

**Liquor Commission of Western Australia
(*Liquor Control Act 1988*)**

Applicants:	Ms Mary Ann Yokeping Choong Ms Jackie Hair Mr Lewis Cox Ms Marilyn Arkeveld Mr Simon Stewert-Dawkins Ms Winifred Finlayson Ms Pamela McBride Ms Therese Shipman Mr M & Ms J Jones <i>(collectively referred to as the residential objectors and represented by Ms Mary Ann Yokeping Choong)</i>
Respondent:	Wolfberry Holdings Pty Ltd (represented by Mr Mark Etherington, of Clayton Utz, Lawyers)
First intervener:	Commissioner of Police
Second intervener:	Executive Director Public Health
Objectors:	McCusker Centre for Action on Alcohol and Youth Mr Glen Wheaton Mr Robert James
Commission:	Mr Eddie Watling (Acting Chairperson) Mr Evan Shackleton (Member) Mr Michael Egan (Member)
Matter:	Application pursuant to section 25 of the <i>Liquor Control Act 1988</i> for a review of the decision of the delegate of the Director of Liquor Licensing to approve the conditional

grant of a small bar licence for premises to be known as Angelo Street Bar

Premises: Angelo Street Bar, 79 Angelo Street, South Perth

Date of Hearing: 24 June 2015

Date of Determination: 31 August 2015

Determination: The application is refused.

Authorities referred to in determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WASCA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 24

Background

- 1 On 1 May 2014, an application was lodged by Wolfberry Holdings Pty Ltd for the conditional grant of a small bar licence for premises to be known as “Angelo Street Bar”, situated at 79 Angelo Street, South Perth.
- 2 Following the advertising of the application for public comment, a total of twelve (12) objections were lodged by residents in the locality. These objections were lodged during the month of June 2014. On 20 June 2014, an objection was also lodged by the McCusker Centre for Action on Alcohol and Youth (“MCAAY”).
- 3 On 23 June 2014, a notice of intervention was lodged by the Commissioner of Police (“the Police”).
- 4 On 26 June 2014, a notice of intervention was lodge by the Executive Director Public Health (“EDPH”).
- 5 Throughout July 2014, submissions and responsive submissions were lodged by the parties.
- 6 On 10 March 2015, the application, which was determined on the papers in accordance with section 16 of the *Liquor Control Act 1988* (“the Act”), was approved by the delegate of the Director of Liquor Licensing (“the Director”) (Decision A226223).
- 7 On 10 March 2015, the Department of Racing, Gaming and Liquor (“the Department”) wrote to all parties advising that the application had been approved. Parties were informed that should they be dissatisfied with the outcome, they may seek a review of the decision under section 25 of the Act. Such an application for review was to be lodged with the Liquor Commission of Western Australia (“the Commission”) within one month after the date upon which parties received notice of the Decision.
- 8 On 20 April 2015, ten (10) of the residential objectors lodged a combined out of time application for review and requested an extension to the deadline for filing the application (Mr Glen Wheaton and Mr Roger James were not signatories to the application, although both remain parties to the review proceedings before the Commission).
- 9 On 28 April 2015, the Commission wrote to Wolfberry Holdings Pty Ltd and advised that the Chairperson of the Commission had exercised his discretion under section 25(2) of the Act to allow the review application despite the late lodgement date.
- 10 Unfortunately, effective service on Wolfberry Holdings Pty Ltd was delayed (as the recorded address of the company had not been updated).

- 11 On 10 June 2015, Wolfberry Holdings Pty Ltd ("the respondent") lodged a submission in relation to the review application and requested that the Commission re-determine the application for extension of time for lodgement of the review application.
- 12 During June 2015, further submissions and responsive submissions were received from the applicant and the respondent and a responsive submission was received from the EDPH on 17 June 2015.
- 13 A hearing before the Commission was held on 24 June 2015.

Preliminary Matter

- 14 The respondent submitted it had been prejudiced as a result of the grant of an extension of time to the residential objectors to lodge a review application because of expenditure incurred on the project on the basis of verbal advice from the Department on 13 April 2015 (that is, after the closing date for a review application) that no review application had been lodged.
- 15 The respondent offered to provide details of the expenditure incurred between 13 April 2015, and 6 May 2015 (the period between Departmental advice that there had been no application for review lodged, and the date of receiving notice that a late application lodgement had been granted).
- 16 However, at the hearing it was agreed that it would be in the interests of all parties to proceed to have the application for review considered and determined.

Submissions on behalf of the applicants

- 17 The applicant's representative, Ms Choong, requested that the individual objections and submissions of the twelve (12) residential objectors and the collective submissions of 10 and 17 June 2015, be adopted for the purpose of the proceedings.
- 18 The grounds for objection are in accordance with section 74 of the Act, specifically:
 - 1) the grant of the application would not be in the public interest – section 74(1)(a) of the Act;
 - 2) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor – section 74(1)(b) of the Act;
 - 3) if the application were granted undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to

persons in or travelling to and from an existing or proposed place of public worship, hospital or school, would be likely to occur – section 74(1)(g)(i) of the Act;

- 4) if the application were granted the amenity, quiet or good order of the locality in which the premises are, or are to be, situated would in some other manner be lessened – section 74(1)(g)(ii) of the Act.

