

IN THE LIQUOR LICENSING DIVISION OF WESTERN AUSTRALIA

IN THE MATTER OF AN APPLICATION BY **VARSIITY FREQ PTY LTD** FOR AN **EXTENDED TRADING PERMIT FOR ONGOING HOURS** FOR PREMISES KNOWN AS **VARSIITY FREQ**, LOCATED AT TENANCY G3 & G4, 2 NEWMAN COURT, FREMANTLE

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**PUBLIC INTEREST ASSESSMENT SUBMISSIONS**

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Date of Document:       The       25       day of       April       2024

Filed on behalf of:       The Applicant

Prepared by:

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1. The Applicant has filed an application for an Extended Trading Permit for Ongoing Hours ("the ETP") for premises known as Varsity Freq, located at Tenancy G3 & G4, 2 Newman Court, Fremantle ("the Venue").



VARSIITY FREQ

2. The ETP is required to operate throughout the whole of the licensed areas of the Venue. Patron accommodation numbers the internal dining area and bar is set at 330 pax. The ETP is not sought for the Tidal Lane Alfresco Area.
3. A copy of the Venue's **Maximum Accommodation Certificate** is annexed and marked "**Annexure A**".
4. Upon approval, the ETP will permit the Venue to trade between the hours of 6:00am and 10:00am on a Sunday, in circumstances where there is a live telecast of an Ultimate Fighting Championship ("UFC") event being shown.
5. Currently, when there is a UFC event on, the Venue is only permitted to open and trade as an unlicensed restaurant and is not permitted to sell liquor until 10:00am.
6. If the ETP is granted, the Venue would be permitted to cater to the liquor requirements of those patrons attending the Venue during UFC events held at the Venue on a Sunday morning, prior to 10:00am and then beyond in accordance with the usual trading hours.

#### **Proposed Trading Conditions**

7. The Applicant proposes the following trading condition to apply, should the ETP be approved:
  - (a) Voluntary notification to local Police and Shire offices of intention to trade, no less than 48 hours prior to the proposed trading morning.

#### **Ultimate Fighting Championship**

8. The UFC is the largest mixed martial arts (MMA) organisation in the world. The UFC showcases the best international fighters using a variety of martial arts styles and disciplines.



9. The UFC is televised live each week on a Sunday with the timetabling of events including Early Preliminaries, Preliminaries and the Main Card. Events are held around the world predominantly in Las Vegas where the UFC is based.
10. During UFC events, participants compete in fights using a combination of boxing, wrestling, judo and various other martial arts, these combined skills are referred to as “mixed martial arts.” The combination of all of these sports makes the UFC very popular with a diverse group of fans and patrons of the Venue.
11. UFC matches take place inside The Octagon, an eight-sided structure comprised of metal chain-link fencing. The fence is six feet high and allows for 30 feet of space from point to point within The Octagon.
12. Each UFC bout is a series of five-minute rounds, with a one-minute rest period between rounds. Non-title fights last for three rounds, while championship UFC fights are five rounds in duration.
13. There are currently 5 different UFC weight classes:
  - Lightweight;
  - Welterweight;
  - Middleweight;
  - Light Heavyweight; and
  - Heavyweight.

14. Annexed and marked “**Annexure B**” is a copy of **UFC Events held in 2023**, with “**Annexure C**” showing the current **UFC Events arranged for 2024** so far. Annexure C provides details of the location and time the events will be held based on Western Standard Time, which confirms the requirement for the ETP.
15. The Venue’s approved **Redline Floor Plan** and the **ETP (Alfresco area) Plan** annexed and marked “**Annexure D**”. It is proposed that the ETP would operate throughout the whole of the internal licensed area of the Venue (i.e. not in the alfresco area).
16. A **Site Map** for the Venue is annexed and marked “**Annexure E**”, which provides an overview of the neighbourhood in closest proximity to the Venue.
17. Annexed and marked “**Annexure F**” is a copy of the Venue’s **Food and Beverage Menu**.



18. The Venue’s features in the internal area of the Venue include:
  - (a) A bar service area;
  - (b) Dining areas providing seated dining with a range of seating options provided;
  - (c) Audio visual experience, with several giant screens for patrons to enjoy watching the fights on; and
  - (d) Function space for those patron who wish to attend as a group and pre-book a function area.

### **Varsity Pty Ltd (“Varsity”)**

19. Operating since 2013, Varsity is a Western Australian success story with proven performance across now 10 venues, all of which trade under a type of Tavern class licence and operate based on the Varsity business model. These venues are:

- (a) Varsity Bar, Nedlands (pax 375), Tavern;
- (b) Varsity Bar Waterford (pax 332), Tavern;
- (c) Varsity Morley (pax 1,003), Tavern;
- (d) Varsity Bar Joondalup (pax 510), Tavern;
- (e) Varsity Northbridge (pax 200), Tavern Restricted;
- (f) Varsity Freo (pax 384), Tavern Restricted;
- (g) Varsity Innaloo (pax 600), Tavern Restricted;
- (h) Varsity Whitfords (pax 350), Tavern;
- (i) Varsity Midland (pax TBA), Tavern (under renovations); and
- (j) Varsity Cannington (pax 800), Tavern Restricted.

(“the Varsity Venues”)

20. Varsity promises and delivers an inclusive, vibrant, fun and entertaining experience with something for everyone. All of the Varsity Venues are designed to appeal to all age groups, with the median age of patrons being 35 years.



VARSIITY BAR JOONDALUP



VARSIITY WATERFORD



VARSIITY NORTHBRIDGE



21. The Varsity brand and overall feel is intentionally designed to make anyone feel at home. Varsity embraces the peculiarities of each of its sites to create special and unique features that make each location quite distinctive, whilst consistently achieving a high level of service and food standards, together with sports entertainment that is extremely popular and are major drawcards at each of the Varsity Venues. It is extremely important to the Applicant for brand consistency and customer service that patrons can enjoy the same level of services at each of the Varsity Venues.
22. The operation of the ETP has been sought at all the Varsity Venues to ensure that all Varsity patrons, regardless of where they live in the Perth metro area are able to enjoy watching the UFC on a Sunday morning over the same trading periods.
23. The Varsity business model clearly differentiates the brand from other types of licensed venues that operate in WA and fall under the banner of a “traditional sports bar”. Each of the Varsity Venues prides itself on distinguishing features in each of its fit-outs, the Varsity brand offers a level of services that separates it from the “traditional” sports bar label and is committed to staying true to the Varsity brand of creating a vibrant and interactive setting for its patrons to enjoy.
24. In their own words Varsity identifies who they are by distinguishing what they are not:

***We are not a traditional pub***

*Varsity does not stay open late blasting loud live music and spilling rowdy revellers onto the streets. Period.*

***We are not just a sports bar***

*While we are proudly Perth’s home of sports experiences we are not a sports-obsessed bar where food and family friendly experiences are reduced to an afterthought.*

***We are not just a uni student hangout***

*While we stay true to our American college / street skater culture origins, Varsity has matured into so much more to so many people.*

***We are not just another burger bar***

*You won’t see Varsity tussle with the healthy grilled burger elite at awards night. Sure, our burgers are famous and delicious (and they’re what helped put Varsity on the map), but they don’t solely define us.*

***We are not a cliché family restaurant***

*We aren't in the company of large, franchises cookie-cutter family restaurants where the experience is polished and predictable.*

*(Source: varsity.com.au)*



Varsity Freo

25. All of the Varsity Venues act as a strong destination attractor within its local area, with a strong community base. Each has a proven ability to draw from a wide catchment area, reflecting Varsity's wide appeal, particularly for special events and live telecasts of particular sporting events, of which the UFC is one of them.



