

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: WOLFBERRY HOLDINGS PTY LTD
PREMISES: ANGELO STREET BAR
PREMISES ADDRESS: 79 ANGELO STREET, SOUTH PERTH
LICENCE NO: 15053
NATURE OF MATTER: CONDITIONAL GRANT OF A SMALL BAR LICENCE

Introduction

- 1 On 1 May 2014 an application was lodged by Wolfberry Holdings Pty Ltd (the applicant) for the conditional grant of a small bar licence for premises to be known as the Angelo Street Bar and located at 79 Angelo Street, South Perth. The application is made pursuant to s 46 and s 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing, which included serving notice of the application on any schools within a 2 kilometre radius of the proposed premises; placing a notice on the site of the premises for 28 days; placing a notice in the West Australian newspaper; and undertaking a letter drop to residents and businesses within a 200 metre radius. Pursuant to s 73 and s 74 of the Act, objections to the grant of the application were lodged by Jackie Hair, Winifred Finlayson, Mary Ann Yokeping Choong, Marilyn Arkeveld, Lewis Cox, Pamela McBride, Glen Wheaton, Therese Shipman, Michael and Janet Jones, Simon Stewart-Dawkins, Robert James (collectively referred to as the resident objectors) and Professor Mike Daube. Pursuant to s 69 of the Act, Notices of Intervention were lodged by the Executive Director Public Health (EDPH) and the delegate of the Commissioner of Police (the Commissioner).
- 3 The application will be determined on the papers in accordance with s 16 of the Act. The submissions and evidence of the parties are briefly summarised as follows.

Submissions by the applicant

- 4 The applicant seeks to establish a small bar in a disused shop in Angelo Street, South Perth. According to the applicant the site chosen is deliberately located in a busy commercial/retail precinct that services the local community. The proposed premises will provide high value, low risk, community based hospitality services in a comfortable, friendly and relaxed environment.

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- 5 It was submitted that the proposed premises is to be located in the Angelo Street commercial precinct which extends for approximately 350 metres along both sides of Angelo Street which has been turned into a dual carriage way at this point. The precinct is a busy and vibrant commercial hub comprising banking and other financial and personal services, a Coles supermarket, a liquor store, numerous small retail outlets and a number of cafes and restaurants.
 - 6 Adjoining the proposed premises on the eastern side are three retail units, comprising a butcher, newsagency and cafe/patisserie. Behind these shops is a small parking area for these businesses (12 bays) and a laneway, closed to through traffic. On the other side of the laneway is the South Perth Dental Surgery together with parking areas that service the dental surgery. To the immediate west of the premises is a 32 bay car park that services a group of retail shops which are located about 30 metres from the proposed premises. Approximately 120 metres away is a 28 bay council car park and 200 metres west is a further car park with 63 bays. The Angelo Street commercial precinct is surrounded by residential areas. Opposite the proposed premises are the Wesley College playing fields and car park.
 - 7 According to the applicant approximately \$1m will be spent on fitting out the proposed premises to create a high end small bar, with a focus on premium wine, craft beer, innovative cocktails and shared 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.
 - 8 The applicant submitted a Public Interest Assessment (PIA) in support of its application. According to the applicant's PIA, Australian Bureau of Statistics data indicates that the locality in which the premises is to be located has higher than average income, high concentration of professional workers and a high rate of home ownership. Consequently, it was submitted that the locality is not a low socio-economic community. Also, police data indicates that crime in South Perth (down by 25%) and Como (down by 18%) have recorded a significant drop in offence numbers in 2012/2013 in comparison to the previous two years, indicating a positive trend in the rate of offending.
 - 9 To gauge the level of support for the proposed small bar, the applicant undertook a community survey. Approximately 1,000 survey forms were hand delivered to local residences with over 250 being completed and returned. It was submitted that the survey results reflect strong community support for the grant of the application with 91% of respondents indicating that the proposed small bar would provide a service that is currently lacking in the locality and 94% of respondents indicating that they would patronise the proposed premises. In addition to the survey, the applicant also submitted various individual letters of support from local community members.

