

IN THE LIQUOR LICENSING DIVISION OF WESTERN AUSTRALIA

IN THE MATTER OF AN APPLICATION BY MOONLIGHTING ENTERPRISES PTY LTD FOR A TAVERN  
RESTRICTED LICENCE AT 110 RIVERSIDE RD, EAST FREMANTLE WA 6158 FOR PREMISES TO BE  
KNOWN AS "8 KNOTS"

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**PUBLIC INTEREST ASSESSMENT SUBMISSIONS**

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Filed on behalf of: The Applicant

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## SECTION A: DETAILS OF APPLICATION

### TERMS USED

1. In these submissions, reference to:
  - a. **Act** means the Liquor Control Act 1988;
  - b. **Applicant** means Moonlighting Enterprises Pty Ltd;
  - c. **Application** means the application by the Applicant for the Licence in respect to the Premises;
  - d. **Licence** means tavern restricted licence pursuant to s.41(1)(c) of the Act;
  - e. **Locality** means the locality relevant to the Application as defined in these submissions;
  - f. **Premises** means the land and buildings at 110 Riverside Road, East Fremantle WA as depicted in plans filed in support of the Application;
  - g. **Regulations** means the Liquor Control Regulations 1989;
  - h. **RSA** means the responsible service of alcohol; and
  - i. **Venue** means the business operating under the Licence trading under the name '8 Knots'.

### Background

2. Nik Jurin is the sole director of the Applicant company and the person with the predominant management role in relation to the Application. His previous hospitality experience includes the successful ownership and/or management of several Western Australian licensed venues including the:
  - a. Federal Hotel, Fremantle over the previous 5 years; and
  - b. South Beach Hotel, South Fremantle over the previous 11 years.
3. The long term popularity and history of responsible management of those venues provides a clear insight into the high standards that will be applied at the proposed Venue in terms of premises, products and services offered and management.

### The Application

4. The Premises are located on the grounds of Aquarama Marina (**Marina**).
5. The Marina:

- a. is situated 20 minutes up-river from the Fremantle Port, a short cruise to the Indian Ocean and beyond to Rottnest Island;
  - b. was built in the 1960's, originally as a small fuel stop with limited pens and a slipway;
  - c. was re-developed in 1985 into its current size, boating 210 pens and a boat stacker rack catering to 50 vessels; and
  - d. currently offers a variety of services to clients including re-fuelling, mechanical repairs, a boats sales, public slipway, detailing & repairs and a boat course training centre.
6. For several decades a licensed restaurant has operated on the ground floor of the main Marina building however the Premises have been vacant from March 2019 to date.
7. The Applicant proposes to reactivate and improve the hospitality venue which formerly operated as a restaurant, retaining its key features while improving the services provided to the public to meet contemporary consumer demands.
8. In its essential respects, the Venue will operate in an analogous manner to the previous restaurant. The following can be noted of the proposed Venue:
- a. There will be no change to the size or maximum accommodation of the Premises.
  - b. The premises will be unchanged in all essential respects with renovations largely limited to cosmetic improvements to the interior plus an upgrade to kitchen and toilet facilities.
  - c. The licensed business operating from the Premises will continue to feature a significant focus on licensed dining services. The kitchen will be of the same size but with improved kitchen facilities. Patrons will be offered a full range of dining services for lunch and dinner seven days per week and food will be available for purchase during all trading hours until 60 minutes prior to closing.
  - d. Substantial seating at tables located throughout the entire Venue will continue to be offer to patrons facilitate and encourage dining in the Venue.
  - e. The general ambiance of the Venue will continue to be relaxed, comfortable, suitable for patrons of all types including families with children. There will be no intensive forms of entertainment or activities contrary to meeting the needs of these patrons.

9. The Applicant applies for the Licence to allow for the additional operational flexibility required to meet the expectations of contemporary consumers, namely, for patrons to be able to enjoy cocktail style (standing) private functions and events, drink at the bar before and/or after their meal and general bar services. A restaurant licence does not permit the consumption of liquor whilst standing and would thus not be capable of meeting these hospitality requirements.
10. Accordingly, the Applicant applies for the grant of the Licence subject to the restrictive trading conditions as set out in these submissions. This will allow the Venue to meet the needs of consumers whilst ensuring that it operates at all times within appropriate operating parameters.
11. In broad terms the Venue will primarily cater for persons that live in, work in and visit East Fremantle, including those that own a vessel moored at the Marina and their guests.
12. As an experienced hospitality operator, the person behind the Application is well aware of his responsibility to effectively manage and mitigate the potential risks associated with any supply of liquor. Accordingly, the Applicant has developed its proposal with the aim of ensuring that the Venue operates at all times:
  - a. as a safe and comfortable environment for patrons of all ages, including females and families;
  - b. without causing an increase in alcohol related harm and ill-health in the community;
  - c. without causing undue disturbance to persons living and working in the Locality; and
  - d. as a positive contribution to the amenity of the Locality.
13. To facilitate these intentions, the Applicant now applies for the grant of the Licence on the terms set out in these submissions.

