

IN THE LIQUOR LICENSING DIVISION OF WESTERN AUSTRALIA

IN THE MATTER OF AN APPLICATION BY RIVERBRIDGE HOSPITALITY PTY LTD FOR VARIATION OF LICENCE CONDITION FOR PREMISES KNOWN AS 'THE CAMFIELD BAR'

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## APPLICANT'S SUBMISSIONS

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### Terms used

1. In these submissions:
  - (a) **Act** means the Liquor Control Act 1988;
  - (b) **Applicant** means Riverbridge Hospitality Pty Ltd;
  - (c) **Application** means the present application for variation of licence condition made pursuant to s 64(1a)(b) of the Act;
  - (d) **Licence** means tavern licence number 602208710516 attached to the Premises in the name of the Applicant
  - (e) **Premises** means the land and buildings at Roger MacKay Drive Burswood, WA which are subject to the Licence;
  - (f) **RSA** means responsible service of alcohol;
  - (g) **Stadium** means Optus Stadium, Burswood; and
  - (h) **Venue** means the business operating under the Licence trading under the name 'The Camfield Bar'.

### Background

2. The Venue is the largest tavern in the State and is one of WA's most iconic licensed venues. It is located adjacent to the Stadium, Perth's major sporting facility.

3. The Stadium and surrounding precinct are managed on behalf of the State government by Venues West which effectively acts as the relevant local government authority.
4. From the outset of the planning process of the Stadium precinct, the view of the State government and Venues West has been that the licensed and unlicensed hospitality facilities situated in the Stadium itself would not be sufficient to adequately cater for the hospitality needs of persons attending events at the Stadium and that it was thus essential to establish a large sized licensed venue adjacent to the Stadium to assist in catering for those needs. The former Burswood Golf Club was identified as the appropriate site for such a venue.
5. Government policy documents relating to the Stadium Precinct expressed clear aims and objectives for this proposed licensed venue and its place in assisting in the development of the precinct as a sporting, hospitality and leisure hub independent of the operation of the Stadium.
6. An express aim of the State government in developing the Stadium precinct was the regular activation of the Venue both on days that a sporting or entertainment event was held at the Stadium (**event days**) and also independent of the operation of the Stadium when no event is held at the Stadium (**non-event days**), to ensure that the Venue and the Precinct was in use and activated on a regular basis all year round.
7. The Applicant, secured a lease of the Premises, applied for and was granted the Licence and opened the Venue for trade on 22 February 2018. To date it remains the only licensed venue in the Stadium precinct other than the Stadium itself.
8. The size of the Venue has always been an important feature from the perspective of Venues West and the State government because its considerable capacity plays a key role not only in servicing the hospitality requirements of the crowds attending the Stadium precinct on major event days but also assisting in the orderly ingress and egress of crowds attending the Stadium for major sporting events.
9. The Venue has been consistently popular since it opened:
  - (a) On event days up to 70,000 patrons use the Stadium and up to 14,000 people use the pedestrian bridge adjacent to the Premises. On such days, the Venue complements and enhances the operation of the Stadium and provides essential ancillary hospitality services to members of the public attending the Stadium including bar, dining, function and entertainment services, before, during and after events held at the Stadium.
  - (b) On non-event days the Venue has proven to be a “destination” hospitality venue, with members of the public attracted by its unique mix of features, including the following:
    - (i) Scenic location in parkland overlooking the Swan River;

- (ii) Proximity to the Perth central business district;
- (iii) Convenient accessibility by public transport;
- (iv) High standard of fit out of the Premises;
- (v) Comprehensive range of hospitality facilities including a working micro-brewery located on the Premises and a wide range of large and small spaces available for the exclusive use of private and corporate function customers;
- (vi) High standards of customer service;
- (vii) High quality of licensed beverage services;
- (viii) High quality dining services, with ample seating throughout the Venue and food available throughout the days and evenings; and
- (ix) Family friendly venue welcoming family groups with young children.

10. The trade of the Venue since it opened has demonstrated that:

- (a) it is a consistently popular. It routinely operates at its maximum capacity both on event days and also on many non-event days;
- (b) it attracts a wide range of consumers including residents of Perth and visitors to Perth from intrastate, interstate and international locations;
- (c) it is consistently managed in a professional, responsible and carefully controlled manner, with staff, approved managers and licensed control officers providing a high level of supervision and control of patrons;
- (d) it operates with a strong emphasis on RSA, with risk mitigation measures in place at all times, with a significant emphasis on dining services and with ample seating provided for patrons throughout the Premises;
- (e) it is not associated with risky alcohol consumption or poor patron behaviour. Rather, it attracts a well behaved, low risk crowd; and
- (f) it operates without causing undue disturbance or other problems in the surrounding neighbourhood, nor causing any lessening of public amenity.