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- 10 In respect of the location of the proposed premises to the Wesley College playing fields, the applicant submitted that the playing fields are cut off from Angelo Street by a 3 metre cyclone fence and the closest Wesley College school buildings are across the playing fields approximately 400 metres from the proposed premises. The applicant has consulted with the headmaster of the College, who has not objected to the application. There is a liquor store 150 metres from the proposed premises, which was granted by the Director of Liquor Licensing in 2011, and this store does not appear to have created any issues for the College in relation to students attempting to purchase packaged liquor. In terms of risks to juveniles accessing alcohol, it was submitted that packaged liquor outlets pose a greater risk than a small on-premise venue as proposed in this application.
- 11 To minimise any adverse impact on the amenity of the area, the applicant would implement the following initiatives:
- patron behaviour will be closely monitored to ensure that the peace and quiet of residents is not unduly disturbed;
 - entry and exit of all patrons will be through the front door which exits onto Angelo Street;
 - patrons leaving the premises will be asked to do so quickly and quietly, respecting the residential nature of the neighbourhood;
 - the breakout of interior noise from the premises will be completely minimised by acoustic panels and other noise minimisation construction;
 - music will be played inside the premises only and at a background level suitable for conversation to occur;
 - management will ensure no loitering occurs outside the building;
 - patrons will not be allowed to unlawfully remove alcohol when leaving the venue;
 - staff will be responsible for keeping the environment around the bar clean and tidy with daily patrols; and
 - all bins will be kept in the appropriate bin storage area.
- 12 Consequently, it was submitted by the applicant that the grant of the application was in the public interest.

Submissions by the resident objectors

- 13 Although individual objectors raised slightly different issues, the resident objectors are generally opposed to the grant of the application on several grounds encapsulated under s 74 of the Act, namely:

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- the grant of the application would not be in the public interest;
 - 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; and
 - if the application were granted –
 - i. undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity would be likely to result; or
 - ii. the amenity, quiet or good order of the locality in which the premises are to be situated would be lessened.
- 14 More specifically, the resident objectors claim, either individually or collectively, one or more of the following:
- there is no requirement for a further liquor licence in the locality;
 - the proposed premises will be located in close proximity to schools and children will pass the venue going to and from school each day;
 - the grant of the application may increase anti-social behaviour in the area;
 - there is a lack of parking in the area and granting the application will only exacerbate this problem and cause further inconvenience to residents; and
 - noise from the venue and patrons going to and from their cars at night will unduly disturb residents.
- 15 It was submitted by the resident objectors that there are 46 existing licensed premises within a 2km radius of the proposed bar of which 40 provide liquor on a retail or service basis. Although there are no existing small bars, there are many nearby alternatives that cater to the requirements of consumers for liquor and related services. In terms of the applicant's consumer survey, some of the objectors claim that they did not receive a survey form, concluding that the applicant was selective in the areas surrounding the proposed premises that were surveyed. It was also submitted that a large number of residents did not respond to the survey and therefore the applicant's claim that there is overwhelming support for the grant of the application is not correct. The objectors submitted a petition/pro forma letters signed by people opposed to the grant of the application.
- 16 The resident objectors state that the proposed premises is located opposite the Wesley College playing fields and submit that a small bar should not be located in such close proximity to, and in such high visibility from, the school's grounds. The playing fields are used by students during and after school and on weekends for sporting activities. Also, there are other schools in the locality which would necessitate children walking past the bar when going to and from school each day. Children may

be exposed to people who have been drinking alcohol at the proposed premises, or students may seek to access alcohol at the licensed premises, particularly since some year 12 students will be 18 years of age whilst still at school. It was submitted that there are clear links between children's exposure to alcohol advertising and the development of attitudes about alcohol and drinking habits. The on-going exposure by children to people consuming alcohol will only serve to normalise alcohol consumption as an everyday activity. There is also a bus stop used by children which is in close proximity to the proposed premises.

