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Mister D'Arcy

97, 97A & 97B Flora Terrace, North Beach WA

Application to redefine Restaurant Licence

Section 38 Submissions
Public Interest Assessment
February 2024

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1 Introduction

- 1.1 Pierre D’Arcy Pty Ltd has applied to the licensing authority to redefine their licensed premises to include the adjoining third tenancy to Mister D’Arcy.
- 1.2 The applicant also lodges these submissions to support their application to vary their alfresco dining extended trading permit (permit no. 0218949422), extending their current alfresco area to be in line with the above-mentioned adjoining tenancy.
- 1.3 This premises currently trades with a restaurant liquor licence and two extended trading permits (extended area & liquor without a meal).
- 1.4 These premises have held a liquor licence for around 20 years now.
- 1.5 These submissions are designed to address the public interest requirements as set out in Section 38(2) of the Liquor Control Act 1988 (the “Act”).
- 1.6 These submissions are also in response to further requirements set by the Director by way of an email from Trent Barkla dated 27th February 2024. In that email the Director required the following.
 - 1.6.1 *“The PIA should be amended to reflect the intentions of both the Alteration/Redefinition and the Add, Vary, Cancel providing rationale and address of matters of s.38 for both and also factor in the ordered outcomes from the Liquor Commission as per determination LCO 4/2024, along with any other material the applicant intends to rely on”.*
- 1.7 **Section 38 - Public Interest requirements.**
- 1.8 Section 38(2) of the Liquor Control Act 1988 sets out the matters to be taken into account by the Licensing Authority in deciding whether or not to grant a liquor licence. Specifically, it states:
 - 1.8.1 *“An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest”.*
- 1.9 The Liquor Control Regulations (1989) say a restaurant licence is not one of the prescribed licence types;

9EA. Kinds of licence prescribed (Act s. 38(1)(a))

For the purposes of section 38(1)(a), the following kinds of licence are prescribed —

- (a) a hotel licence;
- (b) a nightclub licence;
- (c) a casino liquor licence;
- (d) a liquor store licence.

[Regulation 9EA inserted: Gazette 2 Oct 2018 p. 3800.]

- 1.10 However, a PIA is required for this licence application as the Director has asked for it under Section 38(1)(c).

<p>38. Some applications not to be granted unless in the public interest</p> <p>(1) Subsection (2) applies to —</p> <ul style="list-style-type: none">(a) an application for the grant or removal of a licence of a kind prescribed; or(b) an application for a permit of a kind prescribed; or(c) any other application to which the Director decides it is appropriate for subsection (2) to apply.
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- 1.11 Section 38(4) of the Liquor Control Act 1988 states the licensing authority may have regard to the following matters when considering an application for a liquor licence;

- 1.11.1 *“the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and*
- 1.11.2 *whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened; and*
- 1.11.3 *whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and*
- 1.11.4 *any effect the granting of the application might have in relation to tourism, or community or cultural matters; and*
- 1.11.5 *any other prescribed matter”.*

1.12 **Primary Objects of the Liquor Control Act 1988**

- 1.13 The objects of the Act are contained in section 5, which states the primary objects of the Act are,

- 1.13.1 *“to regulate the sale, supply and consumption of liquor; and*
- 1.13.2 *to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, and*
- 1.13.3 *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”.*

- 1.14 Section 5(2) of the Act also includes the following Secondary Objects;

