

<b>ACKNOWLEDGEMENT OF SUPPORT – 23 CIRCUS SMALL BAR</b>	
<b>S1</b>	<i>There will be nil impact by approval of the proposal.</i>
<b>S2</b>	<i>It will be beneficial for Burswood community members to gather together at the venue to socialize, without purchasing a meal.</i>
<b>S3</b>	<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>
<b>S4</b>	<i>Encourage local business that enhances the living experience of local residents.</i>
<b>S5</b>	<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>
<b>S6</b>	<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>
<b>S7</b>	<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>
<b>S8</b>	<i>We have no objections to any plans at the café.</i>
<b>S9</b>	<i>We have no objection to change of use from restaurant to small bar.</i>
<b>S10</b>	<i>I wish to declare my 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, my view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>
<b>S11</b>	<i>I wish to declare my 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, my view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>
<b>S12</b>	<i>I wish to declare my support for the proposal for change of use to a Small Bar at 23 the Circus. As a resident of the area surrounding 23 the Circus, I am fully supportive of the change of use and have no objection to same.</i>
<b>S13</b>	<i>I wish to declare my 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, my view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>
<b>S14</b>	<i>I wish to declare my 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, my view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>
<b>S15</b>	<i>We wish to declare our support for the proposal for change of use to a 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 same.</i>
<b>S16</b>	<i>We wish to declare our support for the proposal for change of use to a 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 same.</i>
<b>S17</b>	<i>We wish to declare our support for the proposal for change of use to a 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 same.</i>

<b>S18</b>	<i>I wish to declare our support for the proposal for change of use to a 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 same.</i>	
<b>S19</b>	<i>I wish to declare my 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, my view is independent of any view that may be expressed by other Lot Owners and the Strata Company.</i>	
<b>S20</b>	<i>We wish to declare our support for the proposal for change of use to a 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 same.</i>	
<b>RESPONSES TO OBJECTIONS – 23 CIRCUS SMALL BAR</b>		
<b>Objection #</b>	<b>Comments from Objection</b>	<b>Response from 23 Circus</b>
<b>O1</b>	<i>Our bedroom window on the 3<sup>rd</sup> 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><u>Noise:</u> Under the Exclusive Use terms for the outdoor courtyard area (Strata Common Property), there is a restriction on the closing time for this outside area. The current closing time is 1 hour prior to when residents themselves are to move inside from their balconies, therefore the assumption that all noise late into the night coming from our premises cannot be substantiated. The other small bar currently operating in the area (3Bs) is in the Axis Tower where this respondent resides. 3Bs often operate until 1 am on Friday and Saturday nights; whereas both our inside and outside areas are shut down by 10.30 (except on rare occasions when the Strata Company grants an exemption for a function to operate inside until midnight). It is often difficult to pinpoint exactly where noise is generated from within the central plaza area; however, given we are effectively locked-in even before the residents themselves, there is no evidence to suggest that all late night noise is generated by patrons or music at 23 Circus.</p> <p><u>Service of Alcohol without food:</u> 23 Circus has an “Extended Trading Permit” (Permit No. 0211393018) issued under the Liquor Control Act that enables the service of Liquor without a meal. This permit has been in place since 28<sup>th</sup> March 2018 and is valid until 27<sup>th</sup> March 2028. This Extended Trading permit allows the service of liquor without a meal provided that:</p> <ul style="list-style-type: none"> <li>• The primary purpose of the business is the regular service of meals.</li> <li>• Kitchen and food service is always available when liquor is served.</li> <li>• Patrons must be seated when consuming liquor.</li> </ul>

		<p>As expressed in our Development Application, the primary purpose for the change of use to a Small Bar is to enable patrons to consume liquor when standing (as opposed to being seated) within the licenced area. This will simply allow us more flexibility when it comes to group bookings such as birthday parties.</p> <p><u>Closing time:</u> The current restaurant licence held by 23 Circus allows us to open 24hrs a day / 7 days a week provided that the kitchen and food service is available whenever liquor is served. Whilst we do not currently trade past 10.30pm, excepting for occasions when the Strata Company grants an exemption for a function to operate inside until midnight, we already can do so without the small bar licence.</p> <p>As expressed in our Development Application, the primary purpose for the change of use to a Small Bar is to enable patrons to consume liquor when standing (as opposed to being seated) within the licenced area. This will enable us more flexibility when it comes to functions, as these will no longer require a Strata Company Exemption to operate inside until midnight (or 2am on weekends).</p> <p>Further, our business model has always been to focus on food and coffee. This will not change under the new licensing conditions. Despite our current 10.30pm closing time; on nights where patronage is low, we have always closed early. We will continue the practice of closing early when numbers are low under the small bar licence conditions and this is standard industry practice.</p>
<p><b>O2</b></p>	<p><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</i></p>	<p><u>Closing time / Noise:</u> As noted in the Response #O1, on nights where patronage is low, we have and will continue to close earlier than the approved hours. Currently, the closing time for the outdoor area is one hour prior to the time that surrounding residents must move inside themselves.</p> <p><u>Carparking:</u> There are at least 60 legal on-street parking bays on The Circus alone. There are also many legal on-street parking bays in the streets and roads</p>

	<p><i>reduce the noise impact for other residents. With greater emphasis on the consumption of alcohol noise and late 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>around The Circus, in addition to the Crown Complex free parking located between Park Road, Victoria Park Drive and Bolton Drive. Staff and customers have access to the on-street parking bays excepting on stadium event days when parking is restricted on the Peninsula and staff and customers use the Crown Complex free parking. A significant majority of our customers are locals who have private off-street parking.</p> <p><u>Increased Rubbish:</u> There is nothing to substantiate an increase in rubbish due to a change in licensing conditions. There will be no changes to our current practices in terms of rubbish disposal and the change of use does not automatically imply a change in volume.</p> <p><u>Deliveries:</u> There is nothing to substantiate an increase in kegs and/or other items that require storage due to a change in licensing conditions.</p> <p><u>Increased vandalism, disturbances etc:</u> This objection is based on a view that there is an increased emphasis on alcohol consumption through the change in use. Whilst the small bar licence does allow the service of alcohol without a meal, the small bar, to be known as “Darren’s Small Bar, Coffee and Kitchen” will still maintain its gastro-pub style breakfasts, lunches and dinner and its focus on making the best coffee in Burswood.</p> <p>As noted in the response to #01, the Extended Trading Permit that is currently approved and in place via Liquor Licensing allows us to serve alcohol without a meal, therefore the small bar licence will not bring any substantial change to the current service of alcohol.</p>
<p><b>03</b></p>	<p><i>As the owner of Three B's Burswood Bar and Bistro we believe the addition of another small bar licence will severely impact our business as the community population is too small and does not warrant two (2) small bar licences. Our business plan reflected Three B's was to be the only small bar licence in the immediate area as a</i></p>	<p><u>Threat to Business Model:</u> As indicated in the responses to #01 and #02, the change in our business model under a small bar licence is miniscule. It is primarily to enable patrons to stand and drink and to remove the need to apply for exemptions to the Strata Company for functions. We have no intention of capitalizing on the great work 3Bs have done in increasing their patronage of non-resident people. Our primary focus will remain on food and coffee, and we</p>

	<p><i>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 bought a lot of repeat customers into the area due to our hard work and now 23 The Circus want to capitilise on our hard work. 23 The Circus has always been a restaurant and i do believe that they have not adhered to their licence from what others have told me serving alcohol without meals. They should remain a restaurant licence 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>have no intention of hosting “event nights” of a similar nature to those hosted by 3Bs.</p> <p>Our current event nights, hosted on the first Tuesday of every second month, are a wine-inspired 3-course Degustation. The focus of these events is pairing food with wine and we intend to maintain these events in their current format under a small bar licence.</p> <p><u>Service of Alcohol without Food:</u> As noted in our response to #O1, 23 Circus holds a current Extended Trading Permit which allows us to serve alcohol without food. There is no increased emphasis on the consumption of alcohol. It is simply to allow patrons to stand whilst they have a drink in their hand.</p>
<p><b>O4</b></p>	<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><u>Service of Alcohol without Food:</u> As noted in our response to #O1, 23 Circus holds a current Extended Trading Permit which allows us to serve alcohol without food. There is no increased emphasis on the consumption of alcohol. It is simply to allow patrons to stand whilst they have a drink in their hand.</p> <p><u>Takeaway Alcohol:</u> Under the revised service of takeaway alcohol rules permitted by the WA Government’s Closure and Restriction (Limit the Spread) Directions (No 4), 23 Cirucs was issued with an “Occasional Licence - State of Emergency Direction”. The Occasional Licence allows us to sell takeaway alcohol when it is purchased in conjunction with a takeaway meal. This occasional licence was issued on 9<sup>th</sup> May 2020 and is renewed every month. Once the State of Emergency Direction is revoked, there will be no more sales of takeaway alcohol with meals, whether we are operating under the restaurant licence or the small bar licence.</p> <p><u>Enforcing current Licence restrictions:</u> It appears this respondent is not fully aware of our current licencing conditions, in particular the Extended Trading Permit and the Occasional Licence. Therefore, comments regarding seeking a change to “cover the position” are not correct.</p>

