a noise management plan

### 5.1 How can a venue occupier have the noise management plan amended?

Where an NMP has been in place for some time, there may be a need for amendments to reflect changes in racing activities, and in this case the venue occupier may apply for approval of an amendment to an approved NMP (see [1. Applying for approval of a noise management plan](#)). This application is essentially the same as for approval of a new NMP and is to be accompanied by the \$500 application fee.

Before approving the amendment the delegate CEO must consult in the same manner as for a new NMP (see [2. Consulting on the application](#)).

Any person who disagrees with the delegate CEO's decision to approve or refuse the amendment to the NMP can appeal (see [6. Appeals](#)).

### 5.2 Can the CEO amend the noise management plan?

No, however if the delegate CEO would like an amendment then he or she could negotiate the amendment with the motor sport club. The club may then agree to apply for the amendment (see above).

If these negotiations are unsuccessful, the delegate CEO has the option of commencing revocation (see [5.3. Revocation of a noise management plan](#)), but only if the grounds for revocation are satisfied.

### 5.3 Revocation of a noise management plan

#### **Regulation 16AC(1), (2), (3), (4) and (5)**

- (1) An approved noise management plan for a motor sport venue ceases to have effect if approval of the plan is revoked under this regulation.
- (2) The CEO may revoke the approval of a noise management plan for a motor sport venue by written notice given to the occupier of the venue.
- (3) The grounds for revocation of a noise management plan for a motor sport venue are that the CEO is satisfied that —
  - (a) there has been a breach of a measure, other than an ancillary measure, in the plan; or
  - (b) there has been a breach of a condition imposed by the CEO under regulation 16AA(5)(a); or
  - (c) information contained in the plan, or contained in or supporting the application for approval of the plan, was false or misleading in a material respect; or
  - (d) the noise emissions from the venue have increased during the period the noise management plan has been in effect.
- (4) The CEO, before exercising the power of revocation under subregulation (2), must —
  - (a) give the occupier of the motor sport venue a reasonable opportunity to show cause in writing why that power should not be exercised; and
  - (b) give the persons referred to in regulation 16AA(4)(a) a reasonable opportunity to make a submission on whether or not that power should be exercised.
- (5) An opportunity is not a reasonable opportunity for the purposes of subregulation (4) unless the relevant person is informed of the right to show cause or make a submission under that subregulation not less than 90 days before the day on which the CEO exercises the power in question.

A delegate CEO who has approved an NMP also has the power to revoke it. In order to ensure fairness in the process, regulation 16AC sets out the procedures to be followed in relation to a revocation of an NMP approval.

Before starting a revocation process, the delegate CEO may consider first raising his or her concerns with the venue occupier to see if these can be resolved without resorting to revocation. If considering revocation, the delegate CEO must be satisfied that at least one of the grounds for revocation are met to the required standard (balance of probabilities), as set out above.

Essentially the process requires that the delegate CEO must give notice of his or her intent to revoke, thus initiating a 90-day consultation period. The delegate CEO

must consult the venue occupier and the parties he or she was required to consult in assessing the original application for approval (see [2. Consulting on the application](#)). The intent is to allow time for negotiations to ensue to resolve issues, and to allow the venue occupier and residents time to prepare submissions. At the end of the 90-day period, if the delegate CEO decides to pursue revocation this is done by issuing a written notice to the venue occupier.

A decision to revoke an NMP approval can be appealed, and the approval remains in force while the appeals are being determined (see [6. Appeals](#)).

In general it is expected that revocation would be used as a last resort, and that the approval normally be allowed to run for the period specified in the original approval. However, a decision not to revoke an approval should not stop other enforcement action being taken for a breach of the approval.