- 17 The resident objectors reject the applicant's assertion that the operation of the proposed small bar will not adversely impact on the local neighbourhood. In this regard, it was submitted that despite the best efforts of staff to control patron behaviour, staff cannot control patrons once they leave the venue. Groups of patrons who are affected by alcohol, laughing, talking loudly, arguing, wandering around nearby streets and getting in and out of cars will create new alcohol-related adverse amenity impacts on the local community. Patrons who walk to the venue will pass by bedrooms windows late at night on their way home, and whilst not engaged in anti-social behaviour, will talk loudly due to the effects of alcohol. It was also submitted that patrons loitering outside the venue may cause noise and disturbance to the residents.
- 18 According to the resident objectors parking in and around the Angelo Street commercial precinct is very limited, with cars often parking in nearby Waverley Street. This is a narrow residential street and when cars are parked on both sides of the road, only one car at a time can manoeuvre along the street. The introduction of a new licensed facility catering for up to 120 people will only further exacerbate congestion in the neighbourhood, pushing patrons further into nearby residential streets, particularly Waverley Street which is approximately 50 metres from the proposed premises. Although cars currently park in this street during the daytime, Waverley Street is peaceful and quiet in the evenings once the shops have closed, however this will change given its proximity to the proposed small bar, which will be trading later into the night. The business which previously occupied the site of the proposed small bar was a convenience store, where people would make quick purchases and leave. This business ceased operation approximately two years ago.
- 19 General research data, linking alcohol to a range of harms in the broader community was submitted to support the contention that the grant of the application may lead to an increase in anti-social behaviour in the area.
- 20 Mr Stewart-Dawkins, who is the resident objector nearest to the proposed premises, raised particular concerns about noise emanating from the premises, including noise from plant and equipment; the emptying glass bottles at the rear of the premises; and the subsequent collection of refuse from the premises. It was submitted by Mr Stewart-Dawkins that a 120 patron capacity bar will generate large quantities of empty bottles which will generate considerable noise from waste products before 7 a.m. until after

12 p.m. closing Monday to Saturday and from before 10 a.m. to after 10 p.m. on Sundays. Also, the laneway at the rear of the premises is used by three residents to access their properties. Should delivery trucks block the laneway, residents will be unable to get to work or to appointments.

Submissions by Professor Daube

- 21 Professor Daube, Director of the McKusker Centre for Action on Alcohol and Youth, objected to the grant of the application on the ground that the grant of the application would not be in the public interest (s 74(1)(a) of the Act).
- 22 It was submitted by Professor Daube that the proximity of the proposed small bar to a number of schools in the area, including Wesley College, St Columba's Catholic Primary School and South Perth Primary School will contribute to the normalisation of alcohol through the frequent exposure of children and young people to alcohol advertising and people consuming liquor.
- 23 According to Professor Daube research indicates that alcohol promotion shapes young people's attitudes and behaviours and contributes to the normalisation of alcohol use and exposure to alcohol advertising influences young people's beliefs and attitudes about drinking and increases the likelihood that adolescents will start to use alcohol and will drink more if they are already using alcohol.
- 24 Market research commissioned by the McKusker Centre for Action on Alcohol and Youth indicates that 94% of WA adults are concerned about alcohol use among young people. Research shows that a two-tiered drinking culture is developing where fewer WA 12-17 year old secondary students are using alcohol (1 in 4 had never consumed alcohol in 2011), but of those who do drink, more are drinking at risky levels.
- 25 It was therefore submitted by Professor Daube that given the existing concern about drinking patterns and alcohol-related harms amongst young people, the potential impact on children and young people should be a central consideration.

Submissions by the Executive Director Public Health

- 26 The EDPH intervened in the application to make representations regarding the close proximity of the proposed premises to a number of schools and the potential harm or ill-health impacts on students who will pass by the premises when travelling to and from school.
- 27 The grounds of the intervention are based on the following:

- the proposed small bar will be located in the immediate proximity of three schools (Wesley College, South Perth primary School and St Columba's Catholic primary school);
- the venue will be directly visible from the grounds of Wesley College;
- the area where the small bar is proposed to be located has high foot traffic of students who attend the surrounding schools;
- if the 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;
- children and young people are a recognised 'at-risk group' with greater vulnerability to the negative influences of their environments; and
- 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.