05	<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><b>Background</b>  <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 I restaurant mostly providing service from breakfast through to mid-afternoon, with some limited evening openings.</i></p> <p><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> <ul style="list-style-type: none"> <li><i>. The by-laws themselves referring to 23 The Circus as the "café I take-away lot" (and not a small bar, for example);</i></li> <li><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</i></li> </ul>	<p><u>Strata Bylaws</u> – Strata By-laws are an issue for the Strata Company and should be dealt with under the Strata Titles Act. Both the Town Planning Act and the Liquor Licencing Act have primacy over the Strata Titles Act; therefore, Strata By-laws should not be the basis for objecting to this application.</p> <p>The Allegro Management Statement, Section 22 "Use of Lots"; states in Article 5 "an owner or occupier of a Café / Take-away Lot having Alfresco Areas must:"</p> <p>b) "unless permitted by all relevant authorities, close its relevant Alfresco Areas 1 hour prior to the relevant closing hours set out in By-law 22 (3). Therefore, the Management Statement anticipates the primacy of relevant authorities such as Town of Victoria Park and Liquor Licensing Board.</p> <p>In addition to the Section 22 (5)(b) of the Management Statement, the Strata By-Laws pertaining to the Common Property (Exclusive Use Area) with respect to opening and closing times are noted as being in place "unless otherwise determined by the strata company and otherwise in accordance with all requirements of the relevant authorities". In accordance with the Burswood Precinct Plan P2, a small bar is permitted by a resolution of council (discretionary use). Further, the Liquor Licensing Act allows for opening and closing times beyond those listed within the bylaws. Therefore, they meet the "and otherwise in accordance with all requirements of relevant authorities" test and do not require a change to the bylaw.</p> <p>Given that a small bar approval within a Survey Strata Lot has already been issued within this Precinct, and on the basis that Strata By-Laws have no primacy, the "legal twilight zone" assertion is erroneous.</p> <p><u>Arguments against the proposal:</u></p> <ul style="list-style-type: none"> <li>• The respondent states that "<i>the proposal represents a fundamental change in the nature of the premises</i>". However, as noted in all the responses to comments thus far, there is no significant change from the</li> </ul>



<p><i>the peaceful enjoyment or 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><i>Again, I emphasise:</i></p>	<p>current Extended Permit and Occasional Licence conditions that would justify a “fundamental” change in the nature of the operation of the Café.</p> <ul style="list-style-type: none"> <li>• The respondent makes numerous statements about conflict with the By-Laws; however as indicated in the previous section of this response, those assertions are flawed in terms of lack of primacy of the Strata Titles Act over Town Planning and Liquor Licencing</li> <li>• Whilst the respondent claims that all of the Townhouses have concerns over the proposed change of use, it would appear that only 2 townhouse owners (including this respondent) have opposed the proposal; however, there is at least 6 in support of the proposed change.</li> </ul>
---	--

. 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 likely that the Town would be brought into further complex complaints and proceedings as a result;*