## **PREMISES**

14. The Premises are located on the ground floor of the main building located in the Marina.
15. The Premises are currently in a tired condition and lack suitable kitchen, toilet and bar facilities. The Applicant proposes to renovate and fit out the Premises at a budget of approximately \$800,000. This will include an upgrade of toilet and kitchen facilities and in the public areas of the Venue, the installation of fixtures, fittings and furniture of a high standard to meet contemporary consumer expectations.
16. In broad terms:

- a. The Premises will comprise one multi-functional area. Two sub-areas are marked on plans as 'Main Area' and the 'Riverside', both of which will offer a full range of hospitality services as described in these submissions.
  - b. The licensed area of the Premises will be entirely internal with the exception of a small external area to cater for smokers.
  - c. A service portal for takeaway sales of non-liquor products (ice, bait, snacks etc.) will service Marina clients.
  - d. A sizable kitchen and cool room will cater for the anticipated significant demand for dining services.
17. The location of the Premises is highly suitable in light of the following features:
- a. Located on the banks of the Swan River, offering stunning views of the Marina and beyond to the waters of the river;
  - b. Located in the Marina and thus conveniently accessible to persons with vessels moored in the Marina and their guests.
  - c. Located close to residential areas of East Fremantle and surrounding suburbs.
  - d. Conveniently accessible for patrons travelling by:
    - (i) private vehicle with considerable parking available on the grounds of the Marina;
    - (ii) taxi and ride share services; and
    - (iii) bicycle with bike racks available on site.

#### **INTENDED MANNER OF OPERATION**

18. The Applicant has carefully planned all aspects of its proposal, including the following keys areas:
- a. Capacity
  - b. Trading hours
  - c. Dress code;
  - d. Juveniles;
  - e. Dining
  - f. Beverages

- g. Functions
  - h. Management, supervision & training
  - i. RSA policies & procedures
  - j. Safety and security
  - k. Entertainment;
  - l. Neighbourhood & amenity issues
  - m. Seating
19. These features have been designed to provide a range and quality of products and services that will satisfy the requirements of the relevant section of the public, deter persons in recognised 'at risk' categories and mitigate against risk of negative impacts of the operation of the Venue on the local community.

#### **Capacity**

20. The Town of East Fremantle has not yet determined the maximum capacity of the Venue however it is expected that the Premises will accommodate a maximum of approximately 350 persons at any one time.

#### **Trading hours**

21. The Venue will operate under the regular permitted trading hours prescribed by the Act for this category of liquor licence, pursuant to s.98 of the Act.

#### **Dress code**

22. The Applicant is aware that adherence to a carefully devised dress code can be an effective way to manage licensed premises and patron profile.
23. The dress code for the Venue will be "casual". This will be interpreted strictly by Venue management to ensure that the Venue is attended by the desired demographic and to minimise persons in a 'high risk' category from seeking to attend the Venue.

#### **Juveniles**

24. The Venue has been specifically developed to appeal and cater to a broad cross-section of the community including family groups with children.
25. It is expected that demand from family groups will be greatest during lunch and dinner meal service periods, particularly on weekends and Public Holidays.
26. Unaccompanied juveniles will not be permitted in the Venue other than in circumstances permitted by the Act.

## Dining

27. Dining services will be a significant focus of the business operating under the Licence:
  - a. Plans of the Premises filed in support of the Application show a sizable commercial kitchen which will be fully equipped and upgraded to meet the significant anticipated demand for dining services.
  - b. Lunch and evening meals will be available on all days of trade.
  - c. Patrons will be able to enjoy food in all parts of the Premises, with a mix of traditional dining environments and spaces to enjoy food in a more casual style.
28. The Applicant proposes to provide patrons of the Venue with food that is accessible, value driven and high quality. These features are seen as a key aspect of the hospitality 'offer' at the Venue. Dining menus developed for the Venue will be regularly refreshed and updated, featuring dishes based on fresh, seasonal produce, sourced locally wherever possible.
29. The Venue's team of kitchen staff will comprise a total of 13 persons comprising 8 full time employees (head chef, sous chefs, chefs de partie and apprentices) and 5 casual staff (kitchen hands, dishwashers etc.).
30. As the Venue will be "family friendly", a children's menu will be offered to cater for the expected high demand during meal service periods from family groups with children.
31. Consistent with the focus on dining services, the Applicant will ensure that a substantial number of seats will be provided in the relevant parts of the Premises for the comfort of diners (see below).
32. **Annexed and marked A1** is a copy of an indicative dining and beverage menu for the Venue.

## Beverages

33. The Applicant intends to maintain beverage services with an emphasis on quality products, excellent service and stylish presentation.
34. Liquor products of a consistently high quality will be offered.
35. The Applicant will ensure that a range of mid strength, low strength and non-alcoholic products are available to patrons at all times.
36. Drink products that would tend to encourage excessive or rapid consumption of alcohol will not be offered or promoted at the Venue.

37. The Venue's wine list will comprise a wide range of varieties and regions covering Western Australian, Australian and international wines. Wines will be in the mid to upper premium range, priced accordingly.
38. A range of premium and craft beers sourced from throughout Australia and the world will be offered to patrons, including products from recognised local brewers.
39. High quality spirit products will base the Venue's cocktail list, offering a selection of classic and bespoke cocktails.
40. The indicative beverage menu for the Venue is attached and marked A1.