28 Consequently, the EDPH recommended that if the application is approved, a condition restricting advertising of alcohol products on the front facade of the premises or near the three schools in proximity to the proposed premises should be imposed on the licence.

Submissions by the Commissioner of Police

- 29 The Commissioner intervened in the application to make representations regarding the intended manner of trade at the proposed premises and the potential impact on the local amenity.
- 30 It was submitted by the Commissioner that the use of an *Enomatic* wine system may encourage rapid liquor consumption and the irresponsible promotion of liquor to patrons. Consequently, the Commissioner recommended that if the licence is granted a condition should be imposed so that the dispensing of liquor from the system must be performed by an RSA accredited staff member.
- 31 In respect of the potential impact on the local amenity, the Commissioner noted that the proposed premises are to be located in a high density commercial and residential setting of South Perth and therefore there is a possibility that the operation of the proposed premises may impact on local residents, businesses and the general amenity of the area. It was also noted that the proposed premises is located in close proximity to Wesley College and therefore there will be a high presence of children and young people frequenting the vicinity of the premises. The Commissioner consequently recommended conditions be imposed on the licence to minimise the risks associated with the operation of the premises, including conditions on responsible server practices, drink standards and CCTV.

Determination

- 32 It is appropriate, for the benefit of the parties, to begin by setting out some of the legislative requirements under the Act which directs the licensing authority in terms of its decision making. Decisions of the licensing authority are not arbitrary, but are informed by the scope and purpose of the legislation and relevant legal precedent.
- 33 An applicant for the grant of a small bar licence must, pursuant to s 38(2) of the Act, satisfy the licensing authority that granting the application is in the public interest, while the burden of establishing the validity of any objection lies on the objector (refer s 73(10) of the Act). An intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321).
- 34 In determining whether the grant of an application is “in the public interest” I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O’Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 35 In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:
- “The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.”*
- 36 The scope and purpose of the Act can be ascertained from its objects (refer s 5), which the licensing authority is bound to take into consideration when determining an application.
- 37 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and

- to 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.
- 38 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- 39 The licensing authority is also entitled (but not bound) to take in to account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 40 The licensing authority must deal with each application on its merits (refer s 33) but has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of liquor Licensing* (1992) 7 WAR).
- 41 I will now consider the merits of the application, which includes consideration of the objections and interventions.
- 42 The applicant seeks to establish a small bar in a commercial/retail precinct in Angelo Street, South Perth, which is surrounded by residential areas. A small bar is restricted under the Act from having no more than 120 persons on the licensed premises at any one time. The applicant has planning approval from the relevant local government authority, as required under s 40 of the Act, to establish the business under the licence and submitted a PIA in support of the application. The PIA included a number of letters and over 250 survey forms from residents in the locality supporting the application. This evidence was submitted to demonstrate that the grant of the application would be consistent with object 5(1)(c) of the Act (catering to the requirements of consumers for liquor and related services).
- 43 The site of the proposed premises was described by the City of South Perth in the following terms –

“The subject site is located within the ‘Neighbourhood Centre Commercial’ zone which can accommodate hospitality focused uses such as cafe/restaurant, tavern and hotel, subject to the relevant approvals. It is

noted that a number of cafe/restaurants operate in the area without a negative impact on the locality.”

44 The application attracted 12 objections, of which 11 were from local residents. The Commissioner of Police and the EDPH also intervened in the application for the purposes of having appropriate conditions imposed on the licence, if granted, in order to minimise the risks associated with the operation of the premises.

45 The general concerns of the resident objectors are perhaps best summarised in the submission from Ms Choong dated 25 September 2014, in which she said:

“The grounds provided for objecting to the location of the Angelo Street Bar at 79 Angelo Street, South Perth covered a range of issues. These include:

- *concerns relating to the large number of children, families and elderly people in the area;*
- *concerns relating to the effects of drunk and disorderly people in the local community;*
- *the inappropriateness of having a bar directly opposite a school with implications for children including –*
 - *modelling of alcohol consumption*
 - *road safety risks*
 - *risks to personal safety*
 - *exposure to anti-social behaviour*
- *insufficient parking for 120 patrons*
- *noise and disturbance to occupants of the area; and*
- *there are nearby alternatives that sell alcohol.”*

46 The resident objectors also submitted their own petition and pro forma letters signed by people opposing the application.