11. On non-event days, the Venue is a “destination” hospitality venue in its own right due its unique location, setting and the range and quality of liquor and related services provided. It thus assists in the activation of the Precinct all year round in accordance with the aims of the State Government.

12. The Applicant has met the expectations of Venues West and the State government in creating and maintaining a large, high quality, multi-faceted, hospitality venue in the Precinct. This has been essential in achieving both the provision of essential support

services to Stadium patrons on event days and to successfully activate the Precinct on non-event days.

### **RSA policies & procedures**

13. The Applicant is strongly committed to ensuring that alcohol is served and consumed in a responsible and safe manner at the Venue at all times.
14. In-house staff training emphasises the importance of RSA principles:
  - (a) Bar staff are instructed to encourage responsible consumption, to pro-actively discourage excessive or rapid consumption, to identify key signs of drunkenness and to implement effective measures to deal with patrons exhibiting such signs. This applies to all 'front of house' staff including bar staff, wait staff and glass collection staff.
  - (b) Bar staff are trained to actively encourage patrons to combine alcohol consumption with food and to have 'breaks' between consumption of alcoholic drinks by consuming water and/or non-alcoholic beverages;
  - (c) Regular refresher training is conducted for all approved managers and general staff with a strong emphasis on RSA issues; and
  - (d) All front of house staff including glass collection staff are required to hold a valid Responsible Service of Alcohol Certificate.
15. Specific RSA policies and procedures are maintained at the Venue including the following:
  - (a) Bar, wait, glass collection and security staff conduct ongoing assessment of the state of sobriety of patrons in all parts of the Venue during all trading hours and to report any signs of drunkenness immediately to the senior manager on duty.
  - (b) Managers ensure that an 'intox sweep' of the entire venue is conducted at regular intervals to identify any patrons exhibiting possible signs of drunkenness and to implement appropriate action in accordance with documented RSA practice for the Venue.
  - (c) One approved manager is appointed as "RSA officer" at all times.
  - (d) drinks containing in excess of 50ml of spirits are not served, with the exception of genuine cocktails;
  - (e) Drinks are not served, titled or promoted in a manner that would tend to encourage the rapid or excessive consumption of alcohol, specifically shots, shooters, laybacks, test tubes or jelly shots;

- (f) A wide range of non-alcoholic and mid-strength drinks is available.

### **Safety & Security**

- 16. The Applicant is committed maintaining an environment for its patrons that is lively and enjoyable whilst also being safe, well controlled and family friendly.
- 17. The premises feature a state-of-the-art CCTV system with coverage throughout the internal and external areas of the Venue.
- 18. The Applicant maintains close consultation with key stakeholders regarding safety and security issues for Event Days, including Venues West, LEU police and Stadium security. This co-ordinated approach has been successful in maintaining effective crowd management and safety on event days.
- 19. Despite its significant size and capacity, the risk profile of the Venue is lessened considerably through a combination of the following factors:
  - (a) Experienced and responsible operators;
  - (b) High quality fit out;
  - (c) High standard of staff training;
  - (d) Comprehensive management policies and procedures;
  - (e) Comprehensive RSA policies and procedures, commitment to dining services and provision of substantial seating;
  - (f) Dress code enforcement;
  - (g) Significant security presence during peak trading periods; and
  - (h) Comprehensive CCTV coverage.
- 20. A significant security presence is maintained with licensed crowd controllers engaged in compliance with the relevant condition attached to the Licence.

### **The Application**

- 21. From the outset the Applicant has been transparent in its intentions regarding maximum capacity, namely, to initially operate the Venue under a voluntarily imposed limit on maximum capacity to allow for the assessment of the operation of the Venue and then subsequently assess the merit of operating with an increased maximum capacity and to make the necessary applications as appropriate.