- 1.14.1 *“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; and*

- 1.14.2 *To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
- 1.14.3 *To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, and*
- 1.14.4 *To encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.”*
- 1.15 Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”*.
- 1.16 In the Aldi South Fremantle decision (refusing an application for a conditional grant of a liquor store licence), dated 22nd March 2019, at paragraph 26, the Director said (attachment MD01);
 - 1.16.1 *“None of the primary objects of the Act take precedence over each other, however, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case¹¹ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations”*.¹²
- 1.17 This means the licensing authority can attribute whatever weight it deems reasonable to competing evidence and other relevant considerations, when determining an application. Whilst this is correct, perhaps the above quote should additionally say that *‘in making such decisions, the licensing authority must act reasonably, and within the scope and purpose of the Act’*.
- 1.18 In a media release by the Premier’s office **“Cheers to WA: Everyone’s a winner under State’s new liquor laws”** dated 14th August 2018, Minister Paul Papalia pertaining to the Liquor Control Act Amendment Bill 2018, stated that the legislation had been amended to include;
 - 1.18.1 *“Discretion by the licensing authority to consider low-risk applications without having regard to the public interest assessment requirements.”*
- 1.19 Through these submissions, the applicant will demonstrate how the redefined licensed area will properly and responsibly cater to the diverse consumer requirements for alcohol and related services for the regular visitors and locals who frequent Mister D’Arcy.
- 1.20 Lastly, and importantly, this application is about responding to the increased popularity of Mister D’Arcy.
- 1.21 In the eyes of the licensee, this redefinition of their licensed area is a necessary progression for their premises to keep up with the wants and

needs of the local community and maintain its relevance amongst the North Beach / Watermans Bay hospitality scene.

2 The Locality

2.1 In defining the “locality” affected by the application, guidance has been provided by “Public Interest Assessment - A Policy of the Director of Liquor Licensing”.

2.2 The Director’s policy states that:

2.2.1 *“As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality.*

2.2.2 *The term “locality” in this instance refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues.*

2.2.3 *....in terms of addressing objects 5(1)(b) and 5(1)(c) of the Act, an applicant may need to consider an area which is much broader than the ‘locality’ used for consideration of amenity issues. For example, an application for a destination liquor store, which may draw its clientele from a large geographic area, would need to address 5(1)(b) and 5(1)(c) of the Act in a much broader context”.*

2.3 In relation to location of Mister D'Arcy, the licensee advises;

2.3.1 It is in close proximity (within 200m) of four other hospitality premises;

2.3.1.1 Maestro Sourdough Pizza,

2.3.1.2 Yelo North Beach

2.3.1.3 Lawleys Bakery Café, and

2.3.1.4 Zeal Vietnamese Restaurant (licensed).



2.3.2 The premises exists within a 'Local Centre' zoning per the City of Stirling local town planning scheme;

Local Centre Zone

- a) To provide for a limited range of small-scale retail, commercial and community facilities to meet the day-to-day needs of the immediate neighbourhood.
- b) To ensure safe and convenient access to facilities, in an environment which is conducive to pedestrian movement.
- c) To ensure development is sited and designed so as to reinforce a sense of place and attractive streetscapes.

2.3.3 The premises finds itself situated amongst other small commercial properties / businesses - see below.



The Pilates Co. within 50m of Mister D'Arcy



Realmark Agency & Sea Beauty Boutique within 60m of Mister D'Arcy

- 2.4 As mentioned later in these submissions, the applicant gathered objective witness evidence via a questionnaire. Relevant to this section, the applicant asked respondents, *“If you live or work in/close to North Beach, how would you describe the nature of the locality and the immediate area surrounding Mister D'Arcy?”*;
- 2.4.1 Raelee said, *“Hospitality strip - much needed due to lack of venues around”*,
- 2.4.2 Lynn said, *“Mature based, community minded”*,
- 2.4.3 Lena-Mireya said, *“Mister D'Arcy is in a perfect location and is the star of North Beach. It is in a beautiful spot along Flora Tce and fits in perfectly to contrast Yelo and the coffee shops next door.”*,
- 2.4.4 Bryce said, *“The entire street is going through change with Yelo and other businesses coming it is all good for the area”*,
- 2.4.5 Elahn said, *“Very good family and close community. Growing every day and love the area & vibe”*,
- 2.5 More comments can be found in the raw witness data sheet in attachment MD02
- 2.6 The applicant will now consider the appropriate locality for the demographic study.
- 2.7 In defining the “locality” affected by the application, guidance has been provided by “Public Interest Assessment - A Policy of the Director of Liquor Licensing”.
- 2.8 The Director’s policy states that:
- 2.8.1 *“As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality.*
- 2.8.2 *The term “locality” in this instance refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application in relation to amenity issues.*
- 2.8.3 *....in terms of addressing objects 5(1)(b) and 5(1)(c) of the Act, an applicant may need to consider an area which is much broader than the ‘locality’ used for consideration of amenity issues. For example, an application for a destination liquor store, which may draw its clientele from a large geographic area, would need to address 5(1)(b) and 5(1)(c) of the Act in a much broader context”.*
- 2.9 In this aforementioned policy document, North Beach is listed as a suburb in the inner metropolitan region, which is a suburb situated within 15km from the Perth CBD. Therefore, the locality definition for North Beach is stated as a 2km radius of the subject premises.