47 In respect of the proximity of the proposed small bar to schools in the area, and in particular Wesley College, the fact remains that none of the school principals or parent associations from these schools lodged an objection to the application. Whilst expressing general concerns about the exposure of children from these schools to alcohol consumption or promotion, it cannot be concluded that the resident objectors represent the views of the majority of parents of students at these schools. Although it

was submitted that some parents of children from these schools signed the objector's petition or pro forma letters, it cannot be ascertained how many respondents were actually parents of children at these schools. There were only 12 formal objections to the application, which clearly indicates that most parents were not sufficiently concerned to the extent that they would lodge an objection. There are over 4,500 licensed premises throughout the State, many located in suburban areas. Inevitably children may walk past licensed premises in their daily activities. According to the applicant's submissions, there will be a focus on high class tapas food and seating will be provided for patrons. Consequently, the set up of the premises will resemble a restaurant, of which there are presently 18 in the locality which children may already pass by.

- 48 Nonetheless, to address the issue of children being exposed to alcohol consumption or promotion as raised by the resident objectors and Professor Daube, the EDPH recommended a condition be imposed on the licence restricting the applicant from advertising alcohol products on the facade of the premises or near the three schools in proximity to the proposed premises. The applicant agreed to this condition.
- 49 General research data was submitted by the resident objectors linking alcohol consumption to a range of harms in the community. This information supports the concerns of residents about drunk and disorderly persons, safety and anti-social behaviour that may result if the application is approved. The weight to be given to such evidence was considered by Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor [2011] VSC 207* where he said:

"..... by its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or locality concerned. It may nonetheless be relevant and admissible, for it may, depending on the circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to minimising it. Such evidence may be especially important where it is connected by other evidence with the 'particular local, social, demographic and geographic circumstances' of the given case."

- 50 The approach of Bell J is consistent with the observations of Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410* where she said:

"The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to

result from the grant of an application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant. However, where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the "risk" of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made." (emphasis added).

- 51 Consequently, the application of such general research data needs to be considered in the context of the locality itself and the risks assessed with due regard to the circumstances of the particular area in which the premises are to be located. In this regard, the applicant's evidence indicates that crime in South Perth and Como has decreased significantly in recent years and there is no evidence that the local community experiences above average levels of alcohol-related harm, despite the presence of over 40 licensed premises. The demographic profile reflects a relatively affluent community which is not disadvantaged. The presence of families, children and elderly people in the area would appear to be typical of many suburbs in Perth. Therefore, on the evidence submitted, I can only conclude that the grant of the application would not pose an unacceptable risk of increased alcohol-related harm in the locality when regard is given to the "particular local, social, demographic and geographic circumstances" of this case.
- 52 Also, the concerns of the objectors presume that the proposed premises will be poorly managed or that patrons leaving the premises will be intoxicated. There is no evidence to support such an assumption in respect of the proposed premises. The majority of licensed premises in the State are well managed; many licensed premises operate in suburban areas without negatively impacting on the amenity of the area; and the majority of people who consume alcohol do so responsibly.
- 53 To assess whether the operation of the premises would negatively impact on the amenity of the area and be compliant with the *Environmental Protection (Noise) Regulations 1997* (noise regulations), the applicant was required to submit an Acoustic Report by an Inspector of Licensed Premises. The Acoustic Report was prepared by Hewshott International and considered the potential increase in the existing noise levels in the area from speech within the bar, background music, patrons leaving the venue, mechanical equipment, waste disposal and delivery vans/trucks. The report

concluded that with certain design features and conditions on the operation of the venue, the proposed premises would be compliant with the noise regulations. Although Ms Choong makes some valid criticisms of the Acoustic Report in submissions dated 10 October 2014, any errors in the Report do not, in my view, undermine the primary finding that the premises can be made compliant with the noise regulations.