## 6. Appeals

### Regulation 16AE(1), (2), (3), (4) and (5)

- (1) A person aggrieved by any of the following decisions (an **appellable decision**) of the CEO may lodge with the Minister an appeal in writing setting out the grounds of that appeal —
  - (a) the approval of a noise management plan for a motor sport venue;
  - (b) the refusal to approve a noise management plan for a motor sport venue;
  - (c) the approval of an amendment to an approved noise management plan for a motor sport venue;
  - (d) the refusal to approve an amendment to an approved noise management plan for a motor sport venue;
  - (e) the imposition of a condition on the approval of a noise management plan for a motor sport venue;
  - (f) the specification under regulation 16AA(5) of a period as the period for which the approval of a noise management plan for a motor sport venue has effect;
  - (g) the revocation of the approval of a noise management plan.
- (2) The appeal must be lodged within 21 days of publication of notice of the decision under regulation 16AD(2)(c).
- (3) Pending the determination of an appeal lodged under subregulation (1) (a), (b) or (f), the decision against which that appeal is lodged continues to have effect.
- (4) Pending the determination of an appeal lodged under subregulation (1) (c), (d), (e) or (g) the decision is to be taken not to have been made.
- (5) Sections 105 to 110 of the Act apply to an appeal lodged under subregulation (1) as if that appeal were an appeal referred to in section 102(1) of the Act.

An ‘appellable decision’ is a decision of the delegate CEO that can be appealed. Appeals under these regulations are dealt with by the Appeals Convenor (see the *Environmental Protection Act 1986*) with the decision being made by the Minister for Environment.

## 6.1 Can I appeal the delegate CEO’s decisions?

Any person who is aggrieved by an appellable decision may lodge an appeal, that is, the venue occupier or any member of the community. Most of the decisions made by the CEO under these regulations can be appealed (see above). There are two decisions of the delegate CEO that cannot be appealed:

- decision to waive or reduce the application fee under regulation 16AA(2); or
- decision to designate a measure in an NMP as an ‘ancillary measure’ under regulation 16AB(1).

## 6.2 How will I know when an appeal can be lodged?

Regulation 16AD requires the delegate CEO to give adequate notice of the appellable decision (see [3.5 Giving notice of approval or refusal](#)). He or she must give written notice to the venue occupier, and may give notice to other persons as he or she sees fit (generally those who have made a submission in relation to the NMP). The delegate CEO must also publish notice of the decision in the *Government Gazette*. This publication date starts the 21-day appeal period, and appeals must be lodged within 21 days of the gazettal date.

If you have an interest in the delegate CEO’s decision it is recommended that you contact the local government concerned and ask to be notified of the gazettal of the decision.

## 6.3 How do I lodge an appeal?

Appeals are to be addressed to the Minister for Environment and lodged with:

**Appeals Convenor for the Environmental Protection Act**  
**Level 22, Forrest Centre**  
**221 St Georges Terrace**  
**PERTH WA 6000**

Appeals can also be lodged by hand delivery, by email to [admin@appealsconvenor.wa.gov.au](mailto:admin@appealsconvenor.wa.gov.au) or by fax to (08) 6467 5199.

The grounds for the appeal must be clearly stated. The appeal must be accompanied by a \$50 fee.

For further information about appeals, see ‘Types of appeal, Noise Regulations’ on the Appeals Convenor’s website [www.appealsconvenor.wa.gov.au](http://www.appealsconvenor.wa.gov.au) or phone (08) 6467 5190.

## 6.4 What happens to the CEO's decision while under appeal?

Regulations 16AE(3) and (4) specify what happens to a decision of the delegate CEO while it is under appeal. Decisions to approve or refuse an NMP and to set the period of approval remain in force while the appeals are being determined. This means for example that, if the delegate CEO has decided to approve an NMP, then the approval remains in force while any appeals are being determined.

## 6.5 How is the appeal decision made?

In considering appeals, the Appeals Convenor follows the procedures given under Part VII of the *Environmental Protection Act 1986*. The Appeals Convenor must consult the delegate CEO, but may also consult other persons, and in doing so can consider any or all of the information that the delegate CEO's decision was based upon. The Appeals Convenor's advice on the appeal is sent to the Minister for Environment, who makes the final decision about the appeal.