- 2.10 Given the location of Mister D'Arcy, the applicant will use both the suburbs of North Beach and Waterman's Bay as representative of the locality.
- 2.11 The appropriate locality definition for the Outlet density study
- 2.4.1. The Director's policy on Public Interest Assessment states that applicants will need to provide "*outlet density information that includes:*
- 2.4.1.1. *"if the applicant intends to sell packaged liquor, the location of all existing licensed premises within the locality,*
 - 2.4.1.2. *if the applicant does not intend to sell packaged liquor, the location of all existing licensed premises within 500 metres,*
 - 2.4.1.3. *nature of services provided by the other licensed premises, and*
 - 2.4.1.4. *the level of access to, and diversity of the services."*
- 2.4.2. Noting the applicant's intention is to not sell packaged liquor, the appropriate locality definition for the outlet density study is therefore 500m from the subject premises.

3 Demographics of the Locality

- 3.1 The Director's policy document on Public Interest Assessments, last amended 31st August 2015 states *"In regard to 'at risk' groups and sub-communities, these have been identified under the Drug and Alcohol Interagency Framework for Western Australia 2011-2015 and may include:*
- 3.2 The potential impact of this proposed licence on the community within the specified locality is something that any applicant must consider and is considered here by this applicant.
- 3.3 In "The Western Australian Alcohol and Drug Interagency Strategy 2018-2022" the priority groups of concern are as follows;
- 3.3.1 *Aboriginal people and communities.*
 - 3.3.2 *Children and young people.*
 - 3.3.3 *People with co-occurring problems*
 - 3.3.4 *People in rural and remote areas including fly-in, fly-out and drive-in, drive-out workers;*
 - 3.3.5 *Families, including alcohol and other drug using parents and significant others;*
 - 3.3.6 *Those interacting with the justice and corrections systems.*
 - 3.3.7 *Other target groups of concern include:*
 - 3.3.7.1 *Older adults:*
 - 3.3.7.2 *Culturally and linguistically diverse communities,*
 - 3.3.7.3 *People identifying as lesbian, gay, bisexual, transgender or intersex; and*
 - 3.3.7.4 *Homeless people.*
- 3.4 The applicant will consider all ten groups above for which data is readily available. The following groups were unable to be considered however, as data is not available for them;
- 3.4.1 *people with co-occurring problems;*
 - 3.4.2 *People in rural and remote areas including fly-in, fly-out and drive-in, drive-out workers;*
 - 3.4.3 *Families, including alcohol and other drug using parents and significant others (see paragraphs 3.5 & 3.6 below);*
 - 3.4.4 *Those interacting with the justice and corrections systems;*
 - 3.4.5 *Culturally and linguistically diverse communities, people identifying as lesbian, gay, bisexual, transgender or intersex; and*
 - 3.4.6 *Homeless people.*
- 3.5 Clarification has previously been sought from the Drug and Alcohol Office regarding the definition of the term "family".
- 3.6 The Drug and Alcohol Office replied that *"a specific definition of family is not provided in the Strategy document. There are a number of reasons for this, including:*

- 3.6.1 *“Recognition of the cultural diversity in Western Australia and that the definition of family can be different for different cultures.*
- 3.6.2 *Recognition that the impact of an individual’s drug and alcohol use is not always confined to a household or what has in the past been defined as the ‘immediate family’ - it can impact more broadly on family members who are external to a household. For example, Grandparents, Aunts and Uncles are commonly reported to be impacted upon.*
- 3.6.3 *Recognition that not all families are biologically related but can still be impacted on by a person’s drug or alcohol use - for example step children/guardians.”*
- 3.7 With such a broad definition, it is impossible for the applicant to identify or quantify this priority population group in the locality.
- 3.8 For the purpose of this demographic study, the applicant has selected relevant Census topics from the Australian Bureau of Statistics (ABS) website (www.abs.gov.au) to provide an indication of the prevalence of each of the priority population groups within the locality and compared them with the same information for the State (Western Australia).
- 3.9 For the purposes of the demographic study, the applicant will be considering the 2021 Census data relating to the suburbs specified in paragraph 2.13, in comparison to the State average.
- 3.10 The selected ABS 2021 Census data is shown in the table below.