26. On average 59% of visitors reside within a 15-minute drivetime to each of the existing sites, revealing also the significant local community support that each Varsity venue generates.
27. Evidence supporting paragraphs 25 and 26 above is reflected in the Surveys provided as part of these submissions in Annexure G.

**Consumer Requirement**

28. The reasonable requirements of consumers and how those needs would be met by the grant of the Application are matters relevant to general public interest

considerations raised under s33 of the Act and also to the objects of the Act as stated in s.5(1)(c) and 5(2)(a).

29. The Applicant has gathered feedback from consumers who live in and around the Locality who were invited to complete a survey relating to the proposal for the Venue, to obtain feedback concerning consumer requirement.
30. Annexed and marked “**Annexure G**” is a bundle of 144 **Consumer Requirement Surveys** that were collected by the Applicant, together with Survey Summary (“the Survey”).
31. The Survey lodged by the Applicant establishes that the relevant section of the public supports the Application for the Venue to operate under the ETP. The Survey reflects significant support for the Application to be granted, including the following results:
  - (a) Approximately 46 % of survey participants were aged in their 30’s and 40’s;
  - (b) Nearly all (98%+) of survey participants confirmed that they would like to attend the Venue during ETP trading hours to watch the UFC;
  - (c) 97% of survey participants confirmed that they want to watch live UFC telecasts on a Sunday morning; and
  - (d) Over 99% of survey participants indicated that the Venue was their preferred location to watch live telecasts of UFC.
32. In the present case, it is evident from the Consumer Requirement evidence gathered by the Applicant, together with the Locality’s demographic profile (provided in the Locality submissions) that:
  - (a) There is a demand for the ETP to operate during the period of 6:00am and 10:00am for the purposes of live screenings of the UFC on Sundays;
  - (b) The Venue will be well patronised during the ETP trading hours by a wide range of consumers from the Locality and the surrounding areas;
  - (c) There is demand for the Venue to offer its services and facilities during the ETP trading hours;
  - (d) The ETP will enhance the entertainment offers available within the Locality that targets the live screening of boxing and martial arts related sporting events; and



- (e) Improve the opportunities to socialise in the Locality.
33. During the ETP trading hours, the Varsity Business Model will be applied at the Venue which will help foster a sense of community engagement that is not just focused on eating and drinking but also entertainment and social interaction with one another. The Applicant submits that an important ingredient in the Varsity brand's success and ability to create a welcoming and safe environment in all of the Varsity venues is the common element of sport.
34. Based on the Applicant's experience in operating the Varsity Venues, the sporting events that Varsity presents at each of its venues have the uncanny ability to bring people together as very few other things can. Sport has the power to bring people together, regardless of their age, race or gender and allows patrons to talk to one another through a common interest, which builds connections and creates rapport.
35. Approval of the Application will create a unique location within the Locality where members of the public can socialise and watch UFC in a safe and fun environment that encourages social interaction and a sense of community.
36. It is the Applicant's intention to file further evidence in relation to the requirements of consumers, once it has been determined:
- (a) whether any objection(s) have been filed, and if so, whether the objection(s) have been accepted by the Director of Liquor Licensing ("the Director"); and
  - (b) once the Director has determined whether the matter will be determined on the papers or by way of a hearing.

#### **Section 38(4)(a) – Harm or Ill Health**

##### **At Risk Groups**

37. The Directors of Varsity have an excellent trading history at all of the highly successful licensed premises that they are associated with. The Applicant submits that it will manage the Venue during the ETP in the same professional and responsible manner.
38. The Director in the policy entitled *Public Interest Assessment Requirements and Application Procedures*, has identified at risk groups as follows:

*“At risk groups” have been identified and may include; ‘children & young people’, ‘aboriginal people and communities’, ‘people from regional, rural and remote communities’, families, ‘people in low socio-economic areas’, ‘mining communities’, ‘communities that experience high tourist numbers.’”*

39. Given the location of the Venue, it is reasonable to assume that due to the range of people attracted to the Locality, there will be persons who fall within one or more of these categories.
40. The Drug and Alcohol Interagency Strategic Framework for Western Australia 2011 – 2015 identifies the following “at risk” groups and sub-communities. Based upon the Applicant’s knowledge of the area and experience in the Hospitality industry and the patronage it receives at the Venue, it makes the following comments with respect to the “at risk” groups identified.
41. Overall, the standard of the fit-out and manner of operations at the Venue indicate that it will be unlikely to attract a significant proportion of ‘at risk’ sectors of the community as noted in the following paragraphs:
- (a) Young people: Based on its style of operations, proposed services and the demographics of the Locality, the Venue does not attract significant numbers of young people and expects this to remain unchanged, should the application be granted.
- As noted in paragraph 20 of these submissions, the median age of patrons attracted to the Varsity Venues is 35 years. With reference to the common ages of the Survey participants in Annexure G and the demographics in the Locality Submissions (Annexures F and G) the demand for the ETP is likely to include a large contingent of more mature members of the community.
- (b) Aboriginal persons: The patron base at the Varsity Venues does not include a notable number of “at risk” Indigenous persons at any of the Venue’s current locations and the Applicant expects this will remain unchanged during ETP trading hours.
- (c) Persons from regional, rural and remote communities: The quality of the fit-out and manner of operations and price point of its foods results in the Venue not attracting a significant proportion of ‘at risk’ sectors of regional, rural and remote communities and the Applicant does not expect this to change during ETP trading hours.

- (d) Families: Based on the Applicant's experience in screening UFC events at the Venue, it is not expected that the UFC will appeal to this demographic during ETP trading hours.
  - (e) Migrant groups from non-English speaking countries: Based on the Applicant's experience in screening UFC events at the Venue, it is not expected that the UFC will appeal to this demographic during ETP trading hours.
  - (f) People in low socioeconomic areas: Taking into consideration the proposed quality fit-out, the style of operations at the Venue and the price point of its food and beverages, the Applicant submits that based on the Venue's trading experience, persons suffering disadvantage generally do not patronise the Venue and does not expect this to change during ETP trading hours.
  - (g) Mining communities or communities with high numbers of itinerant workers:  
This does not apply to the Venue.
  - (h) Communities that experience high tourist numbers: The Applicant does expect to provide services to visitors to the Locality. Based on the Venue's proposed quality fit-out, the style of operations and the price point of its food and beverages the Applicant submits that it is unlikely to attract a significant proportion of 'at risk' tourists during the ETP.
42. The Applicant will strictly maintain and enforce responsible service of alcohol guidelines and will follow the Venue's Harm Minimisation practices at all times.

## **Health**

43. The Health Department no longer provides access to publications relating to alcohol-related harm for regions of WA on their website and therefore this data is not accessible to the Applicant.
44. Annexure G in the Locality Submissions reveals that arthritis, asthma and mental health conditions are the most prevalent long term health conditions suffered by the City of Fremantle's ("the City") residents.
45. Also noted in Annexure G was that 58.6% of the City's residents had no long-term health conditions. There were a greater number of the City's residents aged 50+ when compared to State and National statistics explaining this statistic.

### **Crime Prevention Through Environmental Design**

46. The Location and design of the Venue is within the guidelines and principles outlined in the "Designing/Planning Guidelines".
47. The Venue:
  - (a) is located in an area that has been zoned for the proposed use and is therefore compatible with neighbouring uses;
  - (b) has specific entry/exit locations for patrons, allowing areas to be easily monitored by staff and surveillance equipment;
  - (c) is located in a well-defined private space, well suited to meet the needs of its patrons;
  - (d) consists of well-designed areas that are monitored by experienced approved managers and staff who will be responsible for monitoring patron behaviour; and
  - (e) will assist in the passive surveillance of the streetscape by activating the area around the Venue in the early hours of Sunday morning.
48. The grant of the Application will enhance the amenity of the Locality by the patron type that it will attract and the hospitality and entertainment services that it will provide, which will encourage further activity throughout the day within the Locality.
49. The Applicant will maintain a strict zero tolerance policy with respect to anti- social behaviour at the Venue.

### **Crime**

50. **Crime Statistics for the suburb of Fremantle** obtained from the WA Police website for the period 2014/15 – 2023/24 are annexed and marked "**Annexure H**".
51. Specific statistics on alcohol-related offences that have occurred in the Locality are no longer available from the WA Police, who have previously advised the Applicant's Solicitors that it is "*against WA Police policy to release detailed alcohol related offence statistics prior to the lodgement of a Liquor Licence Application*".
52. As noted on the WA Police website, the crime statistics provided in Annexure H are reported based on the location of where the offence occurred and may be

influenced by a wide range of factors that include population, infrastructure, seasonal trends and the extent to which crime is reported or detected by police. Such factors should be considered when interpreting the statistics annexed to these submissions.

53. No statistics are available in relation to alcohol-related crime.
54. Any statistic provide by WA Police should be treated with caution as statistics generally only refer to alleged offences and not convictions. In the absence of statistics in relation to the rates of conviction, it is uncertain how reliable these statistics are.
55. The Applicant submits that when regard is had to the proposed operation of the ETP (particularly its focus upon the provision of food), and the Venue's past trading history, the Venue should be considered a "low risk" for alcohol related harm.

### ***Anti-Social Behaviour***

56. The Venue does not share the following features which are sometimes associated with other similar licenced premises' that have been associated with alcohol-related anti-social behaviour and aggression:
  - (a) Unattractive, poorly furnished, poorly maintained premises give a message to patrons that the managers anticipate physical violence and associated damage to furnishings (Graham, K, Larocque, L, Yetman, R, Ross, TF and Guistre, E, (1980) "Aggression and Bar Room Environments" Journal of Studies on Alcohol, 41 pp277-Aggression has been significantly correlated with poorly maintained, unclean and unattractive bar environments, Homel, R and Clark, J, 1994 "***The Prediction and Prevention of Violence in Pubs and Clubs***" (Crime Prevention Studies 3, 146). Annexed and marked "**Annexure I**".

The Venue has a high quality fit-out and will be well maintained;

- (b) Poor ventilation and smokey air, inconvenient bar access and inadequate seating, high noise levels and overcrowding (Grahame et al 1980, Homel and Clark et al). The Applicant in its design of the Venue has incorporated both extensive seating, as well as easily accessible bar areas.

The Venue is non-smoking, well set out and ventilated with substantial seating;



- (c) Graham et al (1980) found that aggression was more likely in bars where there was dancing and pool playing.

There are no dance floors areas at the Venue.

Pool tables are a feature at the Varsity Venues and there is no evidence that pool playing at any of these locations have caused aggression or anti-social behaviour.

- (d) There is greater aggression when bar staff are very aggressive, and do not engage in responsible serving practices (Homel and Clark, 1994, etc. al) and/or little control is exercised over patrons' behaviour. Graham et al 1980. Aggression has been found to be more likely in bars where drunkenness is frequent (Graham et al 1980, Homel and Clark 1994) and where there are discounted drinks and other drink promotions.

This is not the case at the Venue; and

- (e) The availability of food (especially full meals) has been associated with a reduced risk of aggression in bars (Graham, K (1985) "Determinants of Heavy Drinking and Drinking Problems — the Contribution of the Bar Environment"; Single and T Storm (EDS) "Public Drinking and Public Policy, Toronto Addiction Research Foundation".

The Venue has a strong focus on food and meal options will be available throughout the Venue's ETP trading hours.

57. It is submitted that the Venue, with its continued commitment to top quality food and meal options, together with family-friendly entertainment falls within that category of venues where the consumption of alcohol is not the primary focus for patrons.
58. Due to these features, it is submitted that the Applicant's venue is much less likely to be associated with alcohol-related violence and aggression.

#### **Section 38(4) (b) – Impact on Amenity**

59. When considering the impact that the grant of the Application will have upon the amenity of the Locality, it is relevant to consider:
- (a) the net benefits to the local community through the introduction of additional events in the Locality on weekends that will improve the amenity

of the area, motivating residents to socialise locally, further activating the area and creating a community hub for like-minded sporting enthusiasts.

- (b) the immediate locale within which the Venue operates and the services it already provides to the local community.
  - (c) the positive impact that Varsity's brand recognition and its popularity add to the appeal of the Locality as a destination attractor, bringing new business into the area on Sundays.
  - (d) as a destination attractor, the Venue will substantially add to the activation of the Locality on Sunday mornings increasing the passive surveillance of the area and supporting crime prevention.
  - (e) the Venue is in a mixed-use area and is therefore compatible with other uses and complements existing services provided.
  - (f) the additional variety, choice and standard of licensed hospitality services that will become available in the Locality through the activation of the ETP.
60. Planning authorities have recognised the need to meet the growing demands of Perth residents and those visiting areas. Localities across the metropolitan area need to ensure that they provide a greater variety of services to meet the needs and tastes of a wide and growing consumer base that will help to attract new residents and also motivate visitation.
61. All sectors of the community seek out hospitality and entertainment services. The City's planning strategies noted in Annexures B – E in the Locality Submissions aim to create activity centres across the City, which are mixed-use and offer a vibrant, safe and amenity rich area that services the local community.
62. The City's objectives are supported by the findings in the Entertainment Surveys (Annexure J & K) in these submissions, as well as the Chamber of Commerce's Discussion Paper (Annexure K) and Tourism WA's research (Annexures H – J) in the Locality Submissions.
63. The Venue's proposed sports entertainment offer during the ETP hours is consistent with the style of entertainment that the Venue already offers throughout the week and therefore the style of services provided at the Venue during the ETP trading hours will remain unchanged. Approval of the ETP will allow the Venue to offer UFC fans the opportunity to enjoy this sport live in a social and licensed setting, which is currently not available within the Locality.

64. By reason of the above, the Applicant submits that the grant of the Application will positively contribute to the amenity of the Locality by:
- (a) Encouraging more people to visit and socialise in the Locality, particularly on a Sunday;
  - (b) Enhancing the vibrancy of the Locality and the surrounding streetscape on a Sunday;
  - (c) Offering a safe licensed venue for residents to visit and enjoy watching live UFC;
  - (d) Adding to the choice of licensed hospitality services that are available in the Locality for the purposes of socialising, enjoying entertainment (i.e. UFC) with quality bar and dining services also available;
  - (e) Supporting the future sustainability of local businesses trading in the surrounding area of the Venue and within the Locality by attracting increased custom to the area.

### **Section 38(4)(ca) – Effect on tourism & community**

#### **Tourism**

65. Tourism WA's publications, **Tourism WA: Perth Entertainment Precincts (2017)** ("the Entertainment Survey"), extracts annexed and marked "**Annexure J**" and **Perth Entertainment Precincts Research 2022 / Final Report** ("the Final Entertainment Survey") extracts annexed and marked "**Annexure K**" both offer insights into what are the strongest drivers for consumers generally in choosing a licensed venue.
66. Fremantle was found to be the most popular entertainment precinct and was very popular with all age groups including over 55's. (Annexure K, page 11, 18, 61).
67. With reference to Annexure K, the weekends are the most popular time to visit any precinct (Page 30), with over 3 in 5 of visits being with a partner, and more than half with friends (Page 32).
68. Each precinct was 'known' for different activities, although it is relevant for this application that Events was one of the drawcards that motivated the public to visit a precinct (Annexure K, page 36). The City identified as part of its Strategic

Planning (Annexures B in the Locality Submissions) that creating more reasons to visit the Locality and creating added attractions in the City would help to increase visitor numbers and activate the Locality.

69. The provision of liquor services also rates highly as a key finding, together with extended trading hours (Page 90, Annexure K). These findings support the ETP.
70. The key findings from both Annexure J and K reveals what the general public value when selecting a location to go and socialise in. It also highlights the importance of hospitality venues continually enhancing and reinvigorating services to achieve an exciting and vibrant atmosphere that is a driver for ongoing visitation.
71. The Entertainment Surveys provides an insight into the key drivers for consumers visiting a licensed premise. Factors that consumers considered when choosing a venue to socialise in, included, but were not limited to:
  - (a) Safety of the venue;
  - (b) The venue's atmosphere;
  - (c) Availability of food and liquor services;
  - (d) Good reviews/popularity;
  - (e) Opening hours (e.g. extended trading hours); and
  - (f) Live music or other live entertainment.

(Annexure J, page 24, Annexure K, page 90)

72. Considerations for selecting a venue included:
  - (a) Whether food is served;
  - (b) Whether alcohol served;
  - (c) Live Entertainment;
  - (d) Opening Hours; and
  - (e) The Venue's atmosphere. (Annexure J, page 24)

73. In the Final Entertainment Survey, 43% of participants aged 35 – 54 years indicated they were attracted to tavern style venues. (Page 85)

74. Those aged 55+ years are also attracted to tavern style venues (30%). (Annexure K, page 86)
75. Overall, the parties attracted to a tavern style venue largely consisted of:
- (a) Friends (60%);
  - (b) Partner (54%); and
  - (c) Work colleagues (18%). (Annexure K, page 32)
76. Tavern/Sports Bar style venues were found to be one of the most visited class of venue in the Entertainment Surveys and the perception was that that this type of licensed premises:
- (a) Added vibrancy to an area;
  - (b) Provided entertainment; and
  - (c) Made an area more appealing and more likely to be visited.
- (Annexure K, pages 94 & 104)
77. Significantly, when considering the following factors, the Venue is well-suited to meet the demands of local residents and visitor during the ETP hours based on the proposed:
- (a) Provision of food and liquor services;
  - (b) Live sporting entertainment;
  - (c) Extended trading hours; and
  - (d) The demographics of Varsity's patron base and those within the Locality.
78. The Applicant submits that the Venue and its proposed style of operations during ETP trading hours will be a positive addition to the amenity of the Locality and will help to better meet the consumer requirements of the local community and visitors for a greater range of entertainment and events to enjoy, particularly on weekends.
79. In addition, the Applicant submits that the additional visitors to the Locality on a Sunday will have a flow on effect on other businesses within the Locality.



## **Community**

80. The Venue will be the only licensed venue in the Locality to present live UFC events on a Sunday morning.
81. Consumer requirement for live telecasts of UFC events is clearly evidenced in the Surveys that the Applicant has gathered from the general public and provided in Annexure G in these submissions.

### ***Section 38(4)(c) - Offence, Annoyance, disturbance and inconvenience***

82. It is submitted that the granting of the Application will not cause offence, annoyance, disturbance and/or inconvenience to residents, business owners or persons passing through the Locality.
83. The Venue and its staff will take all reasonable steps to control the behaviour of patrons whilst at the Venue and as they enter and leave the Venue.
84. The Venue will comply with the Environment Protection (Noise) Regulation 1997 and the requirements of the City.
85. The Applicant submits that the successful track record of the Venue, together with the management of other Varsity Venues that have operated previously with an occasional ETP for sporting events are a testament to the highly successfully Varsity Business Model that will be maintained during the ETP. The Applicant will ensure that these high standards are upheld at the Venue during the ETP with respect to harm minimisation strategies and RSA.
86. By reason of all of the foregoing, the Applicant does not foresee that any significant offence, annoyance, disturbance or inconvenience will be caused by the granting of the Application.

## **Conclusion**

87. The Applicant submits that it is in the public interest for the Application to be granted as:
  - (a) the grant will not result in harm or ill-health due to the consumption of liquor;
  - (b) the approval of the Application will meet the requirements of Varsity's UFC fans that live in the Locality and the surrounding areas.

- (c) the approval of the Application will enhance the services and facilities that will be available for the community and visitors to enjoy, in particular live screenings of UFC events in a licensed environment;
  - (d) the grant of the Application will add to the services and attractions that are available within the Locality on a Sunday;
  - (e) the Application supports the City's planning objectives in relation to increasing attractions and activating the Locality;
  - (f) the grant will not result in any significant antisocial behaviour, noise or disturbance due to the operation of the ETP. The Venue will continue to operate under the Varsity Business Model, providing a safe and friendly licensed premises that will appeal to a wide range of age groups that live and/or visit the Locality.
88. In all the circumstances, the Application should be granted.



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FRASER & ASSOCIATES LAWYERS  
Solicitors for the Applicant

IN THE LIQUOR LICENSING DIVISION OF WESTERN AUSTRALIA

IN THE MATTER OF AN APPLICATION BY **VARSLITY FREO PTY LTD** FOR AN EXTENDED TRADING PERMIT FOR PREMISES KNOWN AS **VARSLITY FREO**, TENANCY G3 & G4, 2 NEWMAN COURT, FREMANTLE

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### LOCALITY SUBMISSIONS

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Date of Document:       The           25       day of           April                   2024

Filed on behalf of:       The Applicant

Prepared by:

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1. The Applicant has filed an application for an Extended Trading Permit (Ongoing Hours) ("the ETP") for premises known as Varsity Freo located at Tenancy G3 & G4, 2 Newman Court, Fremantle ("the Venue").



2. The Applicant is seeking the ETP to allow them to trade outside of their normal trading hours, permitting the Venue to trade between the hours of 6:00am and 10:00am on a Sunday, in circumstances where there is a live telecast of an Ultimate Fighting Championship (“UFC”) event being shown.
3. The ETP is required to operate throughout the whole of the licensed areas of the Venue.
4. Upon approval, the ETP will permit the Venue to trade between the hours of 6:00am and 10:00am on a Sunday, in circumstances where there is a live telecast of an Ultimate Fighting Championship (“UFC”) event being shown.
5. Currently, when there is a UFC event on, the Venue is only permitted to open and trade as a restaurant and is not permitted to sell liquor until 10:00am.
6. If the ETP is granted, the Venue would be permitted to cater to the liquor requirements of those patrons attending the Venue during UFC events held at the Venue on a Sunday morning.





### The Locality

7. The Venue is located on the ground floor of the FOMO mixed-use development (“FOMO”).
8. FOMO is the coordinated redevelopment of the former Myer building, the Queensgate building and the Queensgate car park that delivers a contemporary laneway retail, entertainment and dining destination.



### Local Government Authority

9. For the purpose of section 69 of the Act, the City of Fremantle is the local government authority that may lodge a notice of intervention pursuant to the provisions of section 69(7).
10. The Venue is located in the suburb of Fremantle, which is part of the local government area (“LGA”) that forms the City of Fremantle (“the City”).
11. Based on the policy titled “Specification of Locality” (“the Policy”) a 2km radius defines the Locality. However, applying this policy to the Venue would require the



locality to include not only the suburb of Fremantle but also the following suburbs (in part or whole):



- (a) South Fremantle;
- (b) North Fremantle;
- (c) Beaconsfield;
- (d) East Fremantle;
- (e) Palmyra; and
- (f) White Gum Valley.

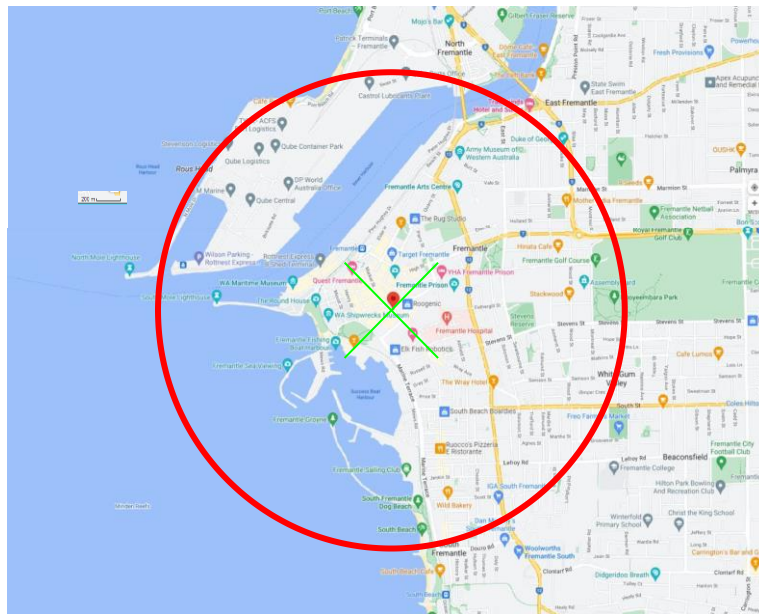


FIGURE 1: LOCALITY MAP

12. By its very nature, Fremantle is a “destination” precinct. Persons are attracted to the locality for the following reasons:
- (a) business/work;
  - (b) retail;
  - (c) dining and liquor services;
  - (d) entertainment;
  - (e) recreation;
  - (f) tourism; and
  - (g) culture.
13. As a key Entertainment Precinct with the metropolitan area, Fremantle has a high density of licensed premises. Annexed and marked “**Annexure A**” is a **Locality**

**Summary** showing similar class licensed premises located within a 2km range of the Venue, however none of these licensed premises operate with an extended trading permit on a Sunday morning that offers live telecasts of UFC events.

### City of Fremantle



14. The City of Fremantle (“the City”) is a LGA located less than 20km south of the Perth CBD and includes the suburbs of Beaconsfield, Fremantle, Hilton, North Fremantle, O’Connor, Samson, South Fremantle and White Gum Valley.
15. With more than 30,000 residents in the LGA over a land area of 19sqm kilometres, the Swan River and Indian Ocean bound Fremantle. Fremantle is regarded as Perth’s second city.
16. The City is predominantly a residential area, with substantial maritime and industrial areas, as well as commercial and tourist areas. Western Australia's major commercial port is in Fremantle, the port handles the majority of the State's imports and exports.
17. The City offers a unique charm and character that is a fusion of all of its qualities including landscape, heritage architecture, music, culture, arts, retail outlets and markets, cafés, pubs and restaurants, all of which have created a vibrant and eclectic community that is the most visited destination in Western Australia outside of the Perth CBD.



18. The City's planning objectives and vision are included in the City's **Strategic Community Plan 2015 – 2025** ("the Community Plan"). Extracts of the Community Plan are annexed and marked "**Annexure B**".

19. The City's vision for the future is outlined below:

*"Fremantle: a destination city*

*A city that is clever and creative, inspiring and inclusive.*

*A city that welcomes and celebrates all people and cultures. A city that encourages innovation, prosperity and achievement.*

*A compassionate city that cares for the wellbeing of our people and the environment we share.*

*A city that thrives on diversity and dares to be different."*

20. The following strategic focus areas are relevant to the Application and support the approval of a Special Facility licence to the Venue:

***"Economic development***

*Diversify and strengthen Fremantle's economic capacity.*

***Places for people***

*Create great spaces for people through innovative urban and suburban design.*

***Health and happiness***

*Creating a physical and social environment where it is easy for people to lead safe, happy and healthy lives."* (Pages 12, 14 – 15, 20 - 23)

21. The City's **Destination Marketing Plan** ("the Marketing Plan), annexed and marked "**Annexure C**" was developed in collaboration with the Destination Marketing Working Group ("DMWG") in collaboration with the City. The DMWG is a group of

tourism, retail, hospitality and business experts with extensive knowledge of Fremantle. The group was engaged to develop a destination marketing strategic plan that supports all consumer facing industries in Fremantle including retail, hospitality, tourism and professional services with the intention of serving as a guide for destination marketing activities for the City.

22. As part of the Marketing Plan, three (3) brand values were identified as part of building a strong brand identity for the City. The brand values are:

- (a) Spirit – linked to Fremantle’s vibrancy, liveliness, colour and fun;
- (b) Soul – relates to Fremantle’s arts and culture, heritage buildings and live music;
- (c) Sea - relates to Fremantle’s beaches, its maritime history, the port, seafood industry, and its unique coastal precincts such as Fishing Boat Harbour.

23. Based on these values, Fremantle’s Brand identity has become:

*“A maritime city with spirit and soul.”*



24. The City is renowned for its significance as a destination attractor for both local residents of Perth as day-trippers and tourists from around the world, for reasons that include its historic charm, waterfront location and port, a range of tourist attractions, vibrant arts scene and a strong hospitality focus including its famous Cappuccino Strip.

25. The following strategic focus areas are relevant to the Application and support the grant of the ETP to the Venue:

***“Economic development***

*Diversify and strengthen Fremantle’s economic capacity.*

***Places for people***

*Create great spaces for people through innovative urban and suburban design.*

***Health and happiness***

*Creating a physical and social environment where it is easy for people to lead safe, happy and healthy lives.”* (Pages 12, 14 – 15, 20 - 23)

26. The Marketing Plan focuses on leveraging the Fremantle brand to drive growth in its visitor economy. A diverse range of experiences and the density of those experiences in the Precinct (identified as Fremantle’s “spirit” – vibrancy, liveliness, colour and fun) that are within walking distance of each other is seen as main motivators for drawing visitors.
27. KPI’s relevant to the Application that were identified as part of the branding strategy is:
- (a) Increased number of visitors to Fremantle; and
  - (b) Increased number of overnight stays and visitor night averages for Fremantle.
- (Refer to pages 7, 8, 11, 18 - 21)
28. The ETP supports to the City’s objectives to create a vibrant and lively weekend economy in the Precinct where a range of attractions and experiences are offered that also encourage overnight stays.
29. Innovative liquor licensing was seen from stakeholder feedback as something that Fremantle tended to do well, however it was noted that there was a need to increase visitation in Fremantle during off-peak visitation periods. The ETP will help to further activate the Precinct early on a Sunday morning and will be a step towards bringing the City closer to growing into a “seven day economy” by adding to the choice of services, entertainment and settings that are available to be enjoyed. (Page 15)
30. Annexed and marked “**Annexure D**” are extracts from the City’s publication **Freo 2029**, which was developed by the City as part of an action plan to transform the City and reinvigorate it, after acknowledging that Fremantle had come into a period of slow decline where population growth was stagnating, retail and commercial floor space was falling and employment diversity was contracting. (Page 3).

31. Central to Freo 29 is the City's plans to economically and socially revitalise the CBD to increase population density and enhance Locality's liveability. (Pages 5 & 6)
32. The Venue supports the City's strategic plans that are set out in Annexures B – E in these submissions and will actively promote Fremantle as a destination to visit and socialise in, as well as enhancing the facilities and services that the Locality offers to residents and visitors.
33. Extracts from the City's **Economic Development Strategy 2015 – 2020** ("the Economic Strategy") are annexed and marked "**Annexure E**".
34. The Economic Strategy includes supporting retail and hospitality businesses that add to the City's Brand and through their operations generates greater visitation and increases overnight stays by persons who are seeking out recreational social space and entertainment, in particular UFC sports fans.
35. The City's approach is focused on increasing the number of activities/experiences that visitors can enjoy both during the day and night, to add "layers" to their experience and increase the frequency of repeat visits.
36. A high volume of visitors, a good leisure offering and a thriving hospitality industry are all viewed as essential components to creating a sustainable destination that offers a variety of attractions for a wide and diverse group of visitors. (Pages 9 – 12, 14 & 20 and also *unwto.org/sustainable-development*)
37. Education and training institutions within Fremantle, including Notre Dame University and the Challenger Institute of Technology make strong contributions to the local economy. Students are consumers of hospitality services within the Locality and are likely to enjoy socialising at the Venue to watch the UFC during their recreation time. (Page 25). The contribution of students to the City's economy is also referred to in the Economic Strategy (Annexure E, page 34)
38. In addition, Fremantle Hospital is located within the Fremantle CBD. Health care professionals are a key segment of the City's working community that relies on hospitality and entertainment services within the Locality, as does Maritime and Port industries workers, all of whom work in many cases shift work. Extended trading hours that are not necessarily in the evenings gives these workers greater opportunities to socialise at times that suit their lifestyle and non-traditional work hours. (Pages 26 & 27)



39. The Applicant submits that the City's vision and strategic objectives mentioned above supports the Application with respect to improving the amenity of the area, increasing visitor numbers (including overnights stays) and adding to the vibrancy of the Precinct, which help to better meet the needs of recreation and fun seekers who wish to socialise and enjoy activities within the Locality, in particular those who enjoy the UFC.
40. The Applicant also suggests that the grant of the Application is consistent with the City's Community Plan and planning guidelines aimed at enhancing the Locality's appeal and vibrancy, which in turn will advance the City's liveability rating. (Refer to Annexures A - E in these submissions)

### Public Transport

41. The Locality is located within an established key regional retail and commercial centre and is therefore well serviced by public transport services. The Fremantle Train Station and buses are in easy walking distance from the Venue.



### Demographics

42. For the purpose of these submissions, the Applicant submits that the statistical data from the Australian Bureau of Statistics (ABS) for the City are the most relevant.
43. Annexed and marked "**Annexure F**" is a copy of the ABS 2021 Quickstats for the suburb of Fremantle ("**Fremantle Quickstats**").
44. Annexed and marked "**Annexure G**" is a copy of the ABS 2021 Quickstats for the City of Fremantle ("**LGA Quickstats**").

45. Key data from Annexure G is noted below:
- (a) The median age of the City’s residents is 42 years of age, similar to the suburb of Fremantle’s residents median age of 41 years.
  - (b) Indigenous residents make up 1.7%, far less than the State median (3.3%);
  - (c) Approximately 34.8% of the population were aged between 25 and 49 years;
  - (d) 5.5% of the population were aged between 20 and 24 years;
  - (e) 64.9% of residents were born in Australia;
  - (f) 81% of households only spoke English at home;
  - (g) The top three (3) Occupations were Professionals (37.5%), Managers (15%) and Community/Personal Service Workers (11.5%);
  - (h) Median weekly incomes for the City’s residents were above the both the State and National figures; and
  - (i) Couples with no children made up 45.1% of the population.
46. Based on the 2021 ABS Census data, the City had a SEIFA index score of 1031.2, reflecting a lower level of disadvantage than most LGA’s in Perth’s South West. Refer to Figure 2 below

Local Government Area	SEIFA Score	Profile Area
Town of East Fremantle	1,082.2	91
City of Melville	1,070.0	85
City of Cockburn	1,033.3	62
City of Fremantle	1,031.2	61
Perth South West	1,022.6	55
Greater Perth	1,020.0	54
Western Australia	1,011.0	48
Australia	1,001.2	42
City of Rockingham	989.3	36
City of Kwinana	970.5	27

Source: Australian Bureau of Statistics, Census of Population and Housing 2021. Compiled and presented in profile.id by .id (informed decisions).  
Please refer to specific data notes for more information

FIGURE 2: SEIFA SCORE

**Tourism**

47. Fremantle offers a wide variety of activities and attractions for visitors to enjoy, together with a range of hospitality offers.
48. As noted in the City’s Strategic Planning documents, which have been outlined in these submissions is the need to leverage visitor numbers and create more



opportunities to increase overnight stays. (Also refer to page 10 in the Marketing Plan)



### Tourism WA

49. In addition to the Entertainment Surveys (Annexures J & K, PIA Submissions), key statistical data from Tourism Western Australia ("TWA") supporting the need for additional liquor, dining and entertainment services are provided below:
  - (a) **Overnight Visitor Fact Sheet – City of Fremantle, 2022** - Annexed and marked "**Annexure H**";
  - (b) **Interstate Visitor Profile 2022** - Annexed and marked "**Annexure I**"; and
  - (c) **Intrastate Market Profile 2018 – 2019** - Annexed and marked "**Annexure J**".
50. The TWA publications referred to in paragraph 49 above reflect significant tourism numbers for the City, whilst also identifying opportunities to improve overall visitor numbers, particularly intrastate visitation in Fremantle. (Also refer Annexures A – E)
51. The Fremantle Entertainment Precinct, together with the Perth CBD are the most popular locations that are visited by both local residents and tourists, with Fremantle being rated as the most diverse appealing to all demographics. (Refer to the Entertainment Surveys, Annexures J and K, PIA submissions)
52. The Venue meets all of the criteria listed in the Entertainment Survey that influence the appeal of a venue to consumers with respect to services and location.
53. The Applicant's proven experience in the hospitality industry and the success of the Varsity brand in WA is evidence of the high standards in both management and

services that will be maintained at the Venue during the ETP trading hours and the demand for the UFC entertainment services proposed.

54. Due to the Venue's style of operations, concept and fit-out the Venue is a popular destination within the Fremantle CBD. The grant of the ETP, will add to the Venue's appeal and increase its role within the Locality as a prominent destination attractor.
55. The Applicant submits that based upon the tourism data provided and the importance of Perth maintaining its liveability ranking (as noted in Annexure K in these submissions), there is an ongoing demand and requirement for additional attractions and a range of licensed venues that offer not only food and beverages but also entertainment and special events in the City. The ETP is linked closely with the Venue's sporting theme and its commitment to present regular sporting events for its patrons to enjoy. Entertainment at the Venue is strongly supported by its food focus.
56. The Venue will support the further reactivation of the Fremantle CBD, motivating the local community and visitors to visit the Locality more regularly and stay longer across the weekend, whilst adding to the vibrancy of FOMO.
57. The Chamber of Commerce and Industry in their discussion paper, **Perth Vibrancy and Regional Liveability** ("the Discussion Paper"), annexed and marked "**Annexure K**," discusses the importance of increasing the vibrancy of Perth in order to attract more people to visit and motivate them to stay longer.
58. It is submitted that the present application is consistent with the planning objectives of the City and WAPC, as well as the recommendations made by the Chamber of Commerce and Industry and Tourism WA.
59. Planning authorities have recognised the need to meet the growing demands of Perth residents and those visiting Perth. Localities across the metropolitan area need to ensure that they provide a greater variety of services to meet the needs and tastes of a wide and growing consumer base that will help to attract new residents and also visitors. The Application supports these objectives.
60. The City has indicated that they are committed to implementing strategies to increase the vibrancy, attractiveness and amenities within their LGA for a growing population and visitors.

61. The features and demographics of the Locality, together with the unique entertainment services that the Venue is proposing to offer during the ETP should be taken into consideration when determining the Application.
62. By reason of the above, the Applicant submits that the grant of the Application will positively contribute to the amenity of the Locality by:
- (a) Encouraging more people to visit the Site and the Locality in general, particularly on Sundays by UFC sports fans;
  - (b) Offering a safe and friendly licensed venue for members of the community to watch live UFC events;
  - (c) Adding to the choice of entertainment that is available in the Locality for members of the community to enjoy; and
  - (d) Supporting the future sustainability of the Site and local businesses trading in and around this location.



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FRASER & ASSOCIATES LAWYERS  
Solicitors for the Applicant

IN THE LIQUOR LICENSING DIVISION OF WESTERN AUSTRALIA

IN THE MATTER OF AN APPLICATION BY **VARSLITY FREO PTY LTD** FOR AN **EXTENDED TRADING PERMIT (ONGOING HOURS)** FOR PREMISES KNOWN AS **VARSLITY FREO**, LOCATED AT TENANCY G3 & G4, 2 NEWMAN COURT, FREMANTLE

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## LEGAL SUBMISSIONS

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Date of Document:           The                           25                   day of                   April                   2024

Prepared by:

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The logo for 'Varsity' is written in a dark blue, stylized, cursive font. The letters are bold and interconnected, with a thick, dark blue horizontal line striking through the middle of the word. The line starts above the 'V', goes through the 'a', 'r', 's', and 'i', and ends below the 't'.

### Extended Trading Permit for Ongoing Hours

1. An extended trading permit may be granted for the purpose of authorising a licensee to sell liquor under the licence during specified hours that would not otherwise be permitted hours (section 60(4)(g) of the Act).
2. An ETP should not be issued in a way calculated to subvert the system of licence classification (*re Universal Bar and Grill (1994) 10 SR (WA) 71*).
3. The "subversion of the licence classification system" means the "imposition of conditions that will change the essential nature of the licence of the relevant class" *Beachport Properties Pty Ltd v Tyncom Pty Ltd & Ors BC 9000206 SCSA* (at page 2).

4. An Applicant for an ETP is not required to demonstrate exceptional public interest considerations in relation to applications for extended trading hours (*Hermal Pty Ltd v The Director of Liquor Licensing (2001) WASCA 356*).
5. A restriction upon extended trading hours cannot be inferred from a lack of express government guidance. Such guidance is provided by the test for an ETP and the scopes and objects of the Act. (*Hermal Pty Ltd v The Director of Liquor Licensing, supra* above).
6. Although the power exists under section 61A to limit the permitted hours authorised by extended trading permits, this power has not been exercised.
7. As such there is at present no limitation upon the trading hours that may be granted under an extended trading permit.
8. We note that:
  - (a) the 2005 *Freemantle Review of the Liquor Licensing Act* recommended that Extended Trading Permits for trading hours be restricted to 2:00am in the morning; and
  - (b) Parliament, as evidenced by debate of the Bill, Hansard 24 October 2006, page 75073 – 7541(a), intended the legislation be drafted in such a manner that the Licensing Authority could grant ETPs to beyond 2:00am, thereby rejecting the Fremantle recommendation.
9. Accordingly, an ETP permitting a venue to trade until 2:00am is:
  - (a) entirely consistent with the tenor of a Tavern (Restricted) licence;
  - (b) consistent with the hours during which Parliament envisaged a hotel or tavern could operate; and
  - (c) does not subvert the system of licence classification.

### **Public Interest**

10. Section 38(4) provides that the matters the Licensing Authority may have regard to in determining whether the grant of an application is in the public interest, include:
  - (a) the harm or ill health that might be caused to people, or any group of people due to the use of liquor;

- (b) the impact on the amenity of the Locality in which the licensed premises or proposed licensed premises are, or are to be, situated;
  - (c) whether offence, annoyance, disturbance or inconvenience may be caused to people who work or reside in the vicinity of the licensed premises or proposed licensed premises; and
  - (d) any other prescribed matter.
11. Relevant to the question of the public interest are the objects of the Act which, for the purpose of the present application, relevantly include the following primary objects:
- (a) to regulate the sale, supply and consumption of liquor;
  - (b) to minimise harm or ill health caused to people or any group of people due to the use of liquor; and
  - (c) to cater for the requirements of consumers for liquor related services with regard to the development of the liquor industry, the tourist industry and other hospitality industries in the State.
12. It is submitted that when sections 5(1)(a), (b) and (c) are read in conjunction, the Licensing Authority, in regulating the sale, supply and consumption of liquor, and catering for the requirements of consumers for liquor and related services, is required to have regard to the object of minimising harm or ill health cause to people or any group of people.
13. It follows that although section 5(1)(b) is a primary object of the Act, it does not necessarily mean that when harm or ill health may be caused to people by the granting of an application no licence should be granted (*Executive Director of Public Health v Lily Creek International Pty Ltd & Ors* (2000) WASCA 258).

#### **Section 5(1)(b): Harm and Ill-health**

14. Section 5(1)(b) provides the following primary object of the Act:

*"To minimise harm or ill-health caused to people, or any group of people, due to the use of liquor."*

15. The Licensing Authority is required to consider whether the risk of increased harm is acceptable or unacceptable. It is not the position, however, that any increase is unacceptable. This is an assessment which must be made on a case-by-case basis

*(Executive Director of Public Health v Lily Creek International Pty Limited & Ors [2001] WASCA 410 at [59] per Wheeler J).*

16. When considering whether the grant of the application will cause harm or ill-health to people or any group of people due to the use of liquor, the approach to be adopted is as follows:
- (a) the Licensing Authority must make findings that specifically identify the existing level of harm and ill-health in the relevant Locality due to the use of liquor;
  - (b) the Licensing Authority must make findings about the likely degree of harm to result from the grant of the application;
  - (c) the Licensing Authority must assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
  - (d) the Licensing Authority must weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the applicant has satisfied the Licensing Authority that it is in the public interest to grant the application.

*(Carnegies Realty Pty Ltd v Director of Liquor Licensing [2015] WASC 208 at page 14.)*

17. It is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol-related harm which is likely to result from the grant of the particular application (*Carnegies*, supra at page 15).

### **Section 5(c)**

18. The Act no longer provides for a "needs test".
19. Section 5(1)(c) of the Act states:

*"(1) The primary objects of this Act are:*

- (c) 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."*



20. In *Australian Leisure and Hospitality Group Pty Limited v Commissioner of Police & Ors* [2017] WASC 88, the Supreme Court stated:

*"... I consider Section 5(1)(c) requires regard be directed to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in considering the issue of catering for consumer requirements.*

*Catering for consumer requirements is not be considered in isolation. The potential and opportunity for proper development of the industry (including change) is not to be ignored.*

*Assuming there is appropriate probity evidence, the words invite a broader ambit of matters to be considered as part of assessing the diversity of consumer requirements and how they are to be catered for".* (paragraphs 67-69)

21. While indicating that it is not for the Court to prescribe the matters which may be important when considering the proper development of the liquor industry, in that matter, the Supreme Court stated:

*"However, in this case, it would seem that the changing demographic of the community and the introduction of a different offering in terms of consumer choice and diversity are important matters for evaluation and the Commission ought to have a proper regard to them, which means not only stating conclusions but revealing an analysis of the relevance of those matters."* (paragraph 10)

22. When considering the primary object contained in Section 5(1)(c), it is settled law that this object does not incorporate the "need" test, which was removed by amendments to the Act made by the *Liquor and Gambling Legislation Amendment Act 2006* (WA) (refer to *Australian Leisure and Hospitality Group Pty Limited v Commissioner of Police* [2016] WASC 40).

23. In *Liquorland (Australia) Pty Limited* LC 07/2017, the Liquor Commission stated:

*"... The Commission has not considered the issue of "need" in determining this application. The Commission does not consider that Section 5(1)(c) of the Act imposes a positive onus on applicants to establish that there is a need or requirement for the granting of the application. That Section relates to an objective assessment of whether the granting of the application will 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. The submissions made on behalf of the Director in respect of this issue are rejected by the Commission." (Paragraph 22) (our underlining).*

24. The submission referred to by the Commission is summarised at paragraph 11 of the Decision as follows:

*"In written submissions dated 4 August 2016, Counsel for the Director stated that:*

*.....In order for the Liquor Commission to conclude that the grant of the application materially caters for the requirements of consumers for liquor, the applicant is required to, by cogent evidence, prove that there is, in fact, a consumer requirement - that is, some call by consumers for the products and services that will be offered at the premises and that the grant of the application will cater for that requirement in a way which can be said to be beneficial to the public interest."*

25. A similar argument was advanced on behalf of the Director of Licensing in the matter of *ALDI Food Pty Limited* [LC 09/2017] ("the ALDI Decision").

26. At paragraph 17 of the ALDI Decision, the Commission stated:

*"It is apparent that the Director wished to rely upon the Woolworth's evidence in submitting that the applicant had 'failed to demonstrate the degree to which the grant of the application would cater for the requirements of consumers for liquor."*

27. The written submissions lodged on behalf of the Director went on to state that:

*"There has to be evidence of some call by consumers for the products and services that will be offered at the proposed licensed premises."*

28. This point was further developed at the hearing at which Counsel for the Delegate stated:

*"... But the point being is that that statement needs to be considered in that context that the Delegate wasn't just considering the evidence provided in support of the ALDI Application, it was also in the context of the evidence put forward by Woolworths as to consumer requirement in considering that evidence as a whole."*

29. To place this submission in context, the application under review in the ALDI Decision was originally considered in conjunction with an application by Woolworths for a liquor store licence in the same shopping centre the proposed ALDI store was to be located.

30. In refusing the ALDI Application at first instance, upon a consideration of both the Woolworths and the ALDI Applications, the Delegate to the Director stated:

*"I have concluded that the Woolworths Application would provide greater benefits to consumers in the locality ..."* (Paragraph 6 of the Decision of the Director of Liquor Licensing dated 11 May 2016).

31. The submission advanced by the Director with respect to the correct approach to be adopted under Section 5(1)(c) of the Act (reproduced above) was rejected by the Commission. The Commission stated:

*"In any event, the submissions advanced on behalf of the Director were based on the misconception that Section 5(1)(c) of the Act required an applicant to establish a need or call or requirement for liquor in the locality. The submissions ignored the wording of the provisions which states that one of the primary objects of the Act is "to cater for the requirement of consumers for liquor and related services with regard to the development of the liquor industry, the tourism industry and other hospitality industries in the state."* (Paragraph 19) (our underlining).

32. The Commission further stated in that case:

*"Section 5(1)(c) requires the Commission to evaluate whether the evidence before it is such that the granting of the application will cater for the requirements of consumers for liquor and related services and provides for the profitability of the liquor industry. It does not require an applicant to establish that there is a need for liquor in the relevant location. As was noted by Martino J in *Australian Leisure and Hospitality Group Pty Limited v Commissioner of Police* the "needs test" no longer applies to applications of this nature".* (paragraph 27) (our underlining)

### **Section 5(1)(c) and the 'balancing exercise'**

33. A conflict may arise between the object of minimising harm or ill health on the one hand and catering for the requirements of consumers on the other. Neither of the primary objects under sections 5(1)(b) and 5(1)(c) should be given precedence. In such cases,

the Licensing Authority undertakes a balancing exercise, weighing up considerations relevant to these and all other objects of the Act.

34. Where there is a prospect of harm or ill health being caused by the grant of a licence, and the grant would advance other objects, the resolution of the conflict that then arises will depend on the degree of importance that is to be attributed to each of the relevant factors in the particular circumstances (*Executive Director of Health v Lily Creek International Pty Limited & Ors* (2000) WASCA 25 at page 45).



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