22. In its original application for the grant of the Licence, the Applicant dealt with the issue of maximum accommodation in Public Interest Assessment submissions filed in support as follows:

*The Applicant's intention is to apply a responsible and cautious approach in its operation of the Venue, to allow for assessment of the operation of the Venue in different trading circumstances over an initial "settling in" period.*

*The Applicant is also cognizant of the requirement by Venues West that the capacity of the Venue is sufficient to allow it to play an effective role in servicing the needs of persons attending the Stadium on Event Days.*

*Following consultation with key stakeholders, namely Venues West and the LEU police, the Applicant has resolved to commence trade operating under a voluntary maximum capacity of 2,500 persons, a figure that is significantly less than that permitted under the Building Code.*

*After the Venue has traded for a reasonable period of time, the Applicant may need to review the issue of capacity numbers following discussions with key stakeholders and seek an adjustment of maximum capacity, as may be appropriate to ensure the Venue can adequately service the needs of persons attending the Stadium on Event Days.*

23. In accordance with the Applicant's submissions, the Licence was originally granted subject to a condition limiting the total maximum accommodation of the Premises to 2,500 persons.
24. The present Application has been motivated by the fact that the Venue regularly attracts considerably more persons than it is able to lawfully accommodate. On a regular basis over the period that the Venue has traded since opening, the Venue reaches its maximum accommodation of 2,500 persons, leaving hundreds of persons waiting in queues outside the Venue seeking admission. This occurs on the great majority of event days and regularly on non-event days that fall on a weekend or public holiday.
25. The Applicant's compliance with Licence condition 5 leads to management and security staff having to routinely deal with complaints from members of the public, including:
- (a) persons who are unable to gain entry to the Venue and who unwillingly leave the Stadium precinct;
  - (b) persons who gain entry to the Venue only after waiting in a queue outside for an extended period of time, sometime times in inclement weather;

- (c) patrons inside the Venue who have been separated from their friends and/or family members who are outside and unable to gain entry to the Venue quickly or at all; and
  - (d) tourists visiting from regional WA, interstate or overseas who have high expectations and limited time to enjoy WA hospitality.
26. The frustration and disappointment expressed by patrons and potential patrons on such occasions is heightened by the fact that it is plainly apparent to them that the Premises are not crowded and could comfortably accommodate many more persons than it does.
27. The Applicant has been able to mitigate these problems for special events by obtaining approval for “one off” increases in maximum capacity. Past “one off” events for which approval was granted by the licensing authority for the Venue to operate at a maximum capacity in excess of 2,500 persons are as follows:
- (a) 2 March 2018: One off AVC (Ed Sheeren concert): Max cap of permanent licensed area approved of 3,000 persons. **Total venue capacity; 3,000 persons.**
  - (b) 3 March 2018: AVC (Ed Sheeren concert): Max cap of permanent licensed area approved of 3,000 persons. **Total venue capacity; 3,000 persons.**
  - (c) 8 September 2018: ETP - Area (AFL Final): Maximum capacity of extended area of 400 persons approved. **Total venue capacity; 2,900 persons.**
  - (d) 22 September 2018: ETP - Area (AFL Final): Maximum capacity of permanent and extended areas (combined) of 3,000 persons approved. **Total venue capacity; 3,000 persons.**
  - (e) 23 September 2018: ETP - Area (AFL Final): Maximum capacity of permanent and extended areas (combined) of 3,000 persons approved. **Total venue capacity; 3,000 persons.**
  - (f) 19 October 2018: AVC (Taylor Swift concert): Max cap of permanent licensed area approved of 3,000 persons. **Total venue capacity; 3,000 persons.**
  - (g) 20 October 2018: AVC (Taylor Swift concert): Max cap of permanent licensed area approved of 3,000 persons. **Total venue capacity; 3,000 persons.**
  - (h) 1 September 2019: ETP - Area (Father’s Day Festival): Maximum capacity of extended area of 500 persons approved. **Total venue capacity; 3,000 persons.**
  - (i) 19 October 2019: ETP - Area (Seasons Opening): Maximum capacity of permanent and extended areas (combined) of 5,000 persons approved. **Total venue capacity; 5,000 persons.**