ABS Census	North Beach 2021	Waterman’s Bay 2021	WA 2021
Aboriginal and Torres Strait Islander People	0.6%	0.7%	3.3%
Age			
Median age	44	49	38
Age			
Persons aged 15-19 years	5.0%	4.9%	5.8%
Median weekly incomes			
Family	\$2,921	\$3,053	\$2,214
Family composition			
Couple family without children	45.8%	52.0%	38.8%
Couple family with children	41.5%	41.1%	44.6%
Household income			
More than \$3000 gross weekly income	37.2%	39.9%	25.6%
Mortgage monthly payments			
Owner with mortgage households where mortgage repayments are less than or equal to 30% of household income (a)	70.8%	74.3%	72.1%
Mortgage monthly repayments			
Owner with mortgage households with mortgage repayments greater than 30% of household income	13.1%	9.6%	13.0%

- 3.11 The purpose of considering the demographic data for the locality is to establish whether the priority population groups identified in paragraphs 3.3 and 3.4 above are over or underrepresented in the locality.
- 3.12 Aboriginal people and communities.
 - 3.12.1 ***This priority group is underrepresented in the locality.***
- 3.13 Children and young people.
 - 3.13.1 ***This group is underrepresented in the locality.***
- 3.14 People from rural and remote communities.
 - 3.14.1 ***The locality is not in a regional, rural or remote area.***
- 3.15 Both suburbs show higher levels of affluence when compared to the State - with both North Beach and Watermans Bay exhibiting higher gross household weekly income.
- 3.16 Further, the data is unremarkable when it comes to mortgage stress for either suburb.
- 3.17 The above data shows that the proposed premises is situated within a financially affluent and stable locality with below average representations of priority groups that data is available for.

4 Outlet Density

- 4.1 The Director’s policy on Public Interest Assessment states “*Applicants will also need to provide.....outlet density information that includes:*
- 5.2.1. *If the applicant intends to sell packaged liquor, the location of all existing licensed premises within the locality;*
 - 5.2.2. *Nature of services provided by the other licensed premises; and*
 - 5.2.3. *The level of access to, and diversity of the services.”*
- 4.2 Further, the “Public Interest Assessment” policy states that the applicant is required to consider;
- 4.2.1 Existing packaged liquor outlets within 3km of the subject premises, and
 - 4.2.2 Premises which may sell liquor for consumption on the premises located within 500m of the subject premises.
- 4.3 As this application is not related to the sale of packaged liquor, the applicant only needs to consider premises within 500m that may sell liquor for consumption on premises.
- 4.4 The only suburbs that fall within a 500m radius, are North Beach and Watermans Bay.
- 4.5 In April 2023 the applicant searched the website of the Office of Racing, Gaming and Liquor for all licensed premises within these two suburbs.
- 4.6 Then, the applicant eliminated any premises from consideration that did not trade in a similar manner to a restaurant.
- 4.7 According to the website, there is one premises within 500m that trades in a similar manner to the Applicant’s premise;

Map no.	Licence No.	Type	Name	Address
1.	6060048561	Restaurant	Zeal Vietnamese Restaurant	111b Flora Terrace, North Beach WA 6020

5 Proposed Style of Operation

- 5.1 The restaurant is targeted at local residents, other people who work in, visit, shop or otherwise resort to the locality.
- 5.2 It must be noted that there will be no physical changes to the existing premises (save for the addition of the expanded areas), and no change to the way in which the place operates and no change to the entertainment provided.
- 5.3 These premises have housed a licensed restaurant for the past 20+ years. The current licensee has operated this venue since July 2022 and has since added an alfresco extended trading permit in September of last year.
- 5.4 Taking from their website;
 - 5.4.1 *“We are very excited to be part of such a wonderful community in this stunning location.*
 - 5.4.2 *The venue is aesthetically beautiful & timeless, artisan but cheeky fresh food, elegant friendly professional service, world class wine list, cutting edge cocktails, 14 coastal and international beers on tap, cool music day & night, plus our trademark blazing open fires.*
 - 5.4.3 *The venue is open 7 days from 11am - 364 days a year*
 - 5.4.4 *Thank you for your support, we are looking forward to the road ahead in North Beach, see you soon.”*