## Appendix 1

### *Environmental Protection (Noise) Regulations 1997* Division 3 – Motor sport venues

**Note:** The following is not an official reprint of the legislation.

#### **Division 3 — Motor sport venues**

*[Heading inserted in Gazette 5 Dec 2013 p. 5673.]*

#### **16A. Terms used**

In this Division —

**ancillary measure** means a measure designated to be an ancillary measure under regulation 16AB(1);

**approved noise** management plan means a noise management plan approved under regulation 16AA, as amended from time to time, that has effect;

**motor sport organisation** means any of the following organisations —

- (a) Australian National Drag Racing Association;
- (b) Australian Power Boat Racing Association;
- (c) Confederation of Australian Motor Sport Limited;
- (d) Motorcycling Australia;
- (e) Motorcycling Western Australia;
- (f) National Association of Drag Racing Inc.;
- (g) National Association of Speedway Racing;
- (h) Western Australian Speedway Commission;
- (i) any other motor sport organisation approved by the CEO for the purposes of this regulation;

**motor sport venue** means premises approved or recognised by a motor sport organisation as premises at which racing activities may be conducted;

**racing activity** means racing of motor vehicles or motor vessels conducted as part of a competition day, practice or training session, exhibition run, trial, test, entertainment event, promotion or other similar activity.

*[Regulation 16A inserted in Gazette 5 Dec 2013 p. 5673-4.]*

#### **16AA. Approval of noise management plan: motor sport venue**

- (1) The occupier of a motor sport venue may apply to the CEO for approval of —
  - (a) a noise management plan for the venue; or
  - (b) an amendment of an approved noise management plan for the venue.

- (2) An application for approval under subregulation (1) is to be accompanied by an application fee of \$500, but the CEO may, in his or her discretion, waive or reduce the fee.
- (3) The CEO may, in writing —
  - (a) if the application is for the approval of a noise management plan — approve, or refuse to approve, the noise management plan for the motor sport venue; or
  - (b) if the application is for an amendment of an approved noise management plan — approve, or refuse to approve, the amendment.
- (4) Before making a decision under subregulation (3) the CEO —
  - (a) must give the following a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved —
    - (i) the occupier of any noise sensitive premises within 1 km of the motor sport venue;
    - (ii) the local government of each district in which noise emissions received from the venue are likely to fail to comply with the standard prescribed under regulation 7;and
  - (b) may give any other person the CEO considers appropriate in the circumstances a reasonable opportunity to make a submission on whether or not the plan or amendment should be approved.
- (5) An approval of a noise management plan under subregulation (3) —
  - (a) may be granted subject to conditions imposed by the CEO; and
  - (b) subject to subregulation (6) and regulation 16AC, has effect for the period specified in the approval.
- (6) If the occupier of a motor sport venue for which an approved noise management plan (the **current plan**) has effect applies for approval of a new noise management plan for the venue not later than 3 months before the current plan would, apart from this regulation, cease to have effect (the **expiry day**), the current plan is taken to continue in effect from the expiry day until —
  - (a) if the CEO approves the new noise management plan — the day on which the new plan has effect; or
  - (b) if —
    - (i) the CEO refuses to approve the new noise management plan; and
    - (ii) at the end of the period within which an appeal against the decision may be lodged under regulation 16AE, no appeal has been lodged, the day after that period ends; or
  - (c) if —
    - (i) the CEO refuses to approve the new noise management plan; and
    - (ii) an appeal is lodged under regulation 16AE against the decision to refuse to approve the new noise management plan, the day

the appeal is concluded.

- (7) The CEO must not approve a noise management plan for a motor sport venue unless the plan —
  - (a) contains a map (current at the time of the application) showing the motor sport venue, including the area where motor vehicles or motor vessels are raced or prepared for racing and car parks used by competitors in races at and visitors to the venue; and
  - (b) contains a description of the types of racing activities that can reasonably be expected to be conducted at the venue and classes of vehicles or vessels that can reasonably be expected to race at the venue; and
  - (c) sets out limitations on the racing activities to be conducted and the times during which racing activities may be conducted; and
  - (d) contains details of reasonable and practicable measures to be implemented to control noise emissions from the venue during the conduct of a racing activity at the venue; and
  - (e) contains details of when and the manner in which notice of racing activities at the venue is to be published or distributed to members of the public; and
  - (f) specifies the persons who will be responsible for implementing the approved noise management plan and sets out each person's responsibilities; and
  - (g) contains a complaint response procedure.
- (8) For the purposes of subregulation (7)(f), the plan may —
  - (a) specify a person by name; or
  - (b) specify a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (9) Regulation 7 does not apply to noise emitted from a motor sport venue during the conduct of a racing activity at the venue if the racing activity is conducted in accordance with an approved noise management plan, excluding any ancillary measure, for the venue.