19 It was submitted that the residential objectors live in the immediate vicinity of the proposed premises, nine (9) in Waverley Street which is just 50 metres from the premises. The premises are to be located in what was previously a convenience store in a commercial/retail strip along Angelo Street, South Perth.

20 Whilst the Angelo Street commercial precinct has existing restaurants and cafes, it was submitted that there has never been a bar, nor any restaurant or café that accommodates up to 120 patrons and operates late every night. Accordingly, the nature and scale of the operations of the proposed premises sets a precedent in a locality where residential areas are directly adjacent to a narrow commercial zone.

21 It was submitted that there are three (3) schools with a combined enrolment of over 2,000 children within 500 metres of the premises and that Wesley College is directly opposite, with the proposed premises being in direct view of the Wesley College playing fields which front on to Angelo Street.

22 With regard to the potential adverse impact on the amenity of the locality, it was submitted that the Director, in making his decision to grant the application, placed insufficient weight on the following evidence:

- 1) the residential objectors live in a residential area in close proximity to a commercial precinct, not a mixed residential/commercial area, and the respondent's own acoustic report confirms that the proposed licensed premises are located in a small commercial precinct surrounded by homes and with schools in close proximity (within a 100m and 450m radius, only 20% and 8% of the use respectively, is commercial);
- 2) some homes are less than 20 metres from the premises;
- 3) the premises will have the capacity for 120 patrons with only three (3) dedicated parking bays (according to the City of South Perth documentation) located off the laneway behind the premises and will have unprecedented operating hours for the commercial area in which it is located;
- 4) the previous use of the premises as a convenience store, where customers would make a purchase and leave, never accommodated 120

customers in the shop at any one time and the customers did not linger in the same way as patrons in a bar;

- 5) the Director acknowledged that there is existing pressure for parking in the area - on Angelo Street, between Coode and Waverley Streets, where the premises are located, there are 16 parking bays on the street for a total of eleven (11) shops, including the proposed premises, with a total of 47 parking bays available to customers (including private parking which services a separate set of shops);
 - 6) at peak operating capacity of 120 patrons (not including bar staff or patrons in excess of 120 waiting outside to gain entry), 47 parking bays are insufficient for patrons of the premises even though other businesses are closed;
 - 7) data submitted by Mr Mitch Ryan, Bad Apples Bar Venue Manager, to the City of South Perth show that bar patrons are likely to impose an additional parking load of 15 to 21 parking bays in the immediate locality at non-peak trading hours when local shops are still open;
 - 8) patrons and possibly staff will park their cars in an adjacent residential street, and in this respect:
 - Waverley Street is a residential street only 50 metres from the premises and provides the nearest available alternate parking;
 - Waverley Street is a narrow street with only a narrow footpath on one side of the street and a narrow verge on the other;
 - when cars are parked on both sides of the street, only one car can pass which will result in local residents being subjected to increased congestion and traffic.
- 23 With regard to the potential for noise and disturbance, it was submitted in relation to the acoustic reports relied upon by the respondents:
- 1) the acoustic report incorrectly labels one section commercial (it is in fact residential) which when corrected highlights the close proximity of residential homes to the premises;
 - 2) the ambient noise survey undertaken used data from noise loggers located in the car park adjacent to the premises resulting in levels for commercial areas, yet the acoustic report applied more stringent assigned noise values relating to residential areas under the Noise Regulations to incorrectly conclude that the existing noise levels measured were higher than the assigned noise values under the Noise Regulations - in fact, no evidence relating to existing noise levels in the residential areas was provided by the respondent at all;

- 3) the acoustic report did not address any problems outside the proposed premises resulting from the operations of the bar, such as noise caused by rubbish (particularly glass) being emptied into bins and collected by waste trucks, or noise caused by patrons arriving, queuing and smoking outside the premises, and leaving late into the night both on foot and by car.
- 24 It was submitted that even if the licence was conditioned requiring the licensee of the premises to conduct regular patrols outside the premises to discourage patrons from loitering in the area or otherwise causing a disturbance in the neighbourhood, the staff have no authority to enforce such action.
- 25 The shortage of car parking spaces in the commercial precinct increases the likelihood that substantial numbers of patrons and possibly staff will park in adjacent residential streets, returning late at night after leaving the premises. Because of the narrowness of Waverley Street, the sound generated by these people simply getting into, and driving off in, their cars is sufficient to breach the Noise Regulations applicable to residential areas for night time. Any ebullient behaviour and loud voices would compound the adverse effects on the amenity of local residents.
- 26 High volume parking in residential streets results in a loss of amenity for residents because of the reduced, and often absence of, parking for visiting tradespeople and social visitors; consequently, residents are sometimes blocked from accessing their own property and illegal parking in designated "No Standing" areas is potentially hazardous as access is restricted in the event of an emergency.
- 27 In response to the advice from the City of South Perth that it would use a one-off \$17,000 parking levy in lieu of the provision of parking bays to:
 - 1) implement parking and line marking in the right of way behind Waverley Street to make it clear that parking was not permitted;
 - 2) purchase software to assist Council's rangers to enforce parking restrictions, both in the Angelo Street Precinct and throughout the wider City; and
 - 3) implement timed parking restrictions on Waverley Street in the future,it was submitted that City rangers are not available to enforce these restrictions after 7:00 pm on weekdays and 5:00 pm on weekends.
- 28 The planning approval process for these premises did not comply with the relevant parking provisions of the City of South Perth Town Planning Scheme No 6 as applicable at the time, despite a petition from the local residents expressing concerns.