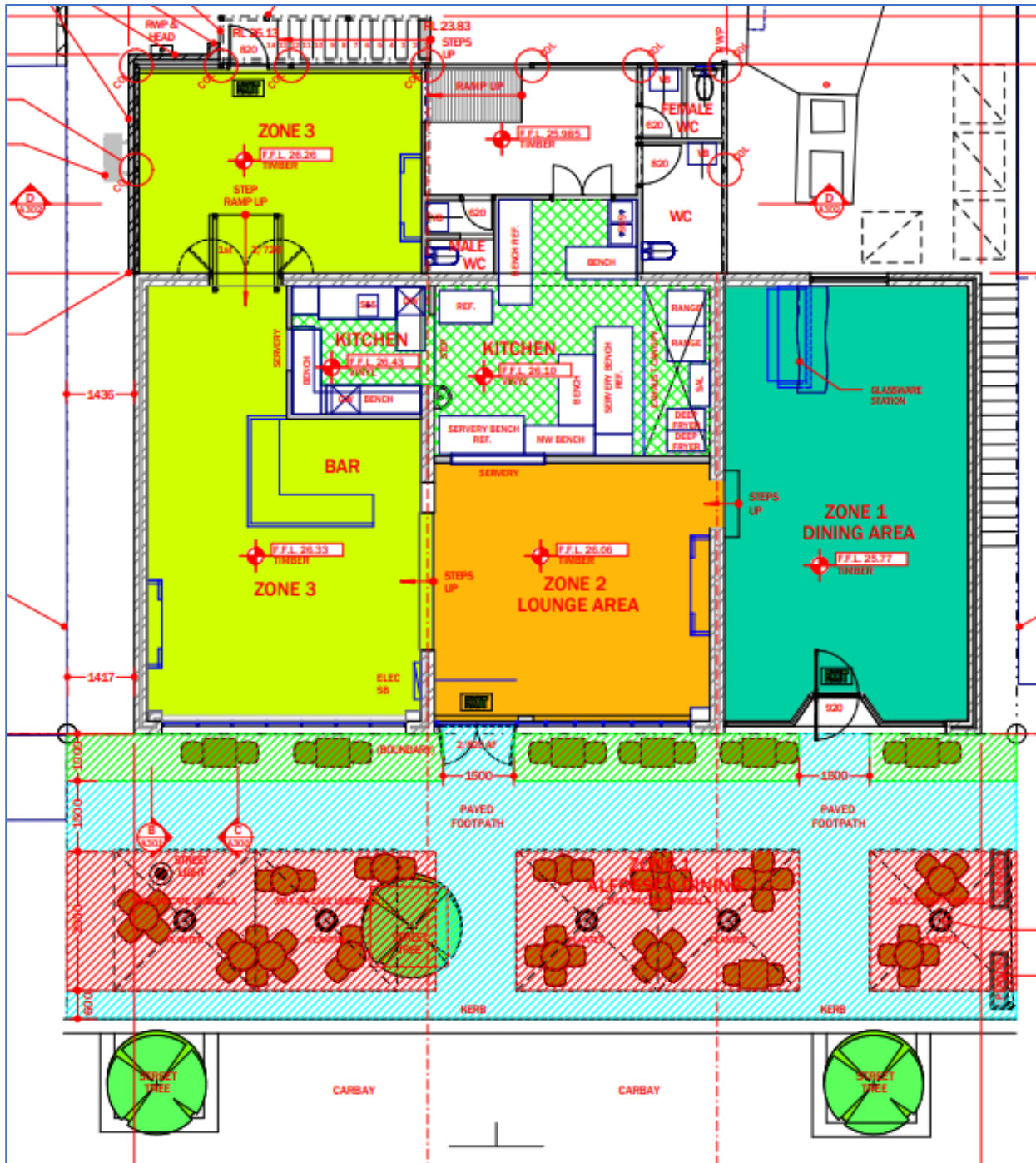
- 5.5 The Applicant is seeking the standard trading hours permitted for restaurants under the Liquor Control Act 1988 to allow it to respond to the demands of the local community.
- 5.6 The Applicant also commits to keeping its kitchen open and the full menu available across all trading days from 11am to 8pm.
- 5.7 The licensee, as stated on its website, is excited to be part of the Flora Terrace community. In line with this it has undertaken a suite of measures to improve the acoustics at the venue and further control noise emissions.
- 5.8 These include;
 - 5.8.1 A 2.4m barrier has been erected on the side of the venue to reduce noise transmission from the alfresco area on Flora Terrace to the rear of the property.
 - 5.8.2 All windows fronting Flora Terrace have been replaced and now have double-glazed, noise reducing glass.
 - 5.8.3 Noise absorbing blinds have been installed along all Flora Terrace facing windows.
 - 5.8.4 Speakers in the alfresco area face straight down and are switched off at 9pm.
 - 5.8.5 Music is kept to a low volume, low enough to allow conversation to occur.
 - 5.8.6 In January the internal ceiling of the venue was treated with 2 coats of silicone spray and 2 coats of paint to help contain noise.
 - 5.8.7 The sub-woofer speaker was incrementally reduced over the last 3 months in 25% increments to now be reduced by 75%.
 - 5.8.8 A policy has been adopted to keep the rear door of the venue closed at all times, and a notice has been placed on the door to that effect.
 - 5.8.9 The bass speaker that was in the back room has been removed.
 - 5.8.10 Any deliveries that are received outside the 7am to 7pm window must deliver to the front of the building (Flora terrace) to avoid the beeping noise when trucks reverse.
 - 5.8.11 The bin area, which was located in the bottom, rear car park, has been moved next to the building. This had been in the bottom car park for over 20 years. The licensee has plans to enclose this bin area to further improve the noise attenuation.
- 5.9 Further the focus of the venue is on food and a convivial, neighbourly atmosphere.
- 5.10 Wes D'Arcy, of the licensee, owns and operates other licensed venues along the Perth northern coast, including Jarrah at Hillarys Boat Harbour, The Iluka, and Grafton Street.

