

## Adelaide Oval SMA [AOSMA] – Application to Vary Liquor Licence Condition

### Sequence of Events

#### 2020 Application

- On or about 01/07/2020, AOSMA submitted an application to vary their existing liquor licence conditions to allow the sale and supply of liquor in aluminum cans.
- On or about 23/07/2020, pursuant to Section 28AA of the Liquor Licensing Act 1997 [the Act], Police formally filed a notice of intervention with the Liquor and Gambling Commissioner, objecting to the application, on public interest/public order and safety grounds.
- Adelaide City Council also lodged an intervention on the application
- On or about 17/08/2020, Vicki Brunello, Delegate, Liquor and Gambling Commissioner, considered the AOSMA application, together with the Police intervention.
- Prior to 17/08/2020, Delegate Brunello sought additional information from AOSMA in respect to the application, specifically, measures that AOSMA intended to put in place to mitigate increased risk to public safety if liquor was served in aluminum cans. No such information was forthcoming.
- On 17/08/2020, Delegate Brunello refused the application. [refer attached Order B228360 dated 17/08/2020]

#### 2022 Application

##### AOSMA Application to vary an existing Licence Condition

- On or about 23/05/2022, AOSMA (represented by Minter Ellison Letter) submitted an application to vary their existing liquor licence conditions to allow the sale and supply of liquor in aluminum cans. Summary of application:
  - Proposed use of cans
  - Suggest a review of operations after six months
  - Details environmental impact
  - AOSMA committed to reducing environmental impact
  - Claims improved ability to ensure responsible consumption of alcohol as cans have less volume which will require more frequent attendance at service points
  - Cans allow for greater patron experience
  - Less risk of spillage
  - Allows AOSMA to explore commercial opportunities
  - Claims slower consumption
  - Cans present no greater risk of use as a projectile than that currently exists with water bottles, soft drink bottle and plastic cups
  - Plastic cups if thrown create a spray effect
  - Security will closely monitor
  - AOSMA is confident its current security arrangements and approach to responsible service of alcohol are sufficient to manage any concerns
  - Cans are used at other events of a large scale and length of events and the use of cans as a projectile appears to be well managed

- Any suggestion allowing the use of cans at Adelaide Oval would create a potential precedent is misconceived. Numerous venues both in South Australia and interstate already allow service in cans, including Superloop Adelaide 500, Royal Adelaide Showground, Fringe, Garden of Unearthly Delights, Village Green (adjoining Adelaide Oval), various music festivals and SANFL. Many of the potential risks are shared and are on whole well managed
  - Comments on the 8 May 2022 news report “*Time to crack open a tinnie at Adelaide Oval*” and the proposal to allow the service of alcohol in cans is supported by the Hon Susan Close Deputy Premier as well as David Speirs, the Leader of the Opposition
  - Provides a summary outlining environment benefits, advantages in respect of responsible service of alcohol and user experience, AOSMA comfortable that current security arrangements and approach to responsible service of alcohol are sufficient to manage.
  - AOSMA propose a six month review and there is no barrier to the approval of the variation.
  - NOTE - no direct commentary in relation to public safety and how public safety will be addressed
- On 31/05/2022 [with the consent of LEB Management] LEB Prosecution approached PASA for their views on the application.

#### Licensing Enforcement Branch Intervention

- On or about 16/06/2022 [with the consent of LEB Management], pursuant to Section 28AA of the Liquor Licensing Act 1997 [the Act], Police formally filed a notice of intervention with the Liquor and Gambling Commissioner, objecting to the application, on public interest/public order and safety grounds. Summary of intervention:
  - Police are of the view there is a real possibility that the personal public safety or an apprehension of danger to the personal safety of the public would exist in the event of a public disturbance at the ground that results in cans being thrown. Intervention provides two examples:
    - A 2010 Sydney Morning Herald article ‘The Day Snow Stopped Play in the Sydney Test’ when spectators hurled beer cans and bottles at Snow as he called on them to fight him. (incident occurred 1971)
    - 1988 State of Origin series at Lange Park when cans of beer and rubbish was lobbed on the field.
    - Police acknowledge a trial is occurring at the Melbourne Cricket Ground and involves the sale and supply is restricted to specific areas of the ground
    - Provides Commentary on Local Policy view:
      - SAPOL doesn’t support the use of normal ring-pull aluminum cans
      - Discussions were held in the past 18 months with the SMA regarding the trialing of open-top aluminum cans (draft top

cans) which are designed to act as a cup (this maybe worth a trial)

- Applicant's desire to reduce its environmental footprint is commendable relying on the reintroduction of aluminum cans in order to achieve this outcome is problematic, given that meaningful alternatives currently exists
  - A further alternative exists by the way of the applicant phasing out single use plastic cups with environmentally friendly biodegradable plastic cups
  - Cites past Licensing Court remarks in that the common theme is that the Court clearly and unequivocally places public safety and the potential for public safety to be compromised as a primary consideration.
- On or about 17/06/2022, a copy of the Police Intervention was forwarded to Chief Inspector Hutchins, and Acting Senior Sergeant O'Connor.
  - On or about 20/06/2022, Police obtained a copy of the AOSMA submission, to the Liquor and Gambling Commissioner dated 23/05/2022, in support of their application. A copy of the AOSMA submission was forwarded to Chief Inspector Hutchins and Superintendent Nairn.
  - On or about 20/06/2022, advice was received from the Liquor and Gambling Commissioner that the application had been set down for an initial hearing on 27/06/2022.
  - On 21/06/22 CBP submitted
  - On 27/06/2022, a hearing [Zoe Thomas, Assistant Director, Licensing, Consumer and Business Services] was convened between all parties. [the applicant's representatives, Superintendent Nairn, Chief Inspector Hutchins, Acting Sergeant Osterstock]

*Dear Parties*

*I refer to the directions hearing in this matter this morning and confirm the matter has been set down for hearing before the Commissioner on **Tuesday 26 July at 2.30pm** at CBS, Level 2. The hearing will be in person; however we will include a TEAMS in case anyone is unable to appear in person on the day.*

*You will receive a calendar request from the Commissioner's inbox in due course.*

*SAPOL is to file any further submissions by COB on Wednesday 13 July and the applicant is to file any submissions in response by COB Wednesday, 20 July 2022.*

- On or about 06/07/2022, [having obtained prior consent [on or about 31/05/22] from LEB Management to approach PASA for comment on the application], PASA's position on the application was received by way of a copy of a letter to the Minister for Police, objecting to the application by AOSMA.
- A copy of the PASA correspondence was forwarded to Chief Inspector Hutchins for information. Hutchins on forwarded PASA's letter to the AC/Ch.Supt and OC ED.
- 11/7/22 PASA's letter received via MLO and OSS Executive.

- On or about 07/07/2022, in accordance with the Liquor and Gambling Commissioner's order of 27/06/2020, further submissions were made, in support of the Police Intervention, which included a copy of the PASA objection.
- On or about 08/07/2022, advice was received from Ben JOHNS, Manager, Liquor and Gaming, Consumer and Business Services, that the applicant had been provided with a copy of the further Police submissions.

### AOSMA Response

- On or about 13/07/2022, further submissions were received from AOSMA in response to the Police submissions of 07/07/2022 by way of Minter Ellison letter dated 12/07/2022. Summary of the response:
  - Important to note that no submission has been received from either the public or Adelaide City Council (ACC). ACC has confirmed by email dated 21 June 2022 that AOSMA will not require any development approval or variation to an existing approval and may proceed without any further consent/approval from Adelaide City Council
  - Acknowledge SAPOL intervention and PASA letter
  - SAPOL concerned about public interest arising from a threat to public safety
  - AOSMA acknowledges the importance of public safety at all times and the implementation of appropriate measures to protect public safety
  - SAPOL's intervention cites two examples (1971 and 1989) both are historical (51 and 33 years ago), difficulty to see the relevance to these isolated incidents. No information provided in relation to control measures employed at the time (suggest nothing similar to today's standards).
  - In the 1970s and 1980s the alcohol/venue management plans, framework and arrangements were significantly different. AOSMA is confident it can manage:
    - AOSMA is of the view aluminum cans present no greater risk as use of a projectile that currently exist from water bottles, drink bottles and plastic cups. This view is reinforced by successful trials of service of cans at other major sporting grounds
    - AOSMA already serves cans in corporate, dining, reception and functions areas including open corporate boxes which are located in four locations with members and general admission areas. AOSMA has not experienced any concerns
    - Adelaide Oval (AO) generally enjoys good crowd behaviour for a venue of this capacity
    - AO maintains a significant presence of security personnel, in conjunction with real time CCTV monitoring, attendance of SAPOL and well at RSA procedures
    - AOSMA and SAPOL work together to ensure incidents are minimized and appropriately managed. If an incident occurs AO take immediate and proactive steps to ensure it is effectively managed,
    - AOSMA propose a six month trial – during which AOSMA (and SAPOL) will continue to monitor all behaviour and safety risks and incidents.

- AOSMA never intends to place its liquor licence as risk and will not jeopardise its regulatory compliance record
  - Cites improved RSA, slower consumption, more frequent attendance, reduced ability for quick consumption, less spillage, greater all round patron experience. Allows AO to explore commercial opportunities
  - We understand the service of alcohol in cans at MCG and Marvel has been well received
  - Concerns raised by VICPOL are historic without regard to current safety and management standards.
  - AOSMA recently attended a stadium security forum. Adelaide Oval is the only major stadium in Australis that has not been granted approval for the use of cans (Other than corporate areas). Consensus received from all stadiums since the introduction of cans that there have been no crowd behaviour issues.
  - Enquiries have been made with AOSMA's supplier who advised draft top cans is not able to be facilitated.
  - AOSMA has recently received a letter from the Hon Susan Close Deputy Premier supporting the variation
  - In closing provides a summary:
    - Incidents identified are historic without regards to current standards
    - Service of cans has been successfully trialed at other major sporting grounds in Australia
    - Service of cans already occurs in corporate, dining, reception and function areas (including open corporate boxes)
    - No concerns raised by members of public or ACC
    - No higher threat to safety
    - AOSMA comfortable that its extensive alcohol management practices, presence of security, SAPOL, CCTV monitoring and RSA procedures the service of cans can be managed
    - Propose six month trial which can be reviewed at any time.
- This letter initiated further consideration by SAPOL. This resulted in the decision to engage with AOSMA to discuss the application about SAPOL's public safety concerns. (This approach was supported by Mr Ben Johns the Acting Assistant Director of Licensing). Rationale included:
- Cans are already approved for significant South Australian major events such as:
    - Superloop Adelaide 500, now Valo Adelaide 500 with a patron capacity of 150K and after race concerts (9.00 am – 11.00 pm).
    - Spin Off music festival at Wayville Show grounds with a patron capacity of 23K and approved by the Liquor and Gambling Commissioner on 13 July 2022 (10.00 am – 11.00 pm)  
(Both of these events are longer than Adelaide Oval events and not within a controlled environment such as Adelaide Oval and arguably with inferior management plans, CCTV and controls in place, with no identifiable issues)
    - SANFL Grounds

- Fringe Events
- Cans by liquor volume are less than plastic cups
- Cans are already available in AO corporate areas and the Adelaide Oval Test Match 'Village Green' with a patron capacity of 3.5K
- Cans have been introduced to other major stadiums around Australia and the consensus received from all stadiums since the introduction of cans was that there have been no crowd behaviour issues arising from the service of alcohol cans as cited by Minter Ellison.

#### AOSMA / SAPOL Meeting

- On 18/07/2022, Superintendent Matt Nairn and Chief Inspector Greg Hutchins met with AOSMA's representative <sup>6(1)</sup> and lawyer <sup>6(1)</sup> to discuss SAPOL's public safety concerns, particularly the cricket and need to ensure public safety. An aspect Nairn and Hutchins were not aware of was AOSMA's intention to continue serving alcohol by tap. (SAPOL members were under the mistaken impression cans were to replace all tap lines. Hutchins later spoke with LEB Prosecutor Mark Osterstock who was also unaware AOSMA's intention to maintain tap service.) In discussions AOSMA made a number of commitments. <sup>6(1)</sup> committed to providing SAPOL written variations as to the discussions for further consideration
- On 19/07/2022 <sup>6(1)</sup> provided a draft update variation to the application to Nairn and Hutchins to consider. Updated variation included:
  - 12 month trial (to encompass entire football and cricket seasons and other events)
  - To address SAPOL's concerns in relation to personal safety:
    - Stadium announcements, warning against use of cans as a projectile, can be a criminal offence, will attract a ban from AO for up to two years
    - AO will commit to imposing a ban of up to two years
    - AO will commit to engaging in a review and debrief with SAPOL at the completion of each day of major events held at AO. AO and SAPOL to work together on this aspect
    - AO will employ staff dedicated to the rapid collection of empty drink containers
    - AO has no intention to cease the service of alcohol in cups, the service of cans represents only one service option
    - AO only supplies mid-strength beer to patrons on "the Hill" and this practice is intended to continue
- Following consideration by Nairn and Hutchins, Hutchins spoke further with <sup>6(1)</sup> to address two aspects:
  - The ability to cease the service of cans if needed
  - Further commentary around the responsible service of alcohol, in particular the 4-2-0 approach (reducing the maximum alcohol sales)

- On 20/07/2022 <sup>s(1)</sup> provided an updated variation to the application which included adding:
  - AOSMA to revert to serving alcohol exclusively within cups should the service in cans not be utilised for a particular event, or a decision be made to cease service in cans during an event for any reason
  - Commentary around AOSMA to be proactive in the responsible service of alcohol and the AO currently alcohol management plan contains a response mechanism for AOSMA to reduce the service of alcohol in a '4-2-0' manner (i.e. maximum number of drinks per transaction)
  
- Other matters considered by SAPOL included:
  - A number of major SA events already hold a liquor licence to serve cans; Superloop (150k capacity), Spin Off festival (23K capacity) SANFL, Fringe events, Royal Adelaide Show Ground, Tennis, Adelaide Oval Test Match Village Green (3500k capacity) etc.
  - A 12 month trial will allow for the evaluation of both football and cricket seasons and other events.
  - The daily debrief of events will allow SAPOL to place any concerns / recommendations to the Liquor and Gambling Commissioner prior to the variation of a condition to the liquor licence being confirmed. It will also allow for SAPOL and AOSMA to closely monitor and respond
  - Minter Ellison's claim that AO was the only major stadium in Australia that has not been granted approval for the use of cans (other than corporate areas). This was later confirmed that all major stadiums allow cans to be served with some variations of service. Soccer stadiums appear the exception
  - Minter Ellison's claim that the consensus received from all stadiums since the introduction of cans that there have been no crowd behaviour issues arising from the service of cans
  - AO is a world class stadium with a good track record, and has vastly improved features when compared to the 80s and 90s,
  - Improved ticketing arrangements,
  - AO maintains a significant presence of security personnel, in conjunction with real time CCTV monitoring
  - The present day AO's alcohol/venue and management plans, framework and arrangements are significantly different with greatly increased safety standards when compared to the 70s and 80s
  - Strong working relationship with police and attendance of SAPOL for all major events
  - The variation allows for service of cans to be ceased for any reason
  - The trial can be reviewed at any time if matters of concern are identified
  - AOSMA commits to addressing any concerns in co-operation with SAPOL and the Liquor and Gambling Commissioner proactively and in a timely manner
  - Minter Ellison also submit:
    - Cans have a smaller volume than current plastic cups, resulting in reduced quantity of alcohol supplied and consumed upon each purchase
    - More frequent attendance at service points provides a greater opportunity for AOSMA staff and security to identify and manage patrons who present a potential concern and improved ability to monitor responsible service of alcohol
    - Cans present no greater risk of being used as a projectile than that currently exists from water bottles and soft drink bottles

- AOSMA is confident that its current security arrangements and approach to responsible service are sufficient to manage concerns as they arise
  - The use of cans at other events of a large scale and length of events, and the use of cans as a projectile appears to have been well managed
  - The service of cans in corporate, dining, reception and function areas (including open boxes) with no concerns raised
  - AO is considering the potential for future sale of non-alcoholic (carbonated) soft drinks in cans
- The updated variation was subsequently supported by SAPOL in a Hutchins' email to <sup>s(1)</sup> on 20/07/2022.
  - AO and SAPOL to consider joint media to advise members of the public of the consequences of throwing cans, this being in support of previous joint media undertaken to highlight both SAPOL and AO stance of not tolerating anti-social behavior by patrons. (AC approval will be sought – not approved)
  - The written agreement was supplied by Minter Ellison to the Liquor and Gambling Commissioner for consideration.

#### 20/7/2022

- CBP prepared and submitted

#### 22/7/22

- <sup>s(1)</sup>, "not good' Police are going to get cans thrown at them, PASA will continue to fight against it (or similar), why get us involved, phone call cut short. Never able to explain rationale.

#### Liquor and Gambling Commissioner Approval

- On 27 July 2022 the Liquor and Gambling Commissioner approved the variation to the license with published reasons. The Commissioner further added an additional condition that aluminum cans must be opened by the licensee at the point of sale.

#### Differences between first and second application

- The difference between the first and second AOSMA application is that in 2020 AOSMA did not respond to Vicki Brunello, Delegate, Liquor and Gambling Commissioner request for further information. (It would appear AOSMA abandoned their application)
- In the AOSMA's 2022 application, Minter Ellison responded to SAPOL's intervention and submissions (Minter Ellison letter of 12/07/2022) which progressed the application, opening the door for face to face discussions which was supported by CBS.
- Adelaide City Council did not lodge an intervention on the 2022 application. SAPOL were the only objectors.