- 54 In response to the Acoustic Report, Mr Stewart-Dawkins submitted that the report did not specifically deal with the issue of 'hard waste' such as empty glass bottles, which is likely to impact on him given his proximity to the proposed premises. The applicant in response to Mr Stewart-Dawkins' concern submitted that it will construct a fully enclosed and acoustically treated waste disposal area and where practical, waste collections will be kept to twice per week and bins will be emptied from the front of the building.
- 55 It was also asserted by the resident objectors that parking in and around the Angelo Street commercial precinct is limited with people often parking their vehicles in nearby Waverley Street. It was submitted that the introduction of the proposed premises will exacerbate this problem and lead to increased congestion in the neighbourhood. However, it must be observed that the objectors live in a mixed use residential/commercial precinct which invariably will result in residents experiencing some degree of inconvenience, particularly in respect of traffic congestion. Whilst the grant of the application may increase some of the existing pressure for parking in the area, I accept the applicant's submission that the prime trading times for the proposed small bar will be after other businesses in the area have generally ceased trading, which will ease some of the demand for parking. It is also anticipated that some patrons will walk to the venue. I also note that the City of South Perth considered the parking issues and subsequently issued planning approval to the applicant, notwithstanding that it required the applicant to pay \$17,000 in lieu of the provision of parking bays.
- 56 While some residents sought to vent their frustration at the planning approval process, this is not a matter for my consideration. The fact remains that the City of South Perth has issued the applicant with planning approval as required under the Act. While I am not constrained by the City's decisions in the exercise of my discretion under the Act, they are nonetheless matters to which weight can be given. The City of South Perth Manager Engineering Infrastructure stated:

"Parking within the Angelo Street Precinct is finite and management of the limited supply is through timed parking. As demand increases the parking controls required to manage parking becomes more intensive and may resort to ticketed parking (with or without payment) or surveillance and compliance through number plate recognition software or in pavement measures.

The proposed restaurant/bar replaces a long standing tenant within the complex that would have had a draw upon the private car park off Angelo Street and adjacent to the proposed change of use. Any variation between the expected parking demand from the replaced super market and the restaurant/Bar would be met on road within the precinct but not necessarily in front. The distance a patron is prepared to walk to a venue is dictated by its reputation.

The mechanical measures to manage the limited street parking could be a condition of the development as a cash in lieu payment for any shortfall in bays. This is a topic for more discussion with the Governance and Enforcement team.

In the absence of any cash in lieu for managing the street parking, there are no Engineering issues that would preclude the application from being progressed."

57 In respect of the \$17,000 parking levy, the applicant was advised by the City of South Perth on the use of those funds:

1. *The City understands residents are concerned about the possibility of patrons parking in the right of way behind Waverley Street. While the City's local law implies no parking is permitted in these areas, the City will use part of the cash-in-lieu payment to implement appropriate parking and line marking to make it clear parking is not permitted.*
2. *The remainder of the funds will be put towards the purchase of software to assist the City's rangers enforce parking restrictions, both in the Angelo Street precinct and throughout the wider City.*
3. *With regard to Waverley Street itself, the City acknowledges there may be a requirement to implement timed parking restrictions in the future. The City is investigating this issue as a part of a City wide parking study.*

58 Although the concerns of the objectors are understandable and residents are often opposed to the establishment of a liquor outlet in proximity to their homes, many licensed premises operate in harmony with the local community and provide a valuable service to local residents and others. The evidence before me is that the proposed small bar meets the relevant local government planning requirements; is located in a 'Neighbourhood Centre Commercial' zone which can accommodate taverns and hotels; and the operation of the premises can comply with the *Environmental Protection (Noise) Regulations 1997*. Whilst the objectors contend that compliance with the noise regulations does not mean that there will be no inconvenience from

noise, the issue is whether the level of inconvenience that may be experienced is what residents could reasonably be expected to tolerate in the interests of the public's requirement for a further liquor outlet.

