

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: VENUESLIVE MANAGEMENT SERVICES (WA) PTY LTD

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENOR)
COMMISSIONER OF POLICE (INTERVENOR)

PREMISES: OPTUS STADIUM

PREMISES ADDRESS: VICTORIA PARK DRIVE, BURSWOOD

APPLICATION ID: A000238429

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A TAVERN
RESTRICTED LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 21 NOVEMBER 2017

Introduction

- 1 This is an application by Venueslive Management Services (WA) Pty Ltd (the applicant) for the conditional grant of a tavern restricted licence for premises to be known as Optus Stadium and located at Victoria Park Drive, Burswood. The application is made pursuant to ss 41, 62 and 68 of the *Liquor Control Act 1988* (the Act).
- 2 Pursuant to s 69 of the Act, the Chief Health Officer (CHO) and the Commissioner of Police (the Commissioner) lodged notices of intervention. The purpose of each intervention was to highlight the risks associated with the operation of a large venue of this nature and how those risks could be mitigated.
- 3 The application will be determined on the written submissions of the parties, as permitted under ss 13 and 16 of the Act. Further, this decision has been prepared, and should be read, in the context of a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹

Legislative and legal framework

- 4 In determining this application, I have been guided by the following legal principles.
- 5 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.² An applicant must therefore adduce sufficient evidence to discharge this burden.

¹ Refer s 16(7) of the Act.

² Refer s 38(2) of the Act.

- 6 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act.³
- 7 An intervenor carries no onus to establish their assertions of fact or opinion.⁴
- 8 The factual matters which I am bound to consider when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5.⁵
- 9 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 10 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 11 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.⁶
- 12 In the conduct of proceedings under the Act, the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality, is not bound by the rules of evidence and makes its determination on the balance of probabilities.⁷
- 13 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁸ However, it is a matter for the

³ ***Water Conservation and Irrigation Commission (NSW) v Browning*** (1947) 74 CLR 492; ***O'Sullivan v Farrer*** (1989) 168 CLR 210; ***Palace Securities Pty Ltd v Director of Liquor Licensing*** [1992] 7WAR 241; and ***Re Minister for Resources: ex parte Cazaly Iron Pty Ltd*** (2007) WASCA 175.

⁴ ***Re Gull Liquor*** (1999) 20 SR (WA) 321.

⁵ ***Woolworths v Director of Liquor Licensing*** [2013] WASCA 227.

⁶ ***Woolworths supra***.

⁷ Refer s 16 of the Act

⁸ ***Executive Director of Health v Lily Creek International Pty Ltd & Ors*** [2000] WASCA 258).

licensing authority to decide what weight to give to the competing interests and other relevant considerations.⁹

- 14 Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.

Determination

- 15 The applicant lodged a detailed Public Interest Assessment (PIA) in support of its application. I have read the applicant's PIA and it is not necessary to refer to that evidence in detail, other than to make the following observations from that material:

- the Stadium will be a state of the art, multi-purpose venue that will be able to host a range of sporting and entertainment events, together with providing general hospitality and function facilities. It will introduce a new level of experience in sports viewing and entertainment to Perth, and Western Australia. Once completed, it will be the largest sporting and entertainment venue in WA and the third largest international sporting venue in Australia;
- featuring innovative design, the latest technology and a level of functionality, services, finishes and fit-out equivalent to the world's best practice, the Stadium will help foster and enhance Perth's reputation as a world class destination;
- located on the Burswood Peninsula, the Stadium is a landmark development which will act as a gateway to the City of Perth; and
- the new Stadium represents a significant investment on behalf of the State.

- 16 In my view, the applicant's evidence clearly establishes that the grant of the application will cater to the requirements of consumers for liquor and related services in accordance with object 5(1)(c) of the Act and will also facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers (object 5(2)(a)). The grant of the application will also promote the tourism industry in the State.

- 17 I therefore find that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest.

- 18 Consequently, a tavern restricted licence is conditionally granted to the applicant subject to the following:

- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the *Local Government Act 1995*, *Health (Miscellaneous Provisions) Act 1911* and any written law relating to the sewerage and drainage of these premises;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 6 June 2017;
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing

⁹ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

- being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
 - (f) the applicant seeking confirmation of the grant on or before 21 November 2018 (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.
- 19 The next issue to determine is the trading conditions for the licence, which will contribute to ensuring the licensed premises is well managed in accordance with the Act and public expectations. Object 5(1)(b) of the Act is directed towards the minimisation of alcohol-related harm in the community, however it should be observed that this is not about preventing harm absolutely.¹⁰ Nonetheless, it was submitted by the intervenors that appropriate trading conditions are an important harm minimisation consideration.
- 20 The applicant submitted that it will adopt a risk based approach to events (and functions) to be conducted at the Stadium. The applicant will undertake an Event Specific Risk Assessment which will incorporate a review of factors such as the nature of the event, the patron demographic, their behaviour profile and other relevant factors. An Event Alcohol Management Plan (EAMP) will then be prepared and provided to the WA Police for consultation purposes. The EAMP will outline how the sale and supply of liquor will be managed for each event and will include details such as opening and closing times for each area, cup limits to apply, the types of liquor products to be available, staffing and security requirements and any other relevant information. The applicant's proposed approach to the provision of alcohol at Optus Stadium is based on its (via a related entity) proven and demonstrated track record of operating ANZ Stadium in Sydney, a licensed premise similar in nature and magnitude to Optus Stadium. If the applicant and the Police cannot agree on the EAMP, the matter will be referred to the Director of Liquor Licensing for determination.
- 21 In this regard, and as part of this risk based approach, the applicant has indicated that it intends to only provide low strength liquor (3.5% ethanol or less) within the general admission area of the venue for most sporting events and liquor will only be available 90 minutes before the commencement of an event until 60 minutes after the event. In other areas of the facility or during such occasions when full strength liquor is available, appropriate management strategies and harm minimisation initiatives, reflected in an EAMP, will be put in place to monitor patron behaviour and levels of intoxication, similar to what has been adopted at ANZ Stadium.
- 22 The new Stadium will be a multi-faceted facility providing food and beverage options throughout the day whilst also catering to large sporting events and concerts as well as large and small functions. While I accept that the licence for the venue needs to be suitably flexible to maximise the potential of the venue as a major facility in the State and cater to public requirements, this must be balanced with the harm minimisation object of the Act. However, I am also mindful of the applicant's experience in managing

¹⁰ *Lily Creek* supra

ANZ Stadium in Sydney and its comprehensive risk based approach to the management of the venue.

- 23 Therefore, having weighed and balanced the submissions of the parties, and other relevant factors, the licence will be subject to the following trading conditions:

Trading hours

The permitted trading hours are those prescribed in s 98(1) of the Act for a hotel licence.

Trading conditions - general

- The licensee is authorised to sell and supply liquor in accordance with the provisions of s 41 of the Act as it relates to a tavern restricted licence.
- The sale of packaged liquor for consumption off the premises is prohibited.
- Advertising of liquor products on the exterior façade of the licensed premises or within the immediate vicinity of the licensed premises (such as A frames, billboards etc) is not permitted.
- Liquor sold or supplied at the licensed premises must not be offered, promoted or advertised in a manner that will encourage irresponsible drinking, including cheap or discounted liquor.
- The licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to, 'laybacks', 'jelly shots', 'test tubes', 'shooters' or any other shooter style drinks.
- The sale of liquor in jugs is prohibited.
- The restaurant areas of the premises, as identified on the approved plans, must be set up with tables or fixed structures used as tables and chairs, except when the area is used for a prearranged private function.
- Drink options that contain low alcohol liquor and non-alcoholic drinks (including free water) must be available during all trading hours.
- Unless otherwise provided for in these conditions, all liquor must be served by staff of the licensee in unsealed containers.

Food

At any time when liquor is sold or supplied at the licensed premises, food must be available.

Alcohol free areas

On an Event Day, the licensee is required to provide dedicated alcohol-free area/s in accordance with the Event Alcohol Management Plan. Alcohol-free area/s must be clearly identifiable by signage.

Security requirements

Crowd controllers must be provided on an Event Day and for a Non-event Day Major Function in accordance with the Event Alcohol Management Plan.

Sealed containers

Liquor may be sold and supplied to customers in sealed containers for self-service and consumption on the licensed premises in function rooms, private suites and outdoor corporate reserve areas provided that:

- no more than two (2) drinks per person (e.g. two (2) stubbies of beer or pre-mixed spirit per person) and two (2) bottles of wine in an esky or in a “banquet bowl” at any one time.

Juveniles

Pursuant to s 120(1)(e) of the Act, unaccompanied juveniles are permitted to enter and remain on the licensed premises on Event Days.

CCTV

A CCTV system in compliance with Director of Liquor Licensing’s policy to be installed and operating from commencement of trade until 1 hour after trading ceases.

Cameras to be in place and operational at all times covering internal access/egress of each entrance and exit of the licensed premises, as well as floor and bar areas;

- these cameras must allow clear identification of patrons;
- the system must comply with Director's Policy relating to CCTV; and
- images recorded via CCTV system must be retained for 28 days and must be made available for viewing or removal by the police or other persons authorised by the Director.