*. 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;*

*. 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;*

*. 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,*

	<p><i>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 imagine how these complaints might significantly escalate with the premises changing to a small bar;</i></p> <p><i>. Nearby premises across the other side of the Plaza at "Three B's" (31 The Circus -only some 200 metres away from the premises at 23 The Circus) have already been converted to a small bar. One questions the need for two small bars within 200 metres of each other, particularly in such a dense residential area where the potential for conflict between small bars and hundreds of surrounding residential townhouses and apartments is high.</i></p>	
<p><b>O6</b></p>	<p><i>We both currently own and are residents of XX, a neighbouring townhouse 5 metres from 23 Circus's external facing bar area (as demonstrated in attached image). Our objection relates to the adverse impacts to our own residence and neighbouring occupants and property owners should the proposed licensing application be granted.</i></p> <p><b><i>Points for objection:</i></b></p> <p><b><i>1. Current strata by-laws will be breached if the application is granted</i></b></p> <p><i>When purchasing 21 The Circus in 2013, we were informed of the by-laws that we agreed and presently maintain compliance. At the time, the café mainly operated as morning to mid-afternoon food and</i></p>	<p><u>Breach of Bylaws</u> – see response to #O5</p> <p><u>Service of Alcohol without Food:</u> As noted in our response to #O1, 23 Circus holds a current Extended Trading Permit which allows us to serve alcohol without food. There is no increased emphasis on the consumption of alcohol. It is simply to allow patrons to stand whilst they have a drink in their hand. There have been a limited number of anti-social incidents under the current trading conditions, therefore there is no basis to support an assumption that anti-social behavior will increase.</p> <p><u>Misuse of Common Area:</u> The use of the Common Area is an issue for the Strata Company to address and should not be considered the basis for objecting under the Town Planning Act. As indicated in response #O2, there is nothing to</p>

<p><i>beverage premises. Upon settlement, we were informed of the strata protections in place to reduce impacts of the cafe to surrounding residential premises (namely all neighbouring townhouses 20, 21, 22, 24 and 25 The Circus). These protections came in the form of by-laws with primary intent to restrict any operations that may impact the livelihood of neighbouring residences, embedded into the Allegro strata scheme (strata plan 44450). For example:</i></p> <ul style="list-style-type: none"><li><i>. The by-laws referring 23 The Circus premises as the "café I take-away lot" (and not as a small bar);</i></li><li><i>. Requirements relating to the fit-out, including required specified glazing and sound proofing, all tables and chairs to have covered 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";</i></li><li><i>. Speakers prohibited from being installed or operated in the café's alfresco area;</i></li><li><i>. 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);</i></li><li><i>. 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.</i></li></ul>	<p>substantiate any increase in deliveries, storage etc. under a small bar operating model.</p>
---	---

**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. 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*

	<p><i>usage of window sills to place and consume beverages purchased from the café - this is a common occurrence.</i></p>	
<p><b>07</b></p>	<p><i>Submission from Allegro Strata Scheme (37 pages)</i></p>	<p>Firstly, it should be noted that no resolution was made by the Council of Owners at the Extraordinary meeting of 5<sup>th</sup> January 2021 to enable the Secretary of the Council to engage with the Town of Victoria Park in respect of the Small Bar Development Application for 23 The Circus. In accordance with the Strata Titles Act, a motion should have been put to a vote of the Council of Owners. On the basis that this did not occur, the submission from the Council of Owners is technically invalid and should not be considered.</p> <p>Nonetheless, in the interests of being thorough with respect to all objections, we have responded as follows:</p> <p><u>Strata Scheme:</u> This is a statement of fact therefore no response is required.</p> <p><u>Strata Company:</u> The Strata Company does own the Exclusive Use Area which forms the alfresco area of the Café Lot. However, it should be noted that the internal area of the Café is a privately owned strata lot, held by the operator of 23 Circus.</p> <p><u>The Council of Owners:</u> The Council of Owners are elected by the Lot Owners to “perform the function of a strata company” subject to the Strata Title Act 1985. There is nothing in the Strata Titles Act that permits the Council of Owners to “represent the interest of lot owners” as claimed in this submission. In fact, as pointed out by the Strata Company later in the submission, the Council of Owners cannot pass a resolution which requires a change to the Schedule 1 by-laws. Such a change requires a Resolution Without Dissent at an Annual General Meeting or Special General Meeting of all lot owners in Allegro. There has been no consultation with the Allegro Lot owners on a potential change to the Café, therefore it is erroneous and misleading for the Strata Company to state that its submission represents the formal position of all 87 Owners.</p>