59 The applicant's evidence, in my view, is capable of supporting the conclusion that the grant of the application would be catering to the requirements of consumers for liquor and related services and will provide a facility, being a small bar, which does not currently operate in the locality. Although the resident objectors provided their own petition with people opposing the grant of the application, weighing the relevance of petitions for or against an application is not purely a numerical exercise of who has the most signatories. The resident objectors were critical that only 259 people responded out of 1,000 survey forms that were distributed. Whilst the applicant's claim of 'overwhelming' support may be an exaggeration, at least 25% of people who received a survey form were sufficiently motivated to return the form, with a large percentage of respondents indicating that the proposed small bar would provide a service that is currently lacking in the locality and they would patronise the venue. Notwithstanding the objectors' criticism of the applicant's survey evidence, clearly some people in the community support the application and would find it convenient to use the services and facilities to be provided at the premises.

60 In determining any application under the Act, I must consider those matters that are relevant to the primary and secondary objects of the Act, as prescribed in s 5. In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, Buss J noted that:

"By s 5(2), in carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and to certain secondary objects. The secondary objects include facilitating the use and development of licensed facilities, reflecting the diversity of the requirements of consumers in the State."

61 Also, Malcolm CJ in *Jericho Nominees Pty Limited v Dileum Pty Ltd* WASC 53 of 1991, stated:

"In my view, the public interest as ascertained from the scope and purpose of the Act involves satisfying the reasonable requirements of the public to have liquor outlets consistent with good order and propriety in relation to the distribution and consumption of liquor"

62 Consequently, in consideration of the evidence presented I am satisfied that the grant of the application would be consistent with objects 5(1)(c) and 5(2)(a) of the Act and with the imposition of various conditions on the licence, the premises can operate in a manner which is not unduly disturbing to the amenity of the area or to local residents. In respect of object 5(1)(b) of the act which relates to minimising alcohol-related harm in the community, as I have already observed, there is nothing in the evidence

presented to suggest that the local community presently experiences above average rates of harm or that the grant of the application would pose an unacceptable risk in the terms discussed by Wheeler J in *Lily Creek* (supra). I therefore find that the objectors have failed to establish the validity of their objection as required under s 73(10) of the Act and I am satisfied that the applicant has discharged its onus under s 38 of the Act.

63 In determining appropriate conditions for the licence, I am guided by the applicant's submissions and undertakings. I am also of the view that trading during the week should not commence before 11 a.m. This is consistent with the advice provided to Hewshott International by the applicant's architect and will also alleviate some of the concerns of the objectors and interveners about children being exposed to the consumption of alcohol in the mornings when on their way to school. Consequently, the following conditions will be imposed on the operation of the licence:

- No more than 120 persons are permitted on the licensed premises at any one time.
- The permitted trading hours are –
 - 11 a.m. to 11 p.m. Monday and Tuesday
 - 11 a.m. to 12 midnight Wednesday to Friday
 - 10 a.m. to 12 midnight Saturday
 - 10 a.m. to 10 p.m. Sunday.
- Seating is to be provided for 116 patrons except during a private function or event.
- There is to be no live entertainment and any amplified music must be background music at a volume that allows normal conversation to occur.
- No person wearing a school uniform is permitted to enter and remain on the licensed premises.
- Patrons are only permitted to enter and leave the premises through the single entry sliding front door.
- Where practical, waste collections should be twice per week with bins emptied from the front of the building.
- The licensee can only empty bottles into the bins at the rear of the premises between the hours of 9 a.m. and 7 p.m.
- As much as is practical, deliveries to the premises are to be only accepted through the front doors.

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- Staff are to conduct regular patrols outside the licensed premises to discourage patrons from loitering in the area or otherwise disturbing neighbours.
 - Doors and windows are to remain closed when customers are not entering or exiting the premises.
 - There is to be no external advertising of liquor products.
 - In respect of the use of an *Enomatic* wine dispensing machine the licensee must ensure that:
 - Responsible service of alcohol practices are implemented to monitor and control access to the system; and
 - Wine sold or supplied by the glass is controlled by bar staff.
 - The licensee shall not promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as, but not limited to, 'laybacks', 'shooters', 'slammers', 'test tubes' and 'blasters'.
 - The sale of pre-packaged canned drinks that are 'ready to drink' (RTD) is prohibited.
 - Drink options that contain low strength alcohol content as well as a range of non-alcoholic drinks shall be available for purchase at all times.
 - Promotions, advertising or incentives which encourage excessive or rapid consumption of liquor must not be conducted.
 - The provision of liquor in jugs is prohibited.
 - The licensee must have a closed circuit television recording device (CCTV) installed which complies with the minimum requirements detailed in the Director of Liquor Licensing's policy relating to CCTV.
 - Compliance with the Operational Management plan lodged with the application particularly in regard to the complaints resolution process.
 - Entertainment condition
 1. A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not –
 - (a) be immodestly or indecently dressed on the licensed premises, and/or
 - (b) take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.