*[Regulation 16AA inserted in Gazette 5 Dec 2013 p. 5674-7.]*

#### **16AB. Ancillary measures: motor sport venue**

- (1) If the CEO approves or amends a noise management plan under regulation 16AA, the CEO may, by written notice given to the person whose plan was approved or amended, designate a measure in the plan to be an ancillary measure if the measure does not directly influence the level, duration or time of day of a noise emission.
- (2) An occupier of a motor sport venue must ensure that any ancillary measure relating to the venue is implemented.

Penalty: a fine of \$5 000.

*[Regulation 16AB inserted in Gazette 5 Dec 2013 p. 5677.]*

### 16AC. Revocation of noise management plan for motor sport venue

- (1) An approved noise management plan for a motor sport venue ceases to have effect if approval of the plan is revoked under this regulation.
- (2) The CEO may revoke the approval of a noise management plan for a motor sport venue by written notice given to the occupier of the venue.
- (3) The grounds for revocation of a noise management plan for a motor sport venue are that the CEO is satisfied that —
  - (a) there has been a breach of a measure, other than an ancillary measure, in the plan; or
  - (b) there has been a breach of a condition imposed by the CEO under regulation 16AA(5)(a); or
  - (c) information contained in the plan, or contained in or supporting the application for approval of the plan, was false or misleading in a material respect; or
  - (d) the noise emissions from the venue have increased during the period the noise management plan has been in effect.
- (4) The CEO, before exercising the power of revocation under subregulation (2), must —
  - (a) give the occupier of the motor sport venue a reasonable opportunity to show cause in writing why that power should not be exercised; and
  - (b) give the persons referred to in regulation 16AA(4)(a) a reasonable opportunity to make a submission on whether or not that power should be exercised.
- (5) An opportunity is not a reasonable opportunity for the purposes of subregulation (4) unless the relevant person is informed of the right to show cause or make a submission under that subregulation not less than 90 days before the day on which the CEO exercises the power in question.

*[Regulation 16AC inserted in Gazette 5 Dec 2013 p. 5678-9.]*

### 16AD. Notice of appellable decision

- (1) In this regulation —  
***appellable decision*** has the meaning given in regulation 16AE(1).
- (2) The CEO —
  - (a) must give a written notice of an appellable decision in respect of a noise management plan for a motor sport venue to the occupier of the motor sport venue; and
  - (b) may give written notice of the appellable decision to such other persons as the CEO thinks fit; and
  - (c) must cause notice, and such particulars as the CEO thinks fit, of the appellable decision to be published in the *Gazette*.

*[Regulation 16AD inserted in Gazette 5 Dec 2013 p. 5679.]*

**16AE. Appeals against decisions in respect of noise management plan for motor sport venue**

- (1) A person aggrieved by any of the following decisions (an **appellable decision**) of the CEO may lodge with the Minister an appeal in writing setting out the grounds of that appeal —
  - (a) the approval of a noise management plan for a motor sport venue;
  - (b) the refusal to approve a noise management plan for a motor sport venue;
  - (c) the approval of an amendment to an approved noise management plan for a motor sport venue;
  - (d) the refusal to approve an amendment to an approved noise management plan for a motor sport venue;
  - (e) the imposition of a condition on the approval of a noise management plan for a motor sport venue;
  - (f) the specification under regulation 16AA(5) of a period as the period for which the approval of a noise management plan for a motor sport venue has effect;
  - (g) the revocation of the approval of a noise management plan.
- (2) The appeal must be lodged within 21 days of publication of notice of the decision under regulation 16AD(2)(c).
- (3) Pending the determination of an appeal lodged under subregulation (1)(a), (b) or (f), the decision against which that appeal is lodged continues to have effect.
- (4) Pending the determination of an appeal lodged under subregulation (1)(c), (d), (e) or (g) the decision is to be taken not to have been made.
- (5) Sections 105 to 110 of the Act apply to an appeal lodged under subregulation (1) as if that appeal were an appeal referred to in section 102(1) of the Act.