		<p>With respect to the claim that myself (Darren Montgomery as owner of the Café and member of the Council of Owners), misled the Council of Owners in relation to the current operating licence. We attach herewith an email and letter from the Chairperson of the Allegro Council of Owners which acknowledges that this statement is incorrect and acknowledging that no Application was made to the Council of Owners. The Chairperson claimed that he will revoke the version of the submission provided to us by Town of Victoria Park and resubmit removing any reference to the Café owner having misled the Council of Owners. It would appear that this action was not undertaken.</p> <p>With respect to the meeting of the Council of Owners on January 5, 2021, myself as a member of the Council of Owners was not advised of this meeting, which makes the meeting itself invalid. I should have been advised of the meeting, allowed to attend to ensure a quorum, then invited to declare my interest. Further, as noted in earlier comments, the Council of Owners cannot purport to “represent the formal position” of all 87 lot owners when this application relates to a Schedule 1 bylaw and no formal consultation with lot owners was undertaken. As can be seen by the submission in support of this application, at least 6 submissions of support were received from Lot Owners of Allegro. Therefore, this submission should be seen as an individual submission and not representative of all lot owners.</p> <p><u>Background:</u> Whilst much of the background information can be verified, there are several personal observations made by the Chairperson of the council of owners which cannot necessarily be verified. Whilst we will not contest these in response to the submission, we do reiterate our response to any claim that this application conflicts with the Strata Bylaws. Strata By-laws are an issue for the Strata Company and should be dealt with under the Strata Titles Act. Both the Town Planning Act and the Liquor Licencing Act have primacy over the Strata Titles Act; therefore, Strata By-laws should not be the basis for objecting to this application.</p>
--	--	---



		<p><u>Arguments Against the Proposal:</u></p> <ul style="list-style-type: none"><li>• The respondent states that “<i>the proposal represents a fundamental change in the nature of the premises</i>”. However, as noted in all the response to comments thus far, there is no significant change from the current Extended Permit and Occasional Licence conditions that would justify a “fundamental” change in the nature of the operation of the Café.</li><li>• The respondent claims an approval by the Town of Victoria Park will create a “chaotic legal twilight zone”. This assertion is flawed in terms of lack of primacy of the Strata Titles Act over Town Planning and Liquor Licencing. There is no “legal twilight zone” between the Town of Victoria Park and the Strata By-Laws, given that Town Planning and Liquor Licencing have primacy over the privately held strata lot (Café). Further, The Management Statement and Strata By-Laws pertaining to the Alfresco / Common Property (Exclusive Use Area) with respect to opening and closing times are noted as being unless permitted by the relevant authorities. In accordance with the Burswood Precinct Plan P2, a small bar is permitted by a resolution of council (discretionary use). Further, the Liquor Licensing Act allows for opening and closing times beyond those listed within the bylaws. Therefore, they meet the “and otherwise in accordance with all requirements of relevant authorities” test and do not require a change to the bylaw.</li><li>• The respondent states there is no prospect of the By-laws being changed given they require a Resolution Without Dissent. This change of use does not require a change to the By-Laws given the change applies to the privately held portion of the strata lot</li><li>• Whilst the respondent claims that all the Townhouses have concerns over the proposed change of use, only 2 townhouse owners (including this respondent) have opposed the proposal; however, there is at least 6 in support of the proposed change.</li><li>• In relation to the current operation being akin to a small bar. Firstly, the assertion that the Owner of 23 Circus misled the Council of Owners has been retracted by the Chairperson on the basis that the Council of</li></ul>
--	--	---

		<p>Owners acknowledges that this is a false allegation. Further, the Council of Owners seem to be unaware of the existing Extending Trading Permit which allows the service of alcohol without a meal. This does not indicate the Café owner's willingness to exercise certain "flexibility with the rules" – the Owner of the Café is simply operating within the conditions of the current permits and licences. Therefore, the assertion that a "further relaxation of the rules will lead to even greater conflict" is erroneous and misleading.</p> <ul style="list-style-type: none"><li>• Further objection was raised on the basis that there is already a small bar located across the Plaza (200mt away) and questions the need for 2 small bars in the area. As indicated in previous responses, the change in our business model under a small bar licence is miniscule. It is primarily to enable patrons to stand and drink and to remove the need to apply for exemptions to the Strata Company for functions. Therefore, in effect, our current licencing conditions enable us to operate in a manner very similar to a small bar and have done for almost 3 years.</li></ul>
--	--	---