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2. The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from -
- (a) exhibiting or showing, or causing, suffering or permitting to be exhibited or shown, on the licensed premises any classified "R 18+", "X 18+" or "RC" classified publication, film or computer game or extract therefrom;
 - (b) causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment on the licensed premises to be immodestly or indecently dressed on the licensed premises, or
 - (c) causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.
3. In this condition "licensed premises" includes any premises, place or area:-
- (a) which is appurtenant to the licensed premises, or
 - (b) in respect of which an extended trading permit granted to the licensee is for the time being in force, but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.
- 64 Should problems arise in the future at the premises or with the operation of the premises, residents can lodge a complaint under s 117 of the Act with the Director of Liquor Licensing. If the complaint is made out, further restrictive conditions, including limiting trading hours, can be imposed on the licence. This option would not be available to residents if the premises operated as a BYO restaurant.
- 65 Accordingly I am satisfied that the applicant has complied with all the statutory criteria, requirements and conditions precedent to the application being granted and therefore a small bar licence is conditionally granted to the applicant subject to the following:
- the design of the premises is to be in accordance with the recommendations contained in the Acoustic Report prepared by Hewshott International.
 - the licensee is to construct a fully enclosed and acoustically treated waste disposal area;
 - a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premises;

- all work being completed within twelve (12) months by in accordance with the plans dated 1 May 2014 and Schedule of Requirements dated 28 July 2014;
- the recommendations of the Inspector of Licensed Premises in the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing on completion of that work within 21 days before the day the licensee wishes to commence trading under the licence;
- a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- the applicant seeking confirmation of the grant on or before 9 March 2016 pursuant to s 62(4)(c) of the Act.

66 For completeness, it is necessary for me to comment on one final matter that arose in this application. Throughout the processing of the application, some objectors questioned the probity of the applicant and whether a person, other than those disclosed in the application, was to be involved in the business to be conducted under the licence. The probity of an applicant is not a ground of objection under s 74 of the Act and therefore it is not open to an objector to pursue this line of inquiry. Pritchard J in *Star & Garter Hotel Pty Ltd v Liquor Commission of Western Australia* [2014] WASC 193 specifically dealt with this issue and concluded that:

An objector who relies upon s 74(1)(a) or s 74(1)(j) is not entitled to rely upon the fit and proper person question as the basis for why the grant of a licence would either not be in the public interest or would not be for the purposes of the Act.

67 The licensing authority and, to some extent, the Commissioner of Police are tasked under the Act to consider whether an applicant is fit and proper to hold a licence. Pursuant to s 37(1) of the Act, the licensing authority cannot grant a liquor licence unless satisfied that each person, directly or indirectly involved in the application is fit and proper. This responsibility is taken very seriously by both the licensing authority and the Commissioner and often exhaustive inquiries are undertaken to discharge this obligation. In respect of this application, the applicant is a company, Wolfberry Holdings Pty Ltd. When the application was first submitted with the Director of Liquor Licensing, the sole director and shareholder of Wolfberry Holdings Pty Ltd was Trisha Elizabeth Paul. Ms Paul subsequently resigned as a director and shareholder of the applicant company and the current directors and shareholders, Peter Jeffrey Vaughan and Kenneth Malcolme Allen, were appointed. Following inquiries conducted by this office and the Commissioner; I am satisfied on the evidence before me that Messrs Vaughan and Allen are fit and proper for the purposes of the Act.

68 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.

69 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

70 This matter has been determined by me under delegation pursuant to s 15 of the Act.

Peter Minchin

DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

10 March 2015