The recorded vision when viewed or exported for removal must include:

- time/date stamp;
- camera location;
- camera identifier; and
- watermarking or method of verifying the original image for authenticity ensuring tamper prevention.

Definitions

“Event Alcohol Management Plan” means an alcohol management plan developed by the licensee for each:

1. Event Day; and
2. Non-event Day Major Function.

“Event Day” means a day on which the venue will be utilised for the purposes of a major sporting event, concert, performance or other event.

“Non-event day” means any day, other than an Event Day, when part of the venue is open for trade.

“Premium Product Area” means an area of the venue designated as such in the Event Alcohol Management Plan for the Event Day, function or event (as appropriate).

“General Admission Food and Beverage Retail Outlets” means any retail outlet or service area that will sell or supply liquor to General Admission ticketholders.

“Non-event Day Major Function” means an individual function or event on a Non-event Day where there are over 1000 people attending and alcohol will be served and supplied at such function or event for greater than 2 hours.

Risk assessment

The licensee must prepare an Event Alcohol Management Plan for each Event Day and Non-event Day Major Function.

Prior notification

No later than thirty (30) days prior to an Event Day or a Non-event Day Major Function the licensee must provide a draft Event Alcohol Management Plan to the Superintendent Licensing Enforcement Division of the WA Police. If the applicant and the Police cannot agree on the EAMP, the matter will be referred to the Director of Liquor Licensing for determination. No later than two (2) days prior to the Event Day or Non-event Day Major Function the Licensee must provide the final Event Alcohol Management Plan to the Superintendent Licensing Enforcement Division.

The Event Alcohol Management Plan is to include such information as:

1. An event alcohol risk assessment;
2. The types and strength of product offerings in General Admission and Premium Product Areas;
3. Staff numbers, including crowd controllers and approved managers;
4. Set up of any temporary bars;
5. Areas deemed to be "Premium Product Areas" for the day;
6. Starting and completion times; and
7. Contact details for operations during the event.

Service limits/restrictions

At all General Admission Food and Beverage Retail Outlets on Event Days, the following is to apply:

1. no more than four alcoholic (4) drinks may be purchased in any single transaction; and
2. liquor is not permitted to be dispensed into glassware or by way of cans, stubbies or like containers.

Entertainment condition

- (a) A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not:
- (i) be immodestly or indecently dressed on the licensed premises, and/or
 - (ii) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (b) The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from:
- (i) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any classified "R 18+", "X 18+" or "RC" classified publication, film or computer game or "Category 1 – Restricted" or "Category 2 – Restricted" publication, extract therefrom; or
 - (ii) causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises; or
 - (iii) causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
- (c) In this condition "licensed premises" includes any premises, place or area:
- (i) which is appurtenant to the licensed premises; or
 - (ii) in respect of which an extended trading permit granted to the licensee is for the time being in force,

but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.

Dress standards – Outlaw Motorcycle Gangs

The following dress standard applies during the permitted trading hours:

- a) Jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:
- (i) Coffin Cheaters;
 - (ii) Club Deroes;
 - (iii) Gods Garbage;

- (iv) Gypsy Jokers;
- (v) Outlaws;
- (vi) Finks;
- (vii) Rebels;
- (viii) Comancheroes;
- (ix) Hell's Angels;
- (x) Rock Machine;
- (xi) Mongols;
- (xii) Lone Wolf; and
- (xiii) Bandidos.

A notice is to be displayed at all entrances to the licensed areas reflecting this condition.

Approval under s 104

Pursuant to s 104 of the Act, profit sharing with the following entities is approved in accordance with the various applications lodged accompanying the application for the tavern restricted licence:

- a) West Coast Eagles Football Club;
- b) Fremantle Football Club;
- c) Cricket Australia;
- d) Western Australian Cricket Association (Inc);
- e) VenuesWest; and
- f) Event promoters.

Compliance with harm minimisation policy

The licensee is to have a House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

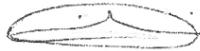
General

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.

- 24 The applicant also lodged an application for the grant of an extended trading permit, under s 60(4)(g) of the Act, to authorise trading on Monday to Saturday from 12 midnight to 2 a.m. the following morning and on Sundays from 8 a.m. to 10 a.m.

- 25 I am satisfied that the grant of this application is in the public interest and a permit will be issued subject to the following conditions:
- The sale and supply of liquor is only authorised to persons attending a private pre-arranged function or event at the premises.
 - The permit relates to the whole of the licenced premises.
 - No trading is permitted on Good Friday, Christmas Day or before 12 noon on ANZAC Day.
 - The permit will remain in force for a period of 5 years.
- 26 A review of the operation of the venue and its trading conditions will be conducted in late 2018, or sooner if there are problems with the management of the venue.
- 27 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 28 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING