

Attachment 3 – Schedule of Submissions

Submission	Comments	Response to Submission
Support	<i>There will be nil impact by approval of the proposal.</i>	Noted.
Support	<i>It will be beneficial for Burswood community members to gather together at the venue to socialize, without purchasing a meal.</i>	Noted.
Support	<i>As a local resident we are thoroughly supportive of the requested changes. The facility provides a much needed centre point for gatherings and community functions within walking distance. The current owners are responsible and sensitive to local needs. During COVID it modified its use to serve the community and was a vital focal point for all.</i>	Noted.
Support	<i>Encourage local business that enhances the living experience of local residents.</i>	Noted.
Support	<i>We wish to declare our support for the proposal for change of use to a Small Bar at 23 the Circus. As a lot owner of Allegro Strata Scheme SP44450, our view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>	Noted.
Support	<i>I wish to declare our declare for the proposal for change of use to Small Bar at 23 the Circus. As a resident of the area surrounding 23 the Circus, we are fully supportive of the change of use and have no objection to the proposal.</i>	Noted.
Support	<i>We have no objections to this application as it makes sense. For as long as we have lived opposite the location (5 years) the business has predominantly been coffee shop during the day with evening being a meeting place for locals. We see the venue as a small bar now.</i>	Noted.
Support	<i>We have no objections to any plans at the café.</i>	Noted.
Support	<i>We have no objection to change of use from restaurant to small bar.</i>	Noted.

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Object	<i>Our bedroom window on the 3rd floor of the Axis tower is in a direct line to 23 the Circus and loud music from patrons and bands playing has been heard a number of times late into the night. Myself and my wife have also attended 23 the Circus and been served alcohol without being advised that we needed a meal, it is my opinion that 23 the Circus is already trading as a small bar which needs to be policed regularly. I totally oppose the closing times on a Friday and Saturday at 2am as these closing times should be in line with the rest of the week. There is already a small bar within 100m of 23 the Circus and it is my opinion that the Burswood Peninsula Precinct is well served by the existing small bar and restaurant, as long as they trade as a restaurant, and this is why I oppose this application.</i>	<p>Noise from the proposed Unlisted Use (Small Bar) is expected to be similar to noise from the current Restaurant land use.</p> <p>The service of alcohol without a meal is the responsibility of Racing, Gaming and Liquor to patrol.</p> <p>A condition has been recommended that restricts the hours of operation to be consistent with the restaurant at No. 31 the Circus.</p> <p>The number of existing similar uses is not a valid planning consideration.</p>
Object	<i>I am opposed to the application for the following reasons: The closing hours are too late for a residential area. Less than 50 % of seats are inside and the noise generated from the courtyard will be detrimental to residents in the subject building and adjoining developments. Buildings in the peninsular area have a general rule with noise that residents move inside off their balconies by 10.30 pm to reduce the noise impact for other residents. With greater emphasis on the consumption of alcohol noise and late</i>	A condition has been recommended that restricts the hours of operation to be consistent with the restaurant at No. 31 the Circus.

	<p><i>leavings by customers will be increased. The restaurant at present rarely has large numbers after 10pm and generally well less than 75 patrons. Carparking in the peninsula area and more particularly The Circus is already at premium at night time and the granting of this use has the potential to increase traffic in the area and reduce further parking for residents and their visitors. Residents are already affected by the restrictive event day regulations recently introduced by Council. The change of use will mean their will be more rubbish in terms of bottles etc. and the use of kegs will mean more deliveries. The premises has no storage area for the increased rubbish, kegs etc. Removal of these items can generate additional noise and inconvenience for residents. The emphasis on alcohol consumption has the potential to bring more people into the Burswood peninsula area with a possible increase in vandalism, disturbances, traffic and is detrimental to the current quiet enjoyment most residents currently experience.</i></p>	<p>The parking requirements for a Restaurant and Licensed drinking premises under the Town's Local Planning Policy No. 23 – Parking are the same, and therefore no discretion is being sought for car parking.</p> <p>Appropriate waste management is the responsibility of the business owner.</p> <p>The loading times are controlled by the Environmental Protection (Noise) Regulations 1997.</p> <p>The amenity of residents has been assessed further in the Council report.</p>
Object	<p><i>As the owner of Three B's Burswood Bar and Bistro we believe the addition of another small bar license will severely impact our business as the community population is too small and does not warrant two (2) small bar licenses. Our business plan reflected Three B's was to be the only small bar license in the immediate area as a point of difference from the larger venues at Crown, Optus Stadium, Blasta Brewery and Empire Bar. Since we opened in March 2018 we have targeted people outside our community and brought a lot of repeat customers into the area due to our hard work and now 23 The Circus want to capitalise on our hard work. 23 The Circus has always been a restaurant and I do believe that they have not adhered to their license from what others have told me serving alcohol without meals. They should remain a restaurant license and adhere to their rules and regulations so two (2) businesses can survive in an already difficult and saturated hospitality industry. I oppose this proposal.</i></p>	<p>The number of existing similar uses is not a valid planning consideration.</p>

Object	<p><i>Quite contrary to its existing licence this establishment has for the last 4 years that I know of (witnessed in person and served in person)sold alcohol for both consumption on the premises (without any emphasis on the necessity to have a meal) and for takeaway from the premises. I feel the business owner is now trying to cover the position by seeking this change in licence use. Whilst they may not be seeking any change in operating hours or patronage numbers the sale of alcohol without the focus on the supply of a meal will, in my opinion, lead to a degradation of patronage behavior which will have greater impact on our community. On occasion it is already an issue. Racing Gaming and Liquor should be enforcing the constraints of the current licence restrictions.</i></p>	<p>The service of alcohol without food and the taking of alcohol off the premises is the responsibility of Racing, Gaming and Liquor to patrol.</p> <p>The Town of Victoria Park should be contacted if any noise or antisocial behaviour occurs to ensure that this can be appropriately investigated.</p>
Object	<p><i>The fundamental reason for my objection is that, rather than being a mere formality relating to liquor licensing requirements etc. as your letter advises that the Town has been told by the applicant, this proposal represents a fundamental change to the nature of the premises, with serious and significant adverse consequences for surrounding residents and property owners.</i></p> <p>Background <i>When Allegro was first developed in mid-2006 (I was an original buyer from Mirvac Fini), 23 The Circus was operated as "FOOD by Christopher Hiller", and was a café / restaurant mostly providing service from breakfast through to mid-afternoon, with some limited evening openings.</i> <i>In recognition of the intended low-impact nature of the café and in consideration of the potential impacts to surrounding residents (such as my property), a series of strong protections were embedded in the By-Laws which govern the Allegro strata scheme (strata plan 44450), including the premises at 23 The Circus.</i></p> <p><i>These protections include, for example:</i></p>	<p>Noted.</p> <p>Noted.</p>

	<p><i>. The by-laws themselves referring to 23 The Circus as the "café / take-away lot" (and not a small bar, for example);</i></p> <p><i>. A range of requirements in relation to the fit-out, including specified glazing and sound-proofing required, all tables and chairs to have rubber feet, and a prohibition forbidding the premises to "create or allow noise or music on or adjacent to the Commercial Lot or an Alfresco area which interferes or is likely to interfere with the peaceful enjoyment of an owner, occupier or other resident of a lot, or any person lawfully using the common property;</i></p> <p><i>. A prohibition on speakers being installed or operated in the café's alfresco area;</i></p> <p><i>. A prohibition on the property being used in a way which "causes or may cause a nuisance to occupiers of the [other] lots or uses of the common property used in connection with the [adjacent] residential lots (clarification added in square brackets);</i></p> <p><i>. Specified operating hours, requiring the premises to be closed by no later than 10:30pm each evening, with the alfresco area to be closed and all patrons inside with the doors closed one hour beforehand (i.e. 9:30pm). Please note that these closing times are at significant variance from those which have been represented to the Town by the applicant in its submission.</i></p> <p><i>As can be seen from the above, the objective in how the café / restaurant was originally conceived (and should continue to be, by virtue of the Allegro By-Laws) was not intended to strike a fair or practical balance between the premises and surrounding residential uses. By their nature, these by-laws gave (and continue to give) absolute primacy to the quiet amenity of the surrounding residential properties by imposing a range of strict requirements on the premises at 23 The Circus. These are requirements of which the owner / operator at 23 The Circus was well aware when originally purchasing and establishing the premises.</i></p>	<p>Noted.</p> <p>Any development approval is granted on the merits of the application under the provisions of the Town of Victoria Park Town Planning Scheme No. 1 and does not constitute approval for the purposes of the Strata Titles Act 1985 or its subsidiary regulations nor affect any requirement under the by-laws of the body corporate in relation to a proposed development pursuant to such legislation.</p>
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Again, I emphasise:

- . These by-laws, designating the premises as a low-impact café /restaurant, have existed since the building was first completed in June 2006;*
- . This represents the set of rules under which I, and every owner in Allegro, have purchased their properties - including APM Asset Management Pty Ltd, the owner of 23 The Circus (the applicant);*
- . It's not just original purchasers from Mirvac Fini who have signed up to these rules - every purchaser since has been made aware of the by-laws at the time of purchase (being strata-titled properties), and the by-laws are also on public record at Landgate;*
- . To ensure the ongoing low impact of the premises at 23 The Circus and to maintain the amenity for surrounding lot owners and residents (such as my nearby property), Mirvac Fini had the wisdom to designate these as Schedule 1 By-Laws under the Strata Titles Act. This means that they can only be changed by a Resolution Without Dissent at an Annual General Meeting or Special General Meeting of all lot owners in Allegro. That is, if even one person votes against a motion to change these by-laws, the motion is lost and the by-laws remain "as-is".*