*[Regulation 16AE inserted in Gazette 5 Dec 2013 p. 5679-80.]*

## Appendix 2

### Sample approval notice of a noise management plan for a motor sport venue

**Local Government A**

**ENVIRONMENTAL PROTECTION (NOISE) REGULATIONS 1997  
DIVISION 3 – MOTOR SPORT VENUES**

**NOTICE OF APPROVAL OF A NOISE MANAGEMENT PLAN FOR A MOTOR  
SPORT VENUE**

1. WHEREAS I AM SATISFIED THAT:

- (a) Motor Sport Venue Occupier A is the occupier of MS Venue X (full address of MS Venue X) ('the venue');
- (b) the venue, being approved by the Confederation of Australian Motor Sports as premises at which racing activities may be conducted, is a motor sport venue for the purposes of Division 3 of the *Environmental Protection (Noise) Regulations 1997* ('the Regulations');
- (c) Motor Sport Venue Occupier A has applied for approval of a noise management plan, being the 'Noise Management Plan – MS Venue X' dated XX Month 20XX ('the plan') for the venue in accordance with regulation 16AA(1) of the Regulations;
- (d) the plan includes the information required by regulation 16AA(7) of the Regulations; and
- (e) the persons specified in regulation 16AA(4) of the Regulations have been given a reasonable opportunity to make a submission on whether or not the plan should be approved,

NOW I HEREBY APPROVE the plan, subject to the conditions contained in Clause 3 below, for the purposes of Division 3 of the Regulations ('the approval').

2. The approval has effect for a period of ten (10) years from the date of publication in the *Gazette*.
3. The approval is subject to the following conditions:
  - (a) The venue occupier is to notify the CEO of Local Government A of the name and contact details of the person appointed as the speedway manager within 30 days of such appointment.
4. The following measures in the plan are HEREBY DESIGNATED AS ANCILLARY MEASURES for the purposes of Division 3 of the regulations:
  - (a) Measure 6. Notice of Racing Activities – Items 1 to 5
  - (b) Measure 7. Complaint Response Procedure – Items 1 to 6
  - (c) Measure 8. Records – Items 8.1, 8.2 (Items 1 to 5) and 8.3.

Dated the XX day of Month 20XX

(Signed)

**CHIEF EXECUTIVE OFFICER**

Local Government A

(Person delegated under section 20 of the *Environmental Protection Act 1986*)

## Appendix 3

### Sample gazettal notice of an appellable decision

**ENVIRONMENTAL PROTECTION ACT 1986  
NOTICE OF APPELLABLE DECISION**

It is hereby notified for public information that the Chief Executive Officer of Local Government A, acting under delegation from the CEO under the *Environmental Protection Act 1986*, has made the following appellable decisions pursuant to Division 3 of the *Environmental Protection (Noise) Regulations 1997*, in relation to an application for approval of a Noise Management Plan for a motor sport venue, namely the 'Noise Management Plan – MS Venue X' dated XX Month 20XX:

- (a) approval of the noise management plan for the motor sport venue;
- (b) the imposition of conditions on the approval of the noise management plan for the motor sport venue; and
- (c) the specification of the period of 10 years as the period for which the approval has effect.

Copies of the noise management plan and the approval notice, including the conditions of the approval, are available from Local Government A offices at full address of Local Government A, or from Local Government A's website: [www.localgovernment.a.wa.gov.au](http://www.localgovernment.a.wa.gov.au).

Any person who is aggrieved by any of the above decisions may lodge an appeal.

An appeal must be lodged within 21 days from the date of publication of this notice in the *Gazette*. The grounds for the appeal must be clearly stated.

Appeals are to be addressed to the Minister for Environment and lodged with –

**Appeals Convenor for the Environmental Protection Act  
Level 22, Forrest Centre  
221 St Georges Terrace  
PERTH WA 6000**

Appeals can also be lodged by hand delivery, by email to [admin@appealsconvenor.wa.gov.au](mailto:admin@appealsconvenor.wa.gov.au) or by fax to (08) 6467 5199.

The appeal must be accompanied by a \$50 fee. For further information about appeals, see 'Types of appeal, Noise Regulations' on the Appeals Convenor's website [www.appealsconvenor.wa.gov.au](http://www.appealsconvenor.wa.gov.au) or phone (08) 6467 5190.