- 5.11 Jarrah is similarly a food focused venue, which caters to families and tourists. Wes is proud to say that in this current environment of a tight labour market most of his staff have been with him for many years. This leads to a consistency of product and service, and familiar faces for patrons, and makes the venue and its staff very approachable for customers and neighbours alike.
- 5.12 Specific to the staff of Mister D'Arcy;
- 5.12.1 All staff members are orientated on their first shift, and their walkthroughs are specific to their job type. Typically, all orientations will include a refresh of job duties, and an introduction to the systems and policies in place at Mister D'Arcy.
- 5.12.2 Overall, orientation and training can take anywhere from 1 - 7 days, with on-going individual training as needed.
- 5.12.3 The head chef has transferred over from Jarrah - one of the other licensed premises run by the Director of Pierre D'Arcy Pty Ltd 0 Wes D'Arcy.
- 5.12.4 The venue manager is in constant communication with Wes to ensure that the premises is run in-line with Wes' hospitality philosophies.
- 5.12.5 Further, a group of senior staff from Jarrah were sent over to Mister D'Arcy at the time the premises was opening to assist in a smooth transition and to get the premises' operations up to standard quickly.
- 5.13 The Applicant has a strong harm minimisation plan which will continue to be in place should this redefinition application be granted.
- 5.14 As detailed in the next section, the applicant gathered objective witness evidence via a witness questionnaire. Specific to this section, the applicant asked respondents, *“Do you currently frequent Mister D'Arcy? Do you believe this new proposed extended area will positively impact the premises and patrons who frequent it?”*.
- 5.15 Of the **47** responses to this question, **46 (98%)**, said **“Yes”**.
- 5.16 Elaborating on their answers;
- 5.16.1 Sasha said, *“I think it will allow people to enjoy the excellent facilities that Mister D'arcy's already has. The food is excellent and we often attend during the week or weekend. It will definitely be a positive impact.”*,
- 5.16.2 Keegan said, *“Mr D'Arcy is very popular + can sometimes be hard to obtain a table. More space would be great”*,
- 5.16.3 Lynn said, *“Absolutely, it will positively impact the premises and patrons. It will provide more space and more opportunity for people to come together to enjoy good food and company.”*,

- 5.16.4 Melanie said, *“We visit 1 x week and at the moment its very busy. Although get to meet more people due to sharing tables”*
- 5.16.5 Megan said, *“Yes absolutely because the vibe of this area needs more restaurants like Mister D'Arcy”*.
- 5.17 More comments can be found in the raw data spreadsheet (Attachment MD02).

6 Addition of new alfresco area

6.1 The applicant is also applying to the licensing authority to expand their alfresco, see below.



6.2 The applicant has obtained the necessary footpath approval from the City of Stirling and will trade no differently from how it currently does, save for adherence to the most recently commissioned acoustic report (attachment MD01).

7 Liquor Commission Orders - 19th February 2024

- 7.1 On 16th February 2024 a Liquor Commission hearing was conducted pursuant to a section 95 complaint brought by the Commissioner of Police (Police) against, in part, Pierre D’Arcy Pty Ltd (Pierre) and Wesley Jason D’Arcy (Wes).
- 7.2 16th February 2024 was a Friday, and unusually, the Liquor Commission issued Orders on 19th February 2024, i.e. the very next working day (the Orders).
- 7.3 The police invited the Liquor Commission to find that there was deliberate non-compliance on the part of Wes, however in the Orders the Commission made no such finding.
- 7.4 By email to the Applicant’s barrister on 30th January 2024 the police confirmed that they did not seek to rely on the truth of the facts alleged in the noise complaints, i.e. that it was noisy on a particular date referred to in the noise complaint.
- 7.5 The Applicant’s barrister consequently invited the Liquor Commission to find the noise complaints were hearsay, from unidentified residents, and not capable of being tested and therefore should be given no weight by the Commission.
- 7.6 Relevantly, the City of Stirling elected not to be present at the Liquor Commission hearing.
- 7.7 In short, no evidence at all was presented to support the noise complaints against Mister D’Arcy.
- 7.8 In the Orders the Liquor Commission did not impose further restrictive trading conditions on Mister D’Arcy, but instead **relaxed several trading conditions** as follows.

	EPN requirement	Liquor Commission Orders
1	Cease all music	<ul style="list-style-type: none"> Where amplified or live music is played, the windows are to be completely closed. Music or entertainment played within the building is to be played at such a level that patrons in the external areas are permitted to converse at normal levels of conversation.
2	Prevent patrons from sitting in the alfresco area from 7pm to 7am Mon – Sat, and 7pm to 9am Sun and PH	<ul style="list-style-type: none"> The area to which the permit relates is to be closed to patrons from 9pm.
3	Keep bi-fold doors and windows closed at all times	<ul style="list-style-type: none"> All windows and doors (including those to the alfresco area) are to be completely closed by 9pm.

- 7.9 In conclusion it is open for the Director to conclude from the Orders that neither the section 95 complaint, nor the noise complaints were accepted by the Liquor Commission.