Arguments Against the Proposal

I therefore object to the proposal in the most strenuous terms, on the following rationale:

- . Far from being a procedural change, the proposal represents a fundamental change in the nature of the premises from that first envisaged, and permitted by the by-laws;*
- . If this proposal were to be approved by the Town, it would create a chaotic "legal twilight zone", where the Town's zoning permits the premises being operated as a small bar, but the strata company by-laws restricts it to being operated as a low impact café/restaurant. The potential for conflict is high, and it is*

Noted.

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	<p><i>likely that the Town would be brought into further complex complaints and proceedings as a result;</i></p> <p><i>. In my correspondence with Liquor Licensing, they have only granted a Small Bar licence conditional upon the Town passing the rezoning. In conversation with their staff, had they been more fully aware of the background to the application (including the Allegro By-Laws, for example), it's possible that they would have forced the application through a "public interest check" process, which would have given Allegro residents more of an opportunity to comment specifically on the liquor licensing aspect of the proposal. Given however that this didn't occur, the only opportunity to now halt this flawed proposal lies with the Town now refusing the rezoning application currently before it;</i></p> <p><i>. There is no prospect of the Allegro By-Laws being amended to accommodate the change in use for 23 The Circus from a café / restaurant to a small bar. As set out previously, if even one resident objects, the proposal for change fails. I will certainly object, and can confidently say one or more of my neighbours will also;</i></p> <p><i>. In a recent survey of townhouse residents surrounding the café, a number of concerns have been raised including the "creep" of alfresco furniture beyond the designated alfresco area, café deliveries and returning items (e.g. bread and milk crates) being left beyond the boundaries of the property and encroaching across the front doors of adjacent townhouses, café residents smoking outside the front doors of adjacent townhouses, noise complaints, complaints re rubbish disposal etc. etc. These complaints have arisen consistently over an extended period of time, with the operator of 23 The Circus having been repeatedly warned and asked to address these issues, but with little effective remedial action given the ongoing nature of the complaints. These issues have arisen (and continue to arise) with the premises being operated as a low-impact café / restaurant! One can only</i></p>	<p>by-laws of the body corporate in relation to a proposed development pursuant to such legislation.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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feet (such as nylon or rubber), and prohibiting the premises to "create or allow noise or music on or adjacent to the Commercial Lot or an Alfresco Area which interferes or is likely to interfere with the peaceful enjoyment or an owner, occupier or other resident of a lot, or any person lawfully using the common property";

- . Speakers prohibited from being installed or operated in the café's alfresco area;*
- . Property prohibited from being used that "causes or may cause a nuisance to occupiers of the [other] lots or uses of the common property used in connection with the [adjacent] residential lots" (clarification and intended context provided in square brackets);*
- . Specified operating hours, requiring the premises to be closed no later than 10:30pm each evening, with the alfresco area to be closed and all patrons inside with the doors closed one hour beforehand (i.e. 9:30pm). Please note that the closing hours in the proposed application are inconsistent with these by-laws.*

2. Disturbance of peaceful enjoyment of our residential property

A small bar licence provides the ability for alcohol to be purchased and consumed without a meal. This has the potential to attract anti-social behavior to the detriment of neighbouring residential premises.

Despite the current protections in place, we frequently experience occasions of loud alfresco music, entertainment and/or noise from patrons, sometimes this noise extends beyond the time permitted as stated in the strata by-laws. In addition, there are also occasions where there is amplification of music inside the café that is often as loud as the alfresco music, particularly when karaoke/sing-alongs are involved. We raised these concerns in a recent survey of townhouse residents surrounding the café about the café operations.

The Town of Victoria Park should be contacted if any noise or antisocial behaviour occurs to ensure that this can be appropriately investigated.

We are concerned the permission of selling alcohol without a meal will only intensify and increase these noise incidents.

3. Misuse of common area for the purpose of business

In the same survey of townhouse residents, we raised concerns relating to the misuse of common area that is beyond the boundary of the café's alfresco area. This misuse includes furniture storage, deliveries of goods, milk and bread crates stacked as storage and provision of cigarette butt disposal bin within the common raised garden bed - which invites cigarette smoking in the front of our residential property. These actions blur the boundaries of where the business can operate, thus creating confusion for café patrons to utilise other common areas (beyond the boundaries of the café) to loiter in front of residential premises windows, doors and usage of window sills to place and consume beverages purchased from the café - this is a common occurrence.

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