- 29 The issues relating to congestion, traffic, noise and disturbance outlined in the applicant's submissions are relevant to the issue of undue offence, annoyance and disturbance.
- 30 When considering the potential for undue harm and ill-health as a consequence of the granting of this licence, the applicant submitted that greater weight should be placed on evidence relating to the specific locality immediately adjacent to and around the premises - this evidence shows there is significantly higher foot traffic by children than generally expected in the greater South Perth and Como area due to the proximity of three (3) schools, the high number of families in the area and the youth orientated activities conducted after school hours and during school holidays at Wesley College.
- 31 It was submitted the evidence also demonstrates that the Wesley school grounds are used by children throughout school hours for sport and play, as well as after school hours, on weekends and during school holidays, and that children and school boarders frequent the area out of school hours.
- 32 Whilst the licensee may be prohibited from displaying external alcohol advertising on the premises, children would still be regularly and repeatedly exposed to alcohol being consumed on the premises when walking home, or during school activities on the Wesley playing fields facing the premises.
- 33 It was submitted that the survey undertaken by the respondent did not support the conclusion that the grant of the application would be catering for the requirements of consumers for liquor and related services and that despite 163 respondents indicating they would provide a letter of support, only 13 letters of support were submitted with the Public Interest Assessment (PIA). In contrast, two of the residential objectors submitted over 400 signed petitions and pro-forma letters from members of the community indicating that the location of the premises is not suitable for a bar.
- 34 The proposed use of an *Enomatic* wine storage and dispensing system is also of concern in that it is not intended that it would be under full supervision to reduce the likelihood of patrons becoming intoxicated.
- 35 In conclusion, the residential objectors submitted that:
- 1) the respondent has not established that the grant of the licence would 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; and
 - 2) it would be in the public interest for those residing in the vicinity of the premises, and the children attending local schools nearby, for the application for the grant of a small bar licence to be refused.

Submissions on behalf of the respondent

- 36 The respondent proposes to establish a small bar in a disused shop in Angelo Street, South Perth and to commit approximately \$1 million on fitting out the premises to create a “high end” small bar, with a focus on premium wine, craft beer, innovative cocktails and food. It is also proposed to install an *Enomatic* wine storage and dispensing system which will enable high value wines to be served by the glass, half glass or quarter glass.
- 37 The total internal area including the bar, kitchen, toilets, office and storage space is approximately 271m² of which approximately 124m² is for patrons. The seating at the front of the premises will reflect a café type layout.
- 38 It was submitted that the site of the proposed small bar in a busy commercial/retail precinct that services a suburban community, away from traditional nightspots, was purposely selected with the aim of providing high value, low risk, community based hospitality services, in a comfortable, friendly and relaxed environment. The locality comprises all of South Perth, the northern 30% of Como and a small proportion of Kensington.
- 39 The Angelo Street commercial precinct extends for 350 metres along both sides of Angelo Street (which is a dual carriageway at the site of the proposed premises) and comprises banking and other financial and personal services, a Coles supermarket, a liquor store, numerous small retail outlets and a sprinkling of cafes and restaurants.
- 40 Demographic data from the Bureau of Statistics (2011 Census) for the suburbs of Como and South Perth reveal that, compared to the average for Western Australia, these suburbs have:
- 1) a significantly lower Aboriginal and Torres Strait Islander population;
 - 2) a significantly higher percentage of professional workers;
 - 3) a significantly higher individual median weekly income, family median weekly income, and percentage of households with a weekly income above \$3000; and
 - 4) an average age of around 36 years.
- 41 It was submitted that whilst the locality is well serviced by restaurants (18 in total), there is only one hotel and two taverns which provide a bar service to the general community, each more than 1km away.
- 42 To gauge and demonstrate the level of demand for the proposed small bar licence, a community survey was undertaken - survey documents were hand delivered to 1000 residents within a kilometre of the proposed premises with

259 responses received indicating overwhelming demand and support for the proposal. In summary:

- 1) 91% of respondents considered that the proposed small bar would provide a service that is currently lacking in the locality;
 - 2) 94% of respondents indicated that they would patronise the proposed small bar;
 - 3) 63% of respondents indicated that they would be happy to provide a letter of support for this application; and
 - 4) 5% (14 respondents) indicated that they would not patronise the proposed small bar (the majority of these 14 respondents indicated that they do not attend any licensed bar premises in South Perth/Como).
- 43 As is evident from the demographic data (paragraph 40 above), there is a low level of “at risk” groups in the community. Nevertheless, the close proximity of Wesley College to the proposed premises is acknowledged. However, the Wesley College playing fields are across Angelo Street which is a dual carriageway adjacent to the premises and the playing fields are separated from Angelo Street by a 3 metre high Cyclone wire fence. The closest school buildings are across the playing fields approximately 400 metres from the proposed premises.
- 44 It was submitted that when approached in relation to the small bar application, the Wesley College Headmaster responded:
- “In essence and probably not surprising to you, we will remain silent on the matter.*
- We are not aware of any problems that the liquor store on Angelo Street has presented to us. I am, however, not sure I would be prepared to reiterate my predecessor’s views on the matter as quoted by you as I believe under-age drinking (particularly underage binge drinking- which I don’t imagine would be a problem with premises like yours) is a significant challenge across all socio-economic levels of society.*
- Additionally I am pleased to hear you present strong views in regard to your pro-active support on preventing juvenile access to alcohol and look forward to working with you constructively in the event that your application is successful.”*
- 45 It was further submitted that the main risk associated with juveniles purchasing or otherwise accessing alcohol relates to the purchase of packaged liquor for consumption off licensed premises rather than liquor sold for on-premises consumption, and in this regard:

- 1) a small bar licence is not authorised to sell or supply packaged liquor for consumption off licensed premises and therefore presents less risk of juveniles gaining access to alcohol than a hotel, tavern or liquor store which are authorised to sell packaged liquor; and
 - 2) Wesley College has reported no problems with the liquor store recently established near the college at 82 Angelo Street.
- 46 There is no evidence that undue harm would be caused to people or any group of people as a consequence of granting this licence; rather, there is evidence that:
- 1) the area in front of the bar experiences low student pedestrian traffic (with just 4% of the total number of students attending schools in the area passing by the proposed premises);
 - 2) when student pedestrian traffic is at its highest the proposed bar will be either closed (early morning) or in a period of low trade (mid-afternoon);
 - 3) the layout of the proposed premises is more similar to a restaurant than a tavern; and
 - 4) advertising of liquor will not occur on external facades and visibility into the proposed premises will be minimised.
- 47 While there are no residences adjoining the licensed premises, the respondent is very conscious of its obligation to not unduly disturb the amenity of the residents living within a relatively short distance of the premises. To this end the respondent will implement a number of initiatives:
- 1) patron behaviour will be closely monitored to ensure that the peace and quiet of residents is not unduly disturbed;
 - 2) entry and exit of all patrons will be through the front door which exits onto Angelo Street;
 - 3) patrons leaving the premises will be asked to do so quickly and quietly respecting the residential nature of the neighbourhood nearby;
 - 4) the breakout of interior noise from the premises will be minimised using acoustic panels and other noise minimisation construction techniques;
 - 5) music will be played inside the premises and at only a background level suitable for conversation to occur;
 - 6) management will ensure no loitering occurs outside the building;
 - 7) patrons will not be allowed to unlawfully remove alcohol when leaving the premises;

- 8) staff will be responsible for keeping the environment around the premises clean and tidy with daily patrols; and
 - 9) all bins will be kept in the appropriate bin storage area.
- 48 As to parking availability, most businesses in the precinct are closed by 6:00pm during the week and by 1:00pm on Saturdays with parking readily available in all parking areas outside of these times. Furthermore, the City of South Perth has considered the parking aspects in detail during its planning assessment and reached the overwhelming conclusion that the proposed operation of the small bar does not present an unsatisfactory outcome in terms of parking.
- 49 The operation of the *Enomatic* wine storage and dispensing system will be overseen by a dedicated sommelier who will be on duty in the bar during busy periods. At other times, the operation of the Enomatic system will be supervised by wait staff undertaking table service or by bar staff.
- 50 In summary, the respondent submitted that:
- 1) there is no evidence to say there is no consumer demand for the products and services to be provided – on the contrary there is clear evidence of a consumer requirement for the proposed service;
 - 2) there is no evidence to support a claim that the licence will create harm to passers-by, or to others in the community;
 - 3) the general exposure of alcohol and alcohol products will be minimal in the context of overall alcohol advertising in the community;
 - 4) this is a commercial zone which the local residents need to accept;
 - 5) there are no existing “undue” problems with respect to harm or ill-health, offence, annoyance, disturbance or inconvenience to persons who reside or work in the area.
- 51 In addition, the inherent nature of a small bar licence gives rise to a number of mitigating factors, including:
- 1) the premises will be limited to 120 persons and as such is easily controlled and not conducive to large, noisy gatherings;
 - 2) packaged liquor sales are not permitted under a small bar licence;
 - 3) patrons will be predominantly seated at tables to encourage the partaking of food and social conversation;

- 4) the proposed bar will focus on quality not quantity and, as such, the price point will be at the “high end” and not conducive to excessive consumption; and
 - 5) entertainment will be low impact with only low level background music the norm.
- 52 The respondent submitted that it has provided sufficient evidence to support the conclusion that the conditional grant of a small bar licence at 79 Angelo Street, South Perth is clearly in the public interest.