- (j) 5 November 2019: ETP area (Melbourne Cup): Approved with max cap 850 persons; **Total venue capacity; 3,350 persons.**
- (k) 16 November 2019: AVC (Raquet Club music event): Max cap of permanent licensed area approved of 3,000 persons. **Total venue capacity; 3,000 persons.**
- (l) 20 March 2020: ETP – Area (West Coast Chicken festival): Maximum capacity of extended area of 500 persons approved. **Total venue capacity; 3,000 persons.**
- (m) 3 October 2020: ETP – Area (Chandon Pique-Nique) Maximum capacity of extended area of 80 persons approved. **Total venue capacity; 2,580 persons.**
- (n) 4 October 2020: ETP – Area (Chandon Pique-Nique) Maximum capacity of extended area of 80 persons approved. **Total venue capacity; 2,580 persons.**
- (o) 3 November 2020: ETP - Area (Melbourne Cup): Maximum capacity of extended area of 500 persons approved. **Total venue capacity; 3,000 persons.**
- (p) 10 September 2021: AVC (AFL Final): Max cap of permanent licensed area approved of 3,250 persons. **Total venue capacity; 3,250 persons.**
- (q) 24 September 2021: AVC (AFL Final): Max cap of permanent licensed area approved of 3,250 persons. **Total venue capacity; 3,250 persons.**
- (r) 25 September 2021: AVC (AFL Grand Final): Max cap of permanent licensed area approved of 3,250 persons. **Total venue capacity; 3,250 persons.**
- (s) 2 November 2021: ETP - Area (Melbourne Cup): Maximum capacity of extended area, 3,000 persons;
- (t) 26 June 2022: AVC (State of Origin): Max cap of permanent licensed area approved of 3,500 persons. **Total venue capacity; 3,500 persons.**
- (u) 2 July 2022: AVC (International Rugby): Max cap of permanent licensed area approved of 3,500 persons. **Total venue capacity; 3,500 persons.**
- (v) 22 July 2022: AVC (Crystal Palace v Leeds): Max cap of permanent licensed area approved of 3,500 persons. **Total venue capacity; 3,500 persons.**
- (w) 23 July 2022: AVC (Manchester United v Aston Villa): Max cap of permanent licensed area approved of 3,500 persons. **Total venue capacity; 3,500 persons.**
- (x) 1 November 2022: ETP area (Melbourne Cup): Maximum capacity of extended area, 3,000 persons: **Total venue capacity; 3,000 persons.**



- (y) 1 April 2023: ETP – Area (Melbourne Cup): Maximum capacity of extended area of 1,000 persons approved. **Total venue capacity; 4,000 persons.**
  - (z) 7 November 2023: ETP – Area (Melbourne Cup): Maximum capacity of extended area of 1,740 persons approved. **Total venue capacity; 4,240 persons.**
  - (aa) 8 December 2023: ETP – Area (Corporate Xmas Party): Maximum capacity of extended area of 800 persons approved. **Total venue capacity; 3,300 persons.**
  - (bb) 6 April 2024: ETP – Area (Seasons): Maximum capacity of permanent and extended areas (combined) of 3,000 persons approved. **Total venue capacity; 3,000 persons.**
28. It can be seen that the Venue has operated whilst accommodating 3,000 – 4,000 patrons on many occasions. In the case of all of the events referred to above:
- (a) The Venue operated at or close to the increased maximum capacity that had been approved;
  - (b) The increased total number of patrons was successfully managed and supervised by management and security staff; and
  - (c) The events did not cause undue disturbance to persons living and working in the neighbourhood and attracted no complaint, warning or prosecution from any key stakeholders.
29. The Applicant has clearly demonstrated its ability to operate the Venue in a controlled and responsible manner, whether operating under the regular maximum capacity of 2,500 persons or for one off events with an increased maximum capacity of 3,000 persons or more.
30. It is apparent that Licence condition 5 as currently framed, imposes a restriction on the operation of the Venue which provides no public benefit, whilst preventing the Venue operating to its full potential and restricting its ability to satisfying the reasonable requirements of consumers for the liquor and related services provided.
31. The Applicant has sought and obtained the Approval of the Department of Health for the increased maximum capacity and amended accommodation certificates approving a total capacity of 3,000 persons for the Premises have been filed in support of the Application.
32. Accordingly, the Applicant now seeks variation of Licence condition 5 to allow it to lawfully accommodate a maximum of 3,000 persons on the Premises at any one time.

## Legal principles

33. Section 64, Act provides:

*Imposing, varying and cancelling conditions*

*(1) Subject to this Act, in relation to any licence, or to any permit, the licensing authority may at its discretion impose conditions —*

*(a) in addition to the conditions specifically imposed by this Act; or*

*(b) in such a manner as to make more restrictive a condition specifically imposed by this Act, and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence or permit and the circumstances in relation to which the licensing authority intends that it should operate.*

*(1a) The licensing authority may impose, vary or cancel a condition under subsection (1) —*

*(a) of its own motion; or*

*(b) on the application of the licensee; or*

*(c) at the written request of the parties to a liquor accord.*

34. There is a wide discretion for the imposition of conditions to be imposed on a licence or permit under s.64 of the Act.