### **Functions**

41. The combination of the unique riverside location of the Premises and the high standard of dining and beverage products and services to be provided will make the Venue a highly attractive option for a wide range of private functions including:
  - a. weddings;
  - b. smaller private functions (such as birthdays, anniversaries etc); and
  - c. corporate functions and events.
42. Subject to demand, parts or all of the Venue will be offered to function customers for their exclusive use for the duration of the function in question.
43. As part of internal risk mitigation policies, the Applicant will generally not accept bookings for functions associated with irresponsible alcohol consumption such as 18<sup>th</sup> birthday celebrations, does and buck's parties or party bus groups. Such function requests will be assessed by management on a case by case basis.

### **Management, supervision & training**

44. Operation of the Venue will be benefited by the 'hands on' involvement of the director of the Applicant company, Nik Jurin, who has attained considerable experience in the WA hospitality industry. He will supervise and control of all aspects of the business operating under the Licence.
45. Staff and approved managers will be subject to induction and ongoing in-house training to ensure the highest standards of service and a comprehensive knowledge of all legal requirements under the Act. Special emphasis will be placed upon responsible service principles (see below).
46. As an experienced operator, the Applicant is well aware of the risks and responsibilities associated with the supply of liquor. Accordingly, this proposal has been developed with the specific aim of ensuring that the Venue operates as a

positive addition to the Locality's lifestyle, leisure and tourism attractions and with a broad range of effective mitigation measures in place at all times.

47. The Applicant's previous track record in the hospitality industry provides a high degree of confidence in this regard and demonstrates a commitment to the provision of high-quality liquor and related services, combined with professional standard of management control and an emphasis on the responsible service of alcohol.
48. All management and staff will be expected to be familiar with the Venue Management Plan, a copy of which is **attached and marked A2**.

#### **RSA policies & procedures**

49. The Applicant is strongly committed to adhering to RSA principles and proposes to implement and maintain a comprehensive range harm minimisation measures.
50. The Applicant has filed a copy of the House Management Policy, Code of Conduct and Management Plan for the Venue in support of the Application. Further focus on RSA can be seen in the Venue Management Plan (attachment A2).
51. The Applicant does not intend to promote drinks that would tend to encourage the rapid or excessive consumption of alcohol.
52. The Applicant is strongly committed to staff training with a focus on adherence to RSA principles:
  - a. Induction training will include a strong emphasis on encouraging responsible consumption, pro-actively discouraging excessive or rapid consumption and effectively identifying signs of drunkenness and implementing effective measures to deal with patrons exhibiting such signs. This will apply to all 'front of house' staff including bar, wait and glass collection staff.
  - b. Bar and wait staff will be trained to actively and routinely 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 will be conducted for all approved managers and general staff with a strong emphasis on RSA issues.
  - d. All front of house staff including glass collection staff will be required to hold a valid Responsible Service of Alcohol Certificate.
53. Specific RSA policies and procedures to be implemented at the Venue will include the following:

- a. Bar, wait and glass collection staff to conduct ongoing assessment of the state of sobriety of patrons at all times and to report any signs of drunkenness immediately to the senior manager on duty.
  - b. Managers to ensure that an 'intox sweep' of the Venue is conducted regularly to identify any patrons exhibiting possible signs of drunkenness and to implement appropriate action in accordance with documented RSA practice for the Venue.
  - c. A wide range of non-alcoholic and mid-strength drinks to be available and advertised at the Venue during all trading hours;
54. To demonstrate it bona fides in this regard the Applicant would consent to a condition being attached to the licence in the terms referred to below should the Director see fit to doing so.

### **Safety & security**

55. The Venue can be considered to be in relatively a low risk category in terms of safety and security given the following features:
- a. Catering to patrons falling within a low risk category;
  - b. High quality of design and fit out;
  - c. Relaxed ambiance with no intensive amplified music or other forms of entertainment and amplified music maintained at a conversational volume;
  - d. Significant focus on and promotion of dining services;
  - e. Strict RSA policies and procedures;
  - f. Substantial seating provided for patrons;
  - g. No late trading in excess of the normal permitted trading hours under the Act;
  - h. Patron dress code;
  - i. Comprehensive RSA policies and procedures;
  - j. Experienced and responsible licensee with a track record of responsible and professional management in the WA liquor industry;
  - k. Commitment to high standard of staff training, quality management and extensive management controls, policies and procedures;
  - l. Comprehensive restrictive trading conditions (see below); and
  - m. CCTV coverage.

56. As indicated earlier in these submissions, the Venue will operate in many respects in manner that is analogous to a licensed restaurant. In combination, the features referred to above indicate that the regular provision of security services at the Venue would be neither necessary nor appropriate and that the duties that would otherwise be performed by security officers can be adequately carried out by Venue management.