Submissions on behalf of the Commissioner of Police

- 53 A notice of intervention was lodged by the Police on the following grounds:
- “If the particular application was granted and/or conditions not imposed public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest – section 69 (6)(c) (ii and (iv) of the Act.”
- 54 The Police have concerns with the proposed manner of trade, specifically, the operation of an *Enomatic* wine storage and dispensing system which, according to the Police, may encourage rapid liquor consumption and irresponsible promotion of liquor to patrons. It is of concern that the manner of trade proposed does not provide sufficient supervision of patrons to prevent the unsafe service of liquor. In addition, the Police submit patrons may not be assessed thoroughly for signs of drunkenness when there is an absence of patron and staff member interaction.
- 55 If the licence is approved, the Police recommend the supply of alcohol from the *Enomatic* wine dispensing system be performed by a Responsible Service of Alcohol (“RSA”) accredited staff member.
- 56 As the premises are to be located in a high density residential and commercial setting of South Perth, the Police are also concerned about the impact of a small bar licence on local residents, businesses and the general amenity.
- 57 Whilst harm minimisation strategies have been proposed in the PIA, it was submitted that the operation of the proposed premises may directly or indirectly affect members of the community, including “at-risk” groups and places in close proximity to the premises.
- 58 In particular, the Police point out that the proposed premises are located approximately 400 metres from the Wesley College school building and according to the 2011 Australian School Student Alcohol and Drug Survey (ASSAD) 29.8% of seventeen (17) year olds (who drank in the previous week) obtained alcohol from a licensed venue – the proportion rose to 57% in the case of twelve (12) to seventeen (17) year olds.

59 It was submitted that children and young people, or those with an alcohol dependency, who attend this area, should be protected at all times from alcohol enticement via external advertisements of alcohol. Should the licence application be approved, it is also recommended that stringent conditions be imposed, in addition to the applicant's strategies in the PIA, in an effort to reduce the negative impacts of the premises on the amenity and neighbouring residents, businesses and community groups.

60 The following recommended conditions were submitted by the Police:

1. *Trading Hours*

As per application:

- a) the licensee is permitted to trade on Monday to Saturday from 7:00 am to 12:00 am midnight and Sunday from 7:00 am to 10:00 pm only; and*
- b) trading on Christmas Day, Good Friday and Anzac Day is not permitted.*

2. *General Conditions*

As per the application:

- a) a substantial range of food is to be available at all times the premises is open to the public;*
- b) the licensee will have regular contact with the neighbouring residents to resolve any issues;*
- c) patrons will be monitored at all times to ensure no persons are loitering outside the premises or unduly disturbing the local residences; and*

in addition:

- d) the premises are to provide seating for a minimum of one hundred (100) patrons at all times;*
- e) no promotions, advertising or incentives which encourage cheap or discounted liquor or which encourage excessive consumption are permitted;*
- f) the licensee is prohibited from advertising liquor products on the external façade of the premises; and*
- g) responsible service signage must be displayed at the premises.*

3. *Drink Standards*

- a) Low-strength and mid-strength beer, plus non-alcoholic drinks must be available;*

- b) 'shots', 'lay-backs', 'jelly shots', 'test tubes' and any other shooter style drinks are prohibited;
- c) the sale and supply of pre-packaged drinks that are 'ready to drink' ("RTD") is prohibited;
- d) jugs of liquor are not permitted;
- e) no liquor is to be supplied mixed with energy drinks - for the purposes of this condition, 'energy drinks' has the same meaning as formulated caffeinated beverage within the Australian New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.

4. *Enomatic Wine Dispenser*

The supply of alcohol from the Enomatic wine dispensing system must be performed by a RSA accredited staff member only.

5. *Liquor Accord*

As per the application, the licensee is to join and participate in the Fremantle Liquor Accord.

6. *Entertainment*

As per the application, entertainment will be restricted to low level, non-amplified, background music set at a level to accommodate easy conversation.

7. *Dress Standards*

Jackets or any other clothing or accessory, or any clearly visible body markings, bearing patches or insignia of any Outlawed Motor Cycle Gangs not limited to, but including, the following listed Outlawed Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:

- a) *Coffin Cheaters;*
- b) *Club Deroes;*
- c) *Gods Garbage;*
- d) *Gypsy Jokers;*
- e) *Outlaws;*
- f) *Bandidos;*
- g) *Rebels;*
- h) *Comancheros;*
- i) *Mongols;*
- j) *Hell's Angels; and*
- k) *Lone Wolf.*

A notice is to be displayed at all entrances to the licensed premises reflecting this condition.

8. Closed Circuit Television (“CCTV”)

As per the application:

- a) a CCTV system is to be in place and operational at all times covering the internal access/egress of each entrance and exit of the premises;*
- b) these cameras must allow clear identification of patrons;*
- c) the system must comply with the Director’s Policy relating to CCTV; and*
- d) images recorded via the CCTV system must be retained for twenty eight days and must be made available for viewing or removal by the police or other persons authorised by the Director.*

