

APM Asset Management Pty Ltd
23 The Circus
Burswood WA 6100

11th May 2021

Dear Aime

RE: Development Application, Unlisted Use (Small Bar) at No. 23 The Circus BURSWOOD

Thank you for the opportunity to address issues raised by Mr. Darren Cooper at the Agenda Briefing Forum with respect to the Strata By Laws covering the premises at 23 The Circus Burswood. I would like to respond to the request for further information as follows:

Relationship between Town Planning Approval and Strata By-Laws

The applicant is aware that there are three separate pieces of legislation relating to the operation of the premises as a small bar. These are:

- a. Liquor Licensing Act
- b. Town Planning Act
- c. Strata Titles Act

As the Town of Victoria Park (ToVP) Council is aware, liquor licensing approved a set of opening hours that are consistent with other Small Bar operations in the area. ToVP itself has recommended a set of opening hours which take into account Town Planning and Land Use considerations. The Strata Company has a set of By-laws which take into account the right to peaceful enjoyment of neighbouring properties in line with the Strata Titles Act. Each approval and/or recommendation under each of the three pieces of legislation differ.

The applicant is currently operating in line with the Strata Company By-Laws in terms of opening hours. This is despite the current Liquor License approval (Restaurant) having provision for the Café to operate 24/7 provided that a substantial meal is available. Current practice includes applying to the Strata Company on occasion to extend the opening hours for the purposes of hosting a Function. The approval of extended opening hours is at the discretion of the Strata Company and requires consultation with potentially affected residents.

In order for the Strata Company to be able to approve a Function to be conducted past the current closing hours (10.30pm); both the Liquor License conditions, and the Development Application approval need to enable this. When considering our application for opening hours, the Town of Victoria Park has recommended more limited hours than the conditions of the Liquor License. The Applicant understands the Town Planning / Land Use drivers for the limitation of hours and, along with the current Strata By-Laws, requests a recommendation which notes the following:

7.00am – 12 midnight Monday-Thursday

7.00am – 12 midnight Friday and Saturday

7.00am – 12 midnight Sunday and Public Holidays

A 12pm approval Friday and Saturday will enable the applicant to “legally” apply for an extension of trading hours with the Strata Company for the purposes of hosting a Function. The applicant also

notes that the existing small bar (3B's) located at 31 The Circus, currently operates under a small bar licence.

Representation by Allegro Strata Company

As per the minutes of the Allegro Strata Council of Owners (CoO), 5th January 2021, there was no motion authorising any CoO member to make a submission or deputation to the Town of Victoria Park in relation to the public consultation for the above-mentioned Development Application. As such, the submission by the Allegro Strata CoO does not follow due process in terms of Section 136 (2) of Strata Titles Act and should be withdrawn from the Agenda item.

Summary

Whilst the Allegro CoO Submission and Deputation are not legally valid in terms of meeting the requirements of the Strata Title Act, the applicant recognises both the support and the concerns of residents of the Allegro Strata property. We are therefore requesting that ToVP Council approve a set of trading hours that are consistent with the Strata By Laws whilst still enabling the applicant to apply to the Strata Company for discretionary approval of functions in the same manner as is currently observed. Approval along these lines is also more consistent with the current operation of the Small Bar at 31 The Circus.

Regards

Darren Montgomery
Director