### **Entertainment**

57. Entertainment will not be a key aspect of the business operating under the License nor a specific attraction for patrons of any particular type. The Premises will not feature a dance floor, nightclub style lighting or powerful speakers.
58. As described in these submissions, the Venue will essentially operate as a family friendly, food focussed hospitality venue, catering to a wide range of members of the community, covering a wide range of ages.
59. The Applicant intends to create and maintain an environment that is suitable for this section of the public, namely, a comfortable and relaxed environment during all regular trading operations at all times of the day and evening. To achieve these aims, entertainment at the Venue will be provided in a format that enhances the hospitality experience of patrons visiting the Venue and is not in a style or intensity that detracts from that experience.
60. The predominant form of entertainment offered during regular trading periods will be background music played via the in-house sound system of the Venue, played at a volume that is conducive to conversation and a comfortable dining experience and TV screens for sport.
61. On occasion a 'low key' live act or a DJ may be engaged to perform at the Venue for the enjoyment of function guests and/or general patrons with volume limited to ensure that a relaxed and comfortable ambiance is maintained.

### **Neighbourhood & amenity issues**

62. The Venue falls within a low risk category in terms of amenity and potential disturbance in light of the following relevant features:
- a. Situated in a location with few residential or other noise sensitive premises in close proximity;
  - b. Operating only during normal permitted trading hours for a tavern (no extended trading);
  - c. Low intensity manner of operation with a strong emphasis on dining services, substantial seating and lacking intensive forms of entertainment;

- d. Catering to persons covering a broad range of ages and types including persons of mature years and family groups with children;
  - e. Unlikely to attract any significant 'at risk' sections of the public in terms of irresponsible consumption of alcohol and/or anti-social behaviour;
  - f. Managed by an experienced hospitality participant with a record of responsible and lawful operation of licensed venues in WA; and
  - g. Comprehensive range of management controls and risk mitigation measures in force all times with a strong emphasis on RSA principles.
63. In combination these features indicate that the Venue will operate without negative impacts in the local community either in terms of reducing amenity or causing undue noise or disturbance to neighbours.
64. In fact, the introduction of the Venue into the Locality would be consistent with the objectives of the relevant local government authority and would provide numerous positive amenity impacts in the Locality by improving the:
- a. quality and variety of leisure and hospitality facilities and services available in the Locality; and
  - b. liveability of the Locality and the quality of life of persons living in, working in and visiting the Locality.
65. Despite the low risk of the operation of the Venue causing undue disturbance in the Locality, in developing the details of this proposal, the Applicant has nonetheless been mindful of the need to minimise any risk of any potential negative impacts through thoughtful design of the Premises and the development of appropriate operating policies and procedures including:
- a. management of sound emitted from the Premises;
  - b. strict adherence to RSA;
  - c. ensuring orderly patron egress;
  - d. policies and procedures regarding the collection, internal handling and removal of glass and general rubbish;
  - e. resident communication & liaison and complaint procedures; and
  - f. closing procedures.
66. The following relevant documents for the Venue are attached:
- a. Venue Management Plan (attachment A2);

- b. Venue Noise Management Plan a copy of which is **attached and marked A3**.
67. The Applicant has demonstrated a strong commitment to ensuring that the Venue operates as a positive addition to the local community and without causing negative impacts to persons working or residing in the vicinity.
68. This comprehensive range of management controls and risk mitigation policies and procedures to be implemented and maintained by the Applicant provide a high level of confidence that the Venue will operate without negative impacts in the local community in terms of amenity or disturbance.

### **Seating**

69. The provision of a substantial seating for patrons throughout the Premises during all regular trading periods is a key element of the Applicant's vision for the Venue to assist in maintaining the desired relaxed and comfortable ambiance and to facilitate a 'dining culture' in the Venue.
70. Accordingly, the Applicant's intention is to provide seating during all regular trading periods for no less than 50% of the maximum number of persons able to be accommodated in the Venue. Flexibility is sought to allow for the temporary removal of seats from relevant parts of the Venue as may be required to cater for the needs of persons attending a private function or special event.
71. To demonstrate its bone fides in this regard the Applicant would consent to a condition being attached to the licence in the terms suggested should the Director see fit to do so (see below).

### **CONSUMER REQUIREMENTS**

72. The Applicant has developed its proposal with the aim of attracting and catering for the needs of patrons:
- a. comprising a mix of persons living and/or working in the Locality; and
  - b. covering a broad range of ages including family groups with accompanied juveniles during the day and early evenings. Young adults will not be specifically catered for and will not be expected to comprise a significant proportion of patronage.
73. The unique location of the Premises combined with the quality of products and services provided at the Venue will be likely to attract a proportion of tourists, particularly those seeking a unique dining experience.

### **Consumer requirement evidence**

74. The Applicant sought the views of persons living and working in the Locality regarding the proposal, copies of which are **attached and marked A4** in a bundle. To enable these persons to make an informed opinion, the Applicant provided each with a copy of the premises plans filed in support of the Application, of copy of attachment A1 (indicative menu) and a “Summary of proposal” a copy of which is **attached and marked A5**.
75. The Applicant proposes to file additional consumer requirement evidence in due course.