Submissions on behalf of the Executive Director Public Health

- 61 The purpose of the EDPH intervention is to make representations regarding the close proximity of the proposed premises to a number of schools and the potential for harm to be caused to, or ill-health impacts to be experienced by, students who pass by the premises when travelling to and from school. Specifically, the grounds of intervention are:
- 1) the proposed small bar will be located in the immediate proximity of three (3) schools (Wesley College, South Perth Primary School and St Columba’s Catholic Primary School);
 - 2) the venue will be directly visible from the grounds of Wesley College;
 - 3) the area where the small bar is proposed to be located has a high level of foot traffic from students who attend the surrounding schools;
 - 4) if this application is granted, there is likely to be an increase in the regular exposure of a large number of students (approximately 2,000) to alcohol in their environment;
 - 5) children and young people are a recognised “at-risk” group, with greater vulnerability to negative influences from their environments;
 - 6) research shows regular exposure to alcohol product advertising on the way to and from school can have a negative health impact on children and young people.
- 62 For similar reasons to those expressed by the Police, the EDPH has a particular concern as to the possibility of alcohol product advertising on the

front façade of the premises and the proposed introduction of a *Enomatic* wine system providing for self-service of alcohol.

63 It was submitted that the following conditions would be an important harm minimisation approach, if the licence is to be granted:

- 1) advertising of alcohol products (e.g. signage reflecting visual graphics of specific alcohol products, posters, a-frames, billboards) on the front façade of the premises and within 150 metres of the schools located within a 2km locality of the premises is prohibited during school term dates;
- 2) if liquor is sold or supplied by way of an *Enomatic* wine system(s):
 - a) self-service of wine for sampling is to be supervised by the licensee, approved manager or bar staff and is to be restricted to an amount of up to 60ml per serve only;
 - b) the sale of wine by the glass for consumption on the licensed premises in amounts exceeding 60ml, must be served by the licensee, approved manager or bar staff; and
 - c) all *Enomatic* wine systems are to be located in areas that are clearly visible from the premises' main bar, with an unobstructed line of sight maintained at all times.

Submissions on behalf of the McCusker Centre for Action on Alcohol and Youth

64 An objection to the licence application was lodged by the MCAAY on the ground that the grant of the application would not be in the public interest – s 74(1)(a) of the Act.

65 Specifically, MCAAY is concerned that the location of the licensed premises are in close proximity to a number of schools, a number of child care and day care centres and a number of other venues which young people would be expected to frequent, including a newsagency, a number of bakeries and a supermarket.

66 It was submitted that the location of the licensed premises in close proximity to schools will contribute to the “normalisation” of alcohol through frequent exposure to alcohol advertising associated with the bar, and potential regular exposure to people drinking if this is visible from the street.

67 It was further submitted that the PIA submitted with the licence application does not outline strategies to ensure that young people will not be exposed to alcohol advertising and promotions related to the small bar.

- 68 Concerns about the proximity of licensed outlets to schools and other places young people frequent have been expressed by a number of health and community organisations and more recently by the Independent Review Committee tasked with reviewing WA's *Liquor Control Act 1988*.
- 69 On the grounds stated, the MCAAY urges the Commission to not grant the application.

Respondent's response to interventions and objections

- 70 By way of clarification, the licence application seeks approval for the full range of permitted trading hours available to a small bar licence under the Act; however, the respondent expects that the core trading hours will be 10:am to 12 midnight Monday to Saturday and 10:00am to 10:00pm on Sundays.
- 71 With regard to the operation of the *Enomatic* wine storage and dispensing system:
- 1) as detailed in the PIA, the *Enomatic* system will be operated and supervised to ensure that RSA principles are observed;
 - 2) the successful operation of similar *Enomatic* systems in other licensed premises have been highlighted;
 - 3) the suggestion the *Enomatic* system could be operated contrary to RSA principles has not been supported by any evidence;
 - 4) the *Enomatic* is an expensive system and only high value wines will be served from the system (it is not economically viable or practical to serve lower value, high turnover "house" style wines from the *Enomatic* system and these wines will be served from the bar);
 - 5) the respondent is committed to providing high quality, high value wines to its customers and the *Enomatic* system is now recognised as an entirely appropriate method to deliver this service;
 - 6) an *Enomatic* system will not be included in the initial fit-out due to budget constraints, but the respondent wishes to reserve the right to install the system at a future date if circumstances permit.
- 72 For the reasons outlined above, the respondent does not accept the condition proposed by the Police requiring the supply of alcohol from the *Enomatic* system to be performed only by a RSA accredited staff member.
- 73 With regard to the close proximity of the premises to Wesley College:

- 1) as detailed in the PIA, the contact with the Wesley College Principal and the Wesley College Parent's Association to provide details of this application and invite discussion on any concerns met with a neutral response from the Principal and no response or objection from the Parent's Association;
 - 2) the respondent has committed to engaging in ongoing communication with the College so that any issues can be dealt with appropriately;
 - 3) as detailed in the PIA, the establishment of a liquor store close by in Angelo Street and also near the College was the subject of similar concerns at the application stage, but the Principal has confirmed the store has not presented any issues for the College;
 - 4) while the ASSAD research provides estimates as to the degree to which students (juveniles) are accessing alcohol, the notice of intervention provides no clarification as to where and how the alcohol is being accessed and consumed and care needs to be taken using this information as the principal risk to under-age persons accessing alcohol relates to the availability of packaged liquor – not liquor sold for on-premises consumption.
- 74 Whilst many of the licence conditions proposed by the Police are accepted, should the licence be granted, the following conditions are disputed:
- 1) a restriction on trading hours - the respondent is seeking the ability to trade for the full range of permitted trading hours available to a small bar licence and does not accept the restricted hours proposed by the Police;
 - 2) the proposal that a substantial range of food be available at all times - the respondent needs to maintain operational control over the kitchen's operations in order to respond to operational practicalities such as end-of-night clean-up and times of low/nil demand;
 - 3) a requirement to maintain regular contact with residents to resolve any issues - whilst the respondent is committed to establishing a complaints resolution process to deal with any resident concerns in an appropriate and considerate manner, a condition on the licence to this effect is too rigid and not appropriate;
 - 4) patrons be monitored at all times to ensure no loitering or undue disturbance of local residences - the respondent has committed to monitoring the conduct of patrons outside the licensed premises, but has no authority outside its premises and to have a licence condition to ensure certain patron behaviour once they leave the premises is too rigid and therefore not appropriate;

- 5) provide minimum seating for one hundred (100) patrons at all times - whilst this will be a general rule, some operational flexibility is required to, for example, accommodate a function that is not based entirely on guests being seated; and
 - 6) the proposed controls over the *Enomatic* wine system - the respondent does not agree with the Police (or the EDPH) position concerning the operation of the system for the reasons stated.
- 75 The above responses apply in equal measure to the EDPH intervention and the MCAAY objection.
- 76 The proposed premises are not in any way exceptional in their nature or location and there are a number of restaurants within the locality (including Angelo Street) that are presently permitted to serve liquor and trade past 12 midnight.
- 77 It is not uncommon, within the locality, for licensed premises to be in close proximity to residential areas. The Como Hotel, Windsor Hotel and the Karalee-on-Preston are in close proximity (less than 50 metres) from residential properties – the Karalee-on-Preston, which operates as a tavern, is surrounded by residential properties and is approximately 385 metres from the Como Primary School. Not only is there a significant difference in the scale and nature between these licensed venues and the proposed small bar, but there is also no evidence of alcohol related harm, or adverse parking or amenity impacts arising from these existing operations within the locality.
- 78 Accordingly, on the basis of the limited evidence provided by the applicant and the fact that the respondent has committed to a prohibition on external advertising of alcohol products, it was submitted that the applicant's objection has not been made out.

Determination

- 79 Under section 25(2c) of the Act, when considering a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 80 On a review under section 25 of the Act, the Commission may -
- (a) *affirm, vary or quash the decision subject to the review; and*
 - (b) *make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance; and*
 - (c) *give directions –*
 - (i). *as to any question of law, reviewed; or*

(ii). to the Director, to which effect shall be given; and

(d) make any incidental or ancillary order.

- 81 In conducting a review under section 25, the Commission is not constrained by a finding of error on the part of the Director, but is to undertake a full review of the material before the Director and make its own decision on the basis of those materials (*Hancock v Executive Director of Public Health*, [2008] WASC 224).
- 82 Determining whether the grant of an application is “in the public interest” requires the Commission to exercise a discretionary value judgment confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241).
- 83 The primary ground of intervention and objection to the present application is that the grant of the application is not in the public interest due to:
- 1) the potential for the licensed premises to contribute to harm and ill-health in the community because of:
 - a) the close proximity of Wesley College and other schools to the proposed premises;
 - b) the potential exposure of students and children to alcohol products advertising;
 - c) the potential for students and children to interact with persons who have consumed alcohol at the premises;
 - d) the proposed operation of an *Enomatic* wine storage and dispensing system; and
 - 2) the adverse impact on the amenity of the local area due to noise and parking issues (particularly in relation to Waverley Street) associated with the proposed licensed premises.
- 84 Understandably, the close proximity of the proposed licensed premises to Wesley College and other schools, and to student/children venues, in the locality, as well as the potential impact the grant of the licence may have on these “at risk” groups has been highlighted.
- 85 The Commission takes a particularly cautious approach in relation to liquor licensing matters where there is the potential for adverse impacts on children, the young and other “at-risk” individuals and/or groups. However, the Commission is not persuaded in this instance that the granting of a licence for

a small bar of the type proposed at the proposed location will create an undue risk to these individuals or groups.