8 Objective Evidence

- 8.1 Throughout the months of October and November (2023), the applicant implemented a witness response strategy in-person, to gather objective evidence for these submissions.
- 8.2 A hard copy of the witness questionnaire can be found at attachment MD03
- 8.3 The following information / documentation was made available to any potential respondent;
 - 8.3.1 Floor plans (attachment MD04),
 - 8.3.2 Map of the locality (attachment MD05), and
 - 8.3.3 Intended Manner of Trade document (attachment MD06).
- 8.4 In total, the applicant gathered 47 responses.
- 8.5 Of the 47 respondents who answered the question “**Approximately how far do you live from Mister D’Arcy**”;
 - 8.5.1 **16** said less than 500m;
 - 8.5.2 **6** said 500m to 1km;
 - 8.5.3 **22** said 1km - 3km; and
 - 8.5.4 3 others said more than 3km.
- 8.6 Of the 47 respondents who listed the suburb they were from;
 - 8.6.1 **16** said they were from North Beach (the suburb where Mister D’Arcy is located); and
 - 8.6.2 A further **20** listed suburbs that were adjacent / bordering North Beach.
- 8.7 This means over **76%** of respondents are extremely local to the area, with **a third** of respondents living in the actual suburb where Mister D’Arcy operates.
- 8.8 Given that this application is directly for the benefit of Mister D’Arcy’s customers and by extension, the local North Beach / coastal community, the objective evidence presented throughout this section shows this respondent pool to be an accurate representation of the community & locality.
- 8.9 Noting all of this, further questions and respondent answers are detailed throughout these submissions, to aid in the applicant satisfying Section 38 of the Liquor Control Act (1988).

9 Section 38(4)(a) of the Act - Harm or Ill-health

- 9.1 Section 38(4)(a) of the Liquor Control Act (1988) asks the Applicant to consider “*the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor.*”
- 9.2 In this section the Applicant assesses the risk with respect to the harm or ill-health that might be caused to people, or groups of people within the locality should this licence be granted.
- 9.3 As the applicant mentions throughout these submissions, the way in which the premises operates will not change. For example;
 - 9.3.1 There will no change in the provision of entertainment. Where amplified or live music is played, the windows will be completely closed.
 - 9.3.2 Music or entertainment played within the building will be played at such a level that patrons in the external areas are permitted to converse at normal levels of conversation.
 - 9.3.3 The fit out, comfort of the venue, and the quality of food and beverage will remain unchanged.
- 9.4 This venue is already licensed and successfully operating under the Mister D’Arcy banner since mid-2022 (having previously run as another successful licensed premises for over 2 decades).
- 9.5 Given all of the above, it is open for the Director to conclude the potential for harm or ill-health is no higher than the potential there already is. Furthermore, the Liquor Commission has recently considered this issue at a hearing and rather than imposing additional restrictive trading conditions, elected to relax some trading conditions (See section 7 above).
- 9.6 The experience of the licensee also puts them in good stead to work with the venue manager and staff on mitigating and deescalating any incidents that may occur.

- 9.7 The demographics of the locality have been discussed in some detail in section 3 of these submissions and concluded there are no significant concerns in respect of the identified priority groups.



- 9.8 In the witness questionnaire, respondents were asked, *“Are there any people or any groups of people in the locality who, in your opinion, would be at risk of increased and undue harm as a result of the granting of this application?”*.
- 9.9 Of the **47** responses to this question, **100%** of them said **“No”**.
- 9.10 Elaborating on their answers;
- 9.10.1 Troy said, *“I don’t think so, again I’m local and I have no complaints with respectful customers and noise controls in place”*,
- 9.10.2 Derek said, *“The establishment is very well managed”*,
- 9.10.3 Anthony said, *“Not to my knowledge”*,
- 9.10.4 Melanie said, *“It’s a get together place for a couple drinks and a bite to eat. Perfect!”*



10 Section 38(4)(b) of the Act - A Report on the Amenity of the Locality

- 10.1 Section 38(4)(b) of the Liquor Control Act, asks the Applicant to consider *“whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened”*.
- 10.2 Section 4 details the measures which the licensee has taken, in an effort to ensure Mister D'Arcy does not negatively impact the amenity of the locality. The applicant invites the Director to read back paragraphs 5.7. - 5.8.11 above.
- 10.3 Currently, the licensee is working with Council and local residents to ensure the premises continues to be a welcome presence in the locality. Further, at the time of writing these submissions, the licensee has implemented an acoustic management plan at the request of the City of Stirling and prepared by Stantec Australia Pty Ltd.
- 10.4 The Stantec acoustic report confirms the venue complies with the Noise Regulations and can be found in the applicant's lodgement email with the Licensing Authority on 22/5/23, as attachment MD07 Acoustic Report.
- 10.5 Further, the Liquor Commission explored the noise emissions issue at a hearing on 16th February 2024 and was comfortable enough to relax the venue's trading conditions in relation to entertainment and its alfresco areas, having agreed that no evidence