#### **Restrictive Trading Conditions**

76. The Applicant is committed to operating the Venue in the manner and subject to the various restrictive trading conditions described in these submissions.
77. To demonstrate its bona fides in this regard, the Applicant seeks that these restrictive trading conditions are formalised as conditions attached to the liquor licence in the terms set out in the document titled “Applicant’s Proposed Restrictive Trading Conditions” a copy of which is **attached and marked A6**.
78. The licence conditions suggested by the Applicant are wide ranging and comprehensive and specifically address issues relevant to potential harm. Collectively they provide a regime of strict controls that will effectively mitigate against risk of harm.

## **SECTION B: LOCALITY**

### **Locality**

79. **Attached and marked B1** are the Applicant's locality submissions.

### **Local Government Authority**

80. For the purpose of section 69(7), Act, the local government authority (**LGA**) able to lodge a notice of intervention in these proceedings is the Town of East Fremantle.

## **SECTION C: TOURISM**

81. Tourists are likely to comprise a moderate but not insignificant proportion of patrons of the Venue given the unique location and facilities and services proposed to be offered at the Venue.

### **Tourism in Western Australia**

82. Tourism is one of Western Australia's most significant industries and is a key part of the State's economy. Perth is regarded as Australia's most globally connected city with particularly strong ties to its Asian neighbours which places the city ideally for investment.

83. The WA tourism industry directly employs 65,800 people and accounts for a further 29,000 indirectly, making a total of 94,800 people in WA employed in the tourism industry.

84. Tourism (direct and indirect) contributes 7.0% of WA's total employment.

85. The value of the WA tourism industry is \$9.5 billion by Gross Value Added (GVA), contributing 3.1% of WA's total GVA.
86. This is the equivalent of \$10.5 billion by Gross State Product (GSP), contributing 3.3% of WA's total GSP.
87. Almost half (45%) of WA's direct tourism GVA was contributed by intrastate overnight travel, while international visitors accounted for almost one quarter. Interstate visitors contributed 19%, while daytrip visitors contributed 13%.
88. The hospitality sector is the top contributor to the WA tourism industry at 36% (\$1.5 billion) of GVA.
89. Western Australia attracts visitors from a wide variety of interstate and international markets. These visitors travel to Western Australia for a variety of reasons including
  - a. Leisure Tourism: including holiday makers and visiting family and friends
  - b. Business Events: including convention and exhibition delegates
  - c. Event Tourism: including spectators and participants
  - d. International Education: including secondary and tertiary students.
90. The peak tourism body in Western Australia is 'Tourism Western Australia' (**TWA**).
91. Copies of the following documents are **attached and marked**:
  - a. **C1** – "TWA New Domestic Segmentation Model" dated August 2018;
  - b. **C2** – "TWA Visitation to WA Overview YE December 2020" dated March 2021;
  - c. **C3** – "TWA Regional Tourism Satellite Account 2018-19" dated September 2020;
  - d. **C4** – "TWA State Tourism Satellite Account 2019-20" dated March 2021;
  - e. **C5** – "TWA International Markets Summary Year Ending June 2017" dated September 2017
  - f. **C6** – "Tourism Research Australia Understanding Repeat Visitation to WA" dated March 2018;
  - g. **C7** – "TWA Interstate Market Profile 2018-19";
  - h. **C8** – "TWA Visitor Experience and Expectations Research (VEER) 2019-20" dated July 2020;
  - i. **C9** – "TWA Annual Report 20219-20"

92. Tourism makes a significant contribution to the State’s economic well-being:

**TWA policy and planning**

93. As part of its planning advisory and referral role, TWA has prepared a number of planning documents to aid the assessment of tourism-related proposals and guide strategic planning for tourism in the State.
94. Copies of the following TWA documents are **attached and marked**:
- a. **C10** – “TWA State Government Strategy for Tourism in WA 2020”;
  - b. **C11** – “TWA Corporate Plan 2020-21”
95. The State Government Strategy for Tourism in Western Australia 2020 outlines seven focus areas to help increase the value of tourism in WA to \$12 billion by 2020 in partnership with industry, government and private sector.

**SECTION D: HARM & ILL HEALTH**

**Alcohol consumption trends in Australia**

96. Alcohol consumption in Australia has been on a steady decline for more than 40 years with consumption per capita in 2017-2018 continuing its decade on decade decline as *‘moderate consumption becomes the norm in Australia’*.

(Source: Wine Australia (22 October 2019) ‘Trends in other alcoholic beverages’ accessed at <https://www.wineaustralia.com/news/market-bulletin/issue-179>; Australian Bureau of Statistics(09/09/2019) ‘4307.0.55.001 ‘Apparent Consumption of Alcohol, Australia, 2017-18’ accessed at [https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4307.0.55.001Main%20Features62017-18?opendocument&tabname=Summary&prodno=4307.0.55.001&issue=2017-18&num=&view=\)](https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4307.0.55.001Main%20Features62017-18?opendocument&tabname=Summary&prodno=4307.0.55.001&issue=2017-18&num=&view=)

97. Australians are drinking less alcohol per capita: (Source: Business Monitor International (2017) 'Australia Food & Drink Report Q1 2018 at p16.