Dated the XX day of Month 20XX

(Name)  
**CHIEF EXECUTIVE OFFICER**  
Local Government A

## Appendix 4

### Sample noise management plan for a motor sport venue

(SAMPLE ONLY)

#### **MOTOR SPORT VENUE OCCUPIER A NOISE MANAGEMENT PLAN – MS VENUE X**

This noise management plan ('the NMP') has been approved by the CEO of Local Government A ('the CEO') for the purposes of Division 3 of the *Environmental Protection (Noise) Regulations 1997*.

#### **1. VENUE DETAILS**

**Name of venue:** MS Venue X ('the speedway')

**Location of venue:** Full address of MS Venue X

**Occupier of venue:** Motor Sport Venue Occupier A ('the occupier')

**Affiliations:** Confederation of Australian Motor Sport (CAMS)  
WA Speedway Commission

**Venue maps:** Attachment 1 – Map of venue showing facilities  
[regulation 16AA(7)(a)]

#### **2. APPLICATION**

The NMP applies –

- 1) while the occupier is the leaseholder of the speedway;
- 2) to racing activities at the speedway organised by the occupier;
- 3) to the emission of noise during a racing activity at the speedway; and
- 4) from the date of approval by the CEO until the expiration of the approval.

Regulation 7 of the *Environmental Protection (Noise) Regulations 1997* does not apply to noise emitted from the speedway during a racing activity if the activity is conducted in accordance with the NMP.

The occupier must ensure that the conditions and ancillary measures designated as such in the CEO's approval notice are implemented.

#### **3. TYPES OF RACING ACTIVITIES AND CLASSES OF VEHICLES [regulation 16AA(7)(b)]**

##### **3.1 Types of racing activities covered by the NMP:**

Club meets, state trials, practice sessions, vehicle tests, exhibitions and special events.

### **3.2 Classes of vehicles:**

Super sedans, sprint cars, late model sedans, special exhibition vehicles and various other vehicles of smaller engine capacity.

## **4. LIMITATIONS ON RACING ACTIVITIES [regulation 16AA(7)(c)]**

### **Scheduled race meetings and practice sessions**

The following limits apply to scheduled race meetings and practice sessions at the speedway:

1. A race meeting or practice session can only take place between 1 October of one year and 31 May of the following year ('season').
2. Racing can only take place at a race meeting or practice session.
3. Racing vehicles are not to be operated at the speedway at any time other than a race meeting or practice session.
4. No more than 10 race meetings are to be held during a season.
5. Race meetings are to be held only on Friday or Saturday, except that a race meeting may be held on a Sunday preceding a public holiday.
6. In addition to the 10 race meetings per season, a preliminary meeting may be held to conduct tests on racing vehicles to establish their compliance with the NMP.
7. A race meeting can only be held on consecutive days once per season.
8. The races at a meeting can only take place within a five-hour period on any one day.
9. The five-hour period must be between midday and 10.00 pm. on any one day.
10. A practice session may be held in the four-hour period immediately preceding the start of a race meeting, but is not to commence before 9.00am.

### **Special events**

Where a special event that is to be open to the public is proposed to be held at the venue, but the event cannot be conducted within the limits for scheduled race meetings and practice sessions, the occupier is to apply to the CEO for approval of the event under regulation 18.

## **5. MEASURES TO CONTROL NOISE EMISSIONS [regulation 16AA(7)(d)]**

### **5.1 Access to race track**

In order to prevent noise emissions due to unauthorised use of the race track by racing vehicles, the gates to the race track are to remain locked at all times other than:

- a) in preparation for and during race meetings, practice sessions and special events approved by the CEO;

- b) during maintenance or improvement of speedway facilities; and
- c) when in use for equestrian activities authorised by the speedway manager.

### **5.2 Public address system noise**

The PA system consists of eight loudspeaker towers placed at the back of the spectator areas, facing towards the track and angled down at 45 degrees. The loudspeakers are not to be moved or adjusted by any person without the approval of the speedway manager.

Noise emissions from the public address system at the speedway are to be under the control of the speedway manager, who is to designate persons who are authorised to use the system.

The public address system controls are to be set to provide a suitable audience sound level during the preliminary meeting each year, with the assistance of such persons as the speedway manager requires, ensuring the minimum practicable 'spill' of sound into nearby noise-sensitive areas.