35. The discretion to impose conditions must be exercised in a manner consistent with the Act. Specifically, the discretion must be in the general public interest pursuant to s.33(1) and consistent with the objects of the Act set out in s.5 of the Act.

36. The licensing authority has an absolute discretion to grant or refuse an application in the public interest, that discretion being confined only by the scope and purpose of the Act read as a whole: s.33 LCA

37. The expression “in the public interest” when used in a statute imports a discretionary value judgement. If the statute provides no positive indication of considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of ‘the public interest’ will ordinarily be confined only by the scope and purposes of the statute.

38. In determining whether it is satisfied that the granting of the application is in the public interest the licensing authority is required to take into account the factual matters relevant to the objects of the Act as set out in s.5, Act;

39. The primary objects provided for in s.5(1), Act are to:

(a) regulate the sale, supply and consumption of liquor: s.5(1)(a), Act;

- (b) minimise harm or ill health caused to people or any group of people due to the use of liquor: s.5(1)(b), Act; and
  - (c) cater for the requirements of consumers for liquor related services with regard to the development of the liquor industry, the tourist industry and other hospitality industries in the State: s.5(1)(c), Act.
40. The secondary objects provided for in s.5(2), Act are to:
- (a) 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; s.5(2)(a), Act;
  - (b) provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor: s.5(2)(d), Act; and
  - (c) provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; s.5(2)(e), Act; and
  - (d) encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community: s.5(2)(f), Act.

**Application of legal principles to the present case**

41. Grant of the Application would be consistent with all of the primary objects and several of the secondary objects of the Act.
42. Grant of the Application would “ensure the proper regulation of the sale, supply and consumption of liquor” under s.5(1)(a), Act because:
- (a) the amendment of a licence condition which is not associated with any positive benefits under the Act but that impedes the satisfaction of the reasonable requirements of consumers, is consistent with “proper regulation”; and
  - (a) the licensing authority can be confident that the business operating under the Licence, as proposed by the Application, will be operated in a professional and responsible manner.
43. Grant of the Application would be consistent with the object to “minimise harm or ill-health caused to people, or any group of people, due to the use of liquor” under s.5(1)(b), Act and “encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community” under s.5(2)(f), Act because the variation sought would be unlikely to lead to any increase in alcohol related harm or ill-health in light of the following:

- (a) The Applicant is an experienced and responsible long-term participant in the hospitality industry with a strong track record in the lawful and responsible operation of the Venue;
  - (b) The Venue is fitted out to a high standard, and features a relaxed ambiance;
  - (c) The Venue currently operates with a significant focus on dining services;
  - (d) The Venue does not cater for or attract persons that fall within a high-risk category in terms of alcohol related harm and ill-health; and
  - (e) The Applicant is strongly committed to RSA principles and practices and operates the Venue subject to a comprehensive range of harm mitigation policies and procedures.
44. Grant of the Application would “*cater for the requirements of consumers for liquor and related services with regard to the proper development of liquor industry and other related hospitality industries*” under s.5(1)(c), Act and “*facilitate the use and development of licensed facilities reflecting the diversity of the requirements of consumers in the State*” under s.5(2)(a), Act by allowing the Applicant to better meet the requirements of consumers as set out in these submissions.
45. Grant of the Application would be in the public interest because it would:
- (a) allow the Venue to better cater for the requirements of consumers;
  - (b) contribute positively to tourism by allowing the Venue to better cater for the hospitality requirements of persons visiting the Locality and thereby assist in the development of the Western Australian tourism industry;
  - (c) be unlikely to cause harm or ill-health to any persons or group of persons or any increased in antisocial or criminal behaviour;
  - (d) be unlikely to cause undue noise, disturbance, offence or inconvenience to any persons; and
  - (e) contribute positively to the amenity of the Locality.
46. In the present case, grant of the Application would not be likely to cause any significant negative outcomes. In any event, the positive aspects of the Application outweigh the risk of alcohol related harm which could potentially be caused by grant of the Application
47. For these reasons grant of the Application would be consistent with Act and in the public interest under sections 33 and 38(2) of the Act.



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