98. **Attached and marked D1** is a media release by the ABS titled “Alcohol consumption lowest in half a century” which states:

*Apparent consumption of alcohol per person has dropped to levels not seen since the 1960s, according to data released by the Australia Bureau of Statistics (ABS) today.*

*In 2016-17, the total alcohol consumed in Australia was equivalent to 186*

*million litres of pure alcohol, or 9.4 litres for every person in Australia aged 15 years and over," said Louise Gates, ABS Director of Health Statistics. "This is the lowest annual figure since 1961-62 and it continues the recent downward trend which started around 2008-09.*

99. **Attached and marked D2** is a media release by the ABS titled "Alcohol-induced deaths decreasing over time" which states:

*Australia has lower rates of deaths directly attributed to alcohol when compared with the late 1990s, with rates recorded at 5.1 deaths per 100,000 Australians in 2017 compared with 6.6 deaths 20 years ago.*

100. It is believed that increasing consumer preference for premium liquor products is leading to a "less but better" consumption attitudes in Australia and that increased focus on health and wellness has resulted in health-conscious consumers opting for low and no-alcohol options as consumers shift towards "mindful drinking".

(Source: Play Market Research ('the biggest alcohol trends for 2020' accessed at <https://www.playmr.com.au/blog/the-biggest-alcohol-trends-for-2020>)

101. Studies have shown that less than 15% of people in Australia consume liquor in a risky and harmful manner, notwithstanding reports about risky drinking levels in Australia: Source: Dr Anne Fox, (January 2015) '*Understanding behaviour in the Australian and New Zealand night-time economies*', p 11.

102. The Australian Institute of Health and Welfare has released the following data which highlights the decline in unsafe alcohol consumption in Australia:

- a. *The majority of Australians aged 14 years and over consume alcohol, however the proportion of people drinking in excess of lifetime risk guidelines has been declining and continues to decline.*
- b. *Between 1967–68 to 2017–18, the proportion of apparent consumption of different alcoholic beverages have changed substantially with decreases in the consumption of beer (from 73.5% to 39.0%) and increases in the consumption of wine (from 14.4% to 38.6%).*
- c. *Data from multiple sources indicate that there has been a decline in the proportion of Australians exceeding the National Health and Medical Research Council (HMRC) guidelines for lifetime risk by consuming more than two standard drinks per day, on average.*
- d. *The National Drug Strategy Household Survey (NDSHS) 2016 found that the proportion of people aged 14 and older exceeding lifetime risk guidelines declined significantly from 19.1% in 2013 (21% in 2001) to 18.0% in 2016.*

- e. *The National Health Survey (NHS) reported that in 2017–18, 16.0% of adults aged 18 and over exceeded the lifetime risk guideline, a decrease from 17.3% in 2014-15 and 19.4% in 2011–12 (Table S2.26).*
- f. *2016 NDSHS findings showed that people aged 14 or older living in Remote and Very Remote areas of Australia are about 1.5 times more likely than people living in Major cities to exceed lifetime risk guidelines (26% compared with 15%) and the single occasion risk guidelines (at least monthly) (37% compared with 24%) (Figure ALCOHOL4; Tables S2.12 and S2.13).*
- g. *2017–18 NHS results showed that adults (aged 18 or older) in Outer regional and remote areas were 1.7 times as likely to exceed lifetime risk guidelines as those in Major cities (24.4% and 14.7% respectively) (Table S2.26; age-standardised proportions).*

(Source: Australian Institute of health and Welfare ‘Alcohol, tobacco & other drugs in Australia’ (Last updated January 2020) accessed at <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contentxs/drug-types/alcohol>)

103. The National Alcohol Strategy 2019-2028 provides as follows:

*“Australia’s overall consumption of alcohol (on a per capita basis) has been in decline for the past 40 years, and the percentage of people reporting abstinence from alcohol has either increased or remained stable between 2009 and 2016. Significant improvements have also been observed in abstinence over the same period among younger Australians. .... This is in spite of the fact that some research indicates that alcohol has become more readily available and affordable in Australia over the last decade.”*

(Source: Department of Health ‘National Alcohol strategy 2019-2028’ at p19)

104. These data support the grant of the Application in terms of the broader context of alcohol consumption trends nationally.

#### ***Alcohol Consumption Trends in Western Australia***

105. Annual consumption levels of alcohol by Western Australians have declined steady over the last few decades, conforming with nationwide trends.
106. The WA National Drug Strategy Household Survey between 2001 and 2016 indicated that:
- a. the percentage of lifetime risk drinkers has declined by 3.3%; and
  - b. the percentage of single occasion risk drinkers has declined by 4.4%.

**(Source:** AIHW National Drug Strategy Household Survey (NDSHS) Accessed at <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/interactive-data/alcohol>)