The public address cabinet is to be locked for access only by the speedway manager and his authorised assistants at all other times.

The public address system will only be used during race meetings; it is not to be used during practice sessions or at any other time except in the case of an emergency.

### **5.3 Certification of racing vehicles**

Each sprint car, super sedan or late model sedan that is to race at a race meeting at the speedway must have a current certificate indicating that its noise level does not exceed the noise limit specified in the CAMS test procedure when tested in accordance with that procedure ('noise limit').

The CAMS test procedure referred to above is attached to and forms part of this NMP.

### **5.4 Scrutiny of racing vehicles**

1. A steward shall be designated for the duration of a race meeting and practice session to verify noise certificates and to evaluate noise emissions from race vehicles.
2. The steward may reject a certificate and require a new test if not satisfied with the noise test on which the certificate is based or if he considers that a racing vehicle has been modified to the extent that the certificate is no longer representative of noise emission from the vehicle.
3. If a racing vehicle at the speedway emits a level of noise that is conspicuously louder than that of the other racing vehicles in the same class at the meeting, the steward may require that vehicle to immediately cease racing, and may prevent that vehicle from further racing at the speedway until that vehicle's noise level has been shown to comply with the noise limit.

### **5.5 Review of racing activities in response to noise complaint**

If complaints are made during a racing activity the occupier will review racing activities to reduce noise where practicable for the remainder of that event.

### **5.6 Written instruction to members**

The club management committee shall provide all club members with a written instruction explaining the noise issues, the member's responsibility to maintain the noise limitation requirements.

## **6. NOTICE OF RACING ACTIVITIES [regulation 16AA(7)(e)]**

Notice of the program for racing activities for a season is to be published and distributed to members of the public as follows:

1. The notice is to be published in the '*Name of Local Community Newspaper*', showing proposed dates of racing activities (where known) for the coming season and the telephone number for noise complaints.
2. In addition to (1), the notice is to be delivered to the address of each noise sensitive premises at locations within 1km of the venue.
3. The notice is to be published and delivered during September of the year in which the season starts.
4. A change to the racing program is to be published in the '*Name of Local Community Newspaper*' and a notice provided in accordance with (2) above within four weeks before the changed meeting is to occur.
5. Notice of a special event approved by the CEO is to be given in accordance with the conditions of the approval.

## **7. COMPLAINT RESPONSE PROCEDURE [regulation 16AA(7)(g)]**

1. A designated telephone line will be manned during racing activities for the receipt of noise complaints.
2. A complaint received will be recorded on the noise complaint form.
3. All complaints will be treated with due consideration and investigated and responded to as appropriate.
4. The occupier will as far as practicable provide advice to the complainant within 48 hours as to the outcomes of the investigation and where appropriate, any proposed modifications to operations.
5. The results of complaint investigations, details of measures taken or considered to reduce noise emissions under Measure 5.5 and an outline of the responses given to the complainant shall be recorded on the noise complaint form.
6. Completed noise complaint forms will be retained at the speedway for the period of the approval and made available to the CEO on request.

## 8. RECORDS

### 8.1 Record of vehicle tests

The occupier is to retain records of all tests of race vehicles under Measure 5.3 for a period of two years.

### 8.2 Record of loud racing vehicles

The occupier is to make a record of all racing vehicles that have been required to cease racing by the steward under Measure 5.4 (Item 3) and retain that record for 2 years in a form that shows:

- 1) details of the racing vehicle required to cease racing;
- 2) the racing vehicle's owner;
- 3) the date and time at which the request to cease racing occurred;
- 4) the action taken by the driver of the racing vehicle following the request; and
- 5) the action taken by the owner of the racing vehicle to remedy the excessive noise emissions.

### 8.3 Records to be forwarded on request

If requested to do so in writing by the CEO, the occupier is to forward a copy of all or any of the records made under Measure 8.2 within 21 days of the request.

## 9. RESPONSIBILITIES [regulation 16AA(f)]

<b>Club committee:</b>	Appointment of speedway manager Development of program for scheduled race meetings
<b>Speedway manager:</b>	Implementation of the NMP Designation and training of stewards Control of public address system
<b>Steward:</b>	Scrutiny of racing vehicles