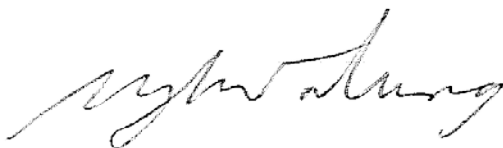
- 86 Whilst Wesley College and its playing fields are immediately opposite the premises, the playing fields and surrounding grounds are separated from the proposed premises by a three (3) metre Cyclone wire fence and Angelo Street itself, which is a dual carriageway at this point. The main entrance gate and Wesley College buildings are also a considerable distance from the premises, significantly reducing the amount of student pedestrian traffic passing the front of the premises.
- 87 Furthermore, the respondent's commitment to ensure that visibility into the premises from the street will be minimised significantly reduces any exposure of the bar's operations to passers-by, including students of Wesley College and other schools, as well as those using the college playing fields.
- 88 The Commission also notes and accepts that the premises will be closed when student pedestrian traffic is at its highest (in the morning) and will be in a period of low trade during afternoon student movements.
- 89 In the Commission's view, the design and style of the proposed premises have some similarities to a café/restaurant and based on the evidence of the proposed operation, the Commission is satisfied the venue will not have an undue impact on "at risk" groups, particularly those children who choose to walk past the premises.
- 90 The Commission is also satisfied that the granting of this licence, which is not permitted to sell packaged liquor, will not contribute to younger people having greater access to alcohol products.
- 91 The Commission has carefully considered the proposed operating procedures for the *Enomatic* wine storage and dispensing system. The quality and price of the wine products proposed to be available through the *Enomatic* system would appear to the Commission not to be conducive to encouraging rapid consumption which could perhaps more easily occur through the traditional methods of purchase. However, in both circumstances, it will generally be dependent on staff supervision of patron behaviour to identify any issues that may arise. Accordingly, the Commission accepts the Police position that the operation of the *Enomatic* system, at all times, must be the responsibility of an RSA accredited staff member.
- 92 The Commission has considered the potential for undue noise, both from the internal operations of the small bar, and from the outside movements of patrons and staff.
- 93 The location and nature of the proposed premises, the style of operation proposed, the proposed management practices for the disposal of waste and the conservative approach to be taken through the restriction of entertainment

to low level background music only has persuaded the Commission, on this occasion and in these circumstances, that the amenity, quiet and good order of the locality will not be unduly disturbed or lessened to any significant extent through the granting of this licence.

- 94 With respect to outside noise, particularly for the residents of Waverley Street, the Commission would expect that there may be some increase in pedestrian and vehicular activity; however, there is evidence that such movements already exist by patrons of the wider commercial precinct of which the premises will be just one part.
- 95 The extent to which the proposed small bar may contribute to any undue increase in noise associated with patrons of the bar leaving the premises after 7:00pm will also depend, in part, on the use by patrons of street parking. This issue is the province of the City of South Perth as the Council has the capacity to place time and permit restrictions on street parking (see below).
- 96 Of particular concern to the applicant is the potential increase in the demand for street parking, especially in Waverley Street, resulting in undue annoyance, disturbance and inconvenience to the residents, at all times the proposed premises are open, but more so after the other commercial operators in the precinct have ceased business for the day i.e. generally after 7:00pm.
- 97 Evidence before the Commission confirms that Waverley Street is already experiencing a high level of street parking, a large proportion of which presumably relates to the commercial/retail businesses already operating within the precinct. Whilst the extent to which this situation might be exacerbated as a consequence of the proposed small bar operation is unknown, there is a physical limit on parking space availability, which already seems to be well utilised during the day.
- 98 Street parking at night also may well be subject to additional use by patrons of the proposed small bar. However, the extent to which this might have an undue adverse impact on the amenity is difficult for the Commission to evaluate in advance of the small bar commencing operation. This predictive exercise is made even more difficult in the light of the other parking options available in the locality, particularly after 7:00pm when all, or most, other commercial/retail businesses have closed for the day.
- 99 As pointed out by the applicant, Waverley Street is a narrow street which allows only one vehicle passage when the parking spaces on both sides are taken. This, in itself, would indicate that parking in Waverley Street is likely to involve an element of inconvenience, certainly for non-residential users; however, these users will generally have other parking options in the evening and at night.
- 100 The Commission is mindful of the role, responsibility and powers of the City of South Perth in relation to the management of parking and the fact that in

granting approval for this development, special consideration was given by Council to the parking requirements, with the respondent required to pay \$17,000 as a cash payment in lieu of the onsite car parking shortfall of seven (7) bays. These funds are to be applied to introducing appropriate line marking in Waverley Street to make it clear that parking is not permitted. The funds are also to be put towards the purchase of software to assist rangers to enforce parking restrictions.

- 101 In addition, the City of South Perth has indicated a preparedness to investigate any requirement for timed parking restrictions. The Council also has the ability to implement and approve residential parking permits should this prove necessary.
- 102 The Commission has no reason to believe the Council will not meet its responsibilities to properly manage car parking within this precinct and is, therefore, not satisfied there is sufficient evidence to demonstrate that the grant of this licence will cause significant parking problems, at least to the extent any such problems will have an undue effect on the residential amenity of the locality.
- 103 In summary, the Commission is not persuaded by the applicant (the residential objectors) nor the interveners (the Police and EDPH) or the McCusker Centre for Action on Alcohol and Youth as an objector, that the granting of this licence application is not in the public interest.
- 104 The application is for the conditional grant of a small bar licence for premises with a maximum approved capacity of 120 persons located in what is ostensibly a retail strip within a precinct zoned commercial comprising, among other businesses, a licensed restaurant and a liquor store.
- 105 On balance, the Commission does not consider that approval of a small bar licence as proposed will cause an unacceptable level of harm and ill-health in the community or have an undue effect on the amenity of the locality.
- 106 The application is therefore refused and the conditional grant of a small bar licence is approved in accordance with the conditions imposed by the Director.



EDDIE WATLING
PRESIDING MEMBER