107. The NDSH found that in WA there has been a significant decrease in the number of people drinking weekly (-6%); and a significant increase in those abstaining from alcohol (4.9%).
108. **Attached and marked D3** is Department of Health report titled “Health and Wellbeing of Adults in Western Australia 2016” which describes the findings from data collected in 2016 from 5,865 Western Australians adults aged 16 years and over. Some key findings from the report relating to the consumption of alcohol include the following:
  - a. Respondents were asked about their alcohol drinking habits, including how many days a week they usually drink and how many drinks they usually have. The alcohol information was categorised into risk levels based on the 2009 guidelines.
  - b. The prevalence of the population drinking at levels considered high risk for long term (over a lifetime of drinking) was assessed:
    - (i) 72.6% of Western Australian were found to have a low risk or less than low risk of long term alcohol related harm.
    - (ii) 27.4% were found to be at “high risk”, defined as drinking more than two standard drinks on any one day.
  - c. The prevalence of the population drinking at levels considered high risk for short term harm was also assessed:
    - (i) 89.4% of the population was found to have a low risk or less than low risk status.
    - (ii) 10.6% were found to be at “high risk”, defined as consuming more than four standard drinks on any one day.
    - (iii) The prevalence of all persons drinking at levels associated with short-term harm was significantly lower in 2016 compared with 2002 -11 prevalence, with a similar pattern observed for males and females. (p.53)
109. **Attached and marked D4** is the Drug and Alcohol Office report titled “Drug and Alcohol Interagency Strategic Framework for Western Australia 2011-2015”.
110. **Attached and marked D5** is the Drug and Alcohol Office report titled “Impact of Alcohol on the Population of Western Australia”

111. **Attached and marked D6** is the Drug and Alcohol Office report titled “Impact of Alcohol on the Population of Western Australia – Regional Profile: South Metro Health Service
112. **Attached and marked D6a** is the “National Alcohol Strategy 2018-2026 Consultation Draft”.

#### **Venue Risk Profile**

113. **Attached and marked D7** is the Applicant’s Venue Risk Assessment which assesses the risk factors of the Permit Area in terms of alcohol related harm and ill-health.
114. **Attached and marked D8** is a copy of chapter 37 of Heather, N, Peters, T and Stockwell, T. (2001) “International Handbook of Alcohol Dependence and Problems”, John Wiley & Sons.
115. It can be seen that the Venue does not feature any factors associated with a risk of patron aggression and violence, excessive or unsafe alcohol consumption or alcohol related harm and ill-health.
116. Accordingly, the Venue can be considered to fall into a low risk category for alcohol related harm and ill-health.

#### **Patron Risk Profile**

117. **Attached and marked D9** is the Applicant’s Patron Risk Assessment which assesses the risk factors of the likely patron profile of the Permit Area in terms of alcohol related harm and ill-health.
118. In all the circumstances, persons attracted to the Venue are unlikely to include those in any recognised “at risk” groups.

#### **Crime issues in the Locality**

119. **Attached and marked D10** is the WA Planning Commission document titled “Designing Out Crime Planning Guidelines”. The location and design of the Premises is consistent with the principles outlined in those guidelines in that the Premises will be:
  - a. located in an area designated for mixed use and therefore compatible with neighbouring uses;
  - b. well monitored by staff and surveillance equipment;
  - c. designed to have specific entry/exit locations;
  - d. located in a well-defined private space;

- (i) able to assist in the monitoring of the streetscape via passive surveillance undertaken by patrons and staff in and around the Premises.
120. A copy of the following relevant crime statistics from the Western Australian Police Force website are **attached and marked**:
- a. **D11** - for Western Australia; and
  - b. **D12** - for East Fremantle.

## **SECTION E: LEGAL SUBMISSIONS**

121. **Attached and marked E1** is a copy of the Applicant's summary of legal principles relevant to the Application.

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

#### Section 5: Objects of the Act

122. The Application falls squarely within all of the primary objects and several of the secondary objects of the Act.
123. Grant of the Application would be consistent with the requirement for the licensing authority to "*ensure the proper regulation of the sale, supply and consumption of liquor*" under s.5(1)(a) because:
- a. the licensing authority can be confident that the business operating under the Licence will be operated in a professional and responsible manner;
  - b. the fit-out of the Premises will be of a high quality and the Premises and facilities will be maintained to a high standard; and
  - c. the liquor and related services provided at the Venue will be of a high standard and will constitute a unique hospitality facility in the Locality.
124. 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) of the Act because:
- a. The anticipated patron profile can be considered low risk in terms of alcohol related harm or ill-health;

- b. The nature of the Premises and the intended manner of operation of the Venue do not have any high risk features in terms of alcohol related harm or ill-health;
  - c. The Applicant does not propose to trade during extended trading hours;
  - d. The Venue will feature a significant focus on dining services with food available to patrons during all trading hours until 60 minutes prior to closing;
  - e. Substantial seating will be provided throughout the Venue to facilitate and encourage services and assist in the maintenance of a relaxed ambiance;
  - f. The Applicant is an experienced participant in the WA hospitality industry with a long track record of the lawful and responsible operation of licensed venues in this State;
  - g. Operation of the Venue will involve the regular and comprehensive training of staff training to maintain a high standards at all times;
  - h. The Applicant is strongly committed to RSA procedures and policies; and
  - i. The Venue will not sell or supply alcohol for consumption off the licensed premises.
125. 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 would 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 providing:
- a. High quality premises;
  - b. A diversified range and high quality of liquor and related services including licensed dining, beverage and function services;
  - c. A convenient and accessible location for locals and tourists;
  - d. A licensed venue that is distinctive and unique in the Locality;
  - e. A safe and well-controlled environment; and
  - f. Additional variety and choice for consumers.
126. The Venue would cater for the requirements of consumers for liquor and related services with regard to the proper development of the tourism industry under s.5(1)(c) because:

- a. the Venue will be likely to be attractive to tourists given its unique riverside location combined with its offer of a range of locally produced liquor and food products;
  - b. the liquor and related services proposed to be provided at the Venue would cater for and be attractive to the leisure and hospitality requirements of intrastate, interstate and international tourists visiting the Locality;
  - c. grant of the Application would assist in attracting greater numbers of tourists to the Locality and increase the contribution of tourists to the economy of the Locality;
  - d. grant of the Application would be consistent with the tourism objectives of the local government authority and ; and
  - e. grant of the Application would assist in attracting greater numbers of tourists to the Locality and increase the contribution of tourists to the economy of the Locality; and
  - f. grant of the Application would assist in the continued promotion and development of the tourism industry in the Locality and in Western Australia and contribute to the development of the State's hospitality industry.
127. Grant of the Application would 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) of the Act for the reasons set out below.

Section 38(4)(a) - Harm or Ill health

128. The following matters are relevant to the assessment of potential harm and ill health at a specific level:
- a. The persons behind the Application are experienced and responsible long-term participants in the hospitality industry with a strong track record in the lawful and responsible operation of licensed venues in WA;
  - b. The Premises will be fitted out to a high standard;
  - c. The business operating under the Licence will involve a significant focus on dining services and food will be available to patrons during all trading hours until 60 minutes prior to closing;
  - d. A relaxed ambiance will be maintained at all times with substantial seating provided throughout the Venue;
  - e. The Applicant is strongly committed to RSA principles and practices; and

- f. The Venue will operate subject to a comprehensive range of restrictive trading conditions; and
  - g. The Venue will not cater for nor be likely to attract any significant proportion of patrons that fall within a high-risk category in terms of alcohol related harm and ill-health.
129. In the present case, the evidence supports a conclusion that, assessed against the existing level of harm, no significant level of additional harm will be likely to be caused by the grant of the Application.

Section 38(4)(b) - Impact on amenity

130. Grant of the Application will positively contribute to the amenity of the Locality by:
- a. contributing to the activation of the streetscape
  - b. adding to the vibrancy attractiveness and convenience of the Locality.
  - c. meeting the stated goals of the local government authority in the Locality;
  - d. supporting the further development of the Locality as a key hospitality and leisure precinct for the local population;
  - e. helping to improve the identity of the Locality and supporting the continued development of hospitality and tourism services in the Locality;
  - f. providing additional leisure services for residents, workers and visitors who wish to enjoy the liquor and related services offered at the Venue;
  - g. providing quality hospitality services to tourists and increasing the attractiveness of the Locality as a tourist destination; and
  - h. providing employment opportunities at the Venue.

Section 38(4)(c) - Offence, annoyance, disturbance and inconvenience

131. Grant of the Application is unlikely to cause offence, annoyance, disturbance and inconvenience to persons in the Locality due to the:
- a. low intensity manner of operation proposed;
  - b. safe and comfortable ambiance during all trading hours;
  - c. strong focus on dining services;
  - d. substantial seating provided for patrons;

- e. commitment to a comprehensive range of restrictive trading conditions and management controls.
- f. commitment to RSA principles and practices at all times;
- g. noise management policies and procedures maintained at all times to minimise the risk of undue disturbance in the community; and
- h. patrons are unlikely to fall within any 'high risk' categories.

Sections 33 and 38: Public interest

132. Grant of the Application would be in the public interest because it would:

- a. cater for the reasonable requirements of a significant section of the public residing and/or working in or near the Locality;
- b. contribute positively to tourism by providing an attractive licensed hospitality facility for persons visiting the Locality and thereby assist in the development of the Western Australian tourism industry;
- c. not have the characteristics and attractions that are commonly associated with antisocial or criminal behaviour and would be unlikely to cause harm or ill-health to any persons or group of persons;
- d. be unlikely to cause noise, disturbance, offence or inconvenience to any persons; and
- e. contribute positively to the amenity of the Locality;
- f. contribute positively to the local economy of the Locality by triggering a significant capital investment in the Premises and the creation of local employment opportunities.

133. In the present case, the evidence submitted by the Applicant establishes significant positive impacts from the grant of the Application. In broad terms the creation of the Venue will be associated with the following positive outcomes:

- a. Creating a multi-faceted leisure and hospitality venue offering a wide range of liquor and related services and catering to a broad cross-section of local residents and visitors to the Locality, including family groups;
- b. Assisting in the activation and re-invigoration of the Locality by creating a venue with a strong connection to the local community;
- c. Providing additional choice of hospitality and leisure facilities available to persons living and working in and near the Locality by the creation of a

convivial space for 'locals' to socialise and enjoy quality dining, function and beverage services;

- d. Improving tourism in the Locality by providing services that attract and satisfy the leisure and hospitality requirements of intrastate, interstate and international tourists; and
- e. Providing employment opportunities in the Locality;

134. The evidence submitted by the Applicant establishes numerous positive impacts of grant of the Application and that such grant would be in the public interest. 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

135. 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.

#### **CONCLUSION**

136. It is submitted that in all the circumstances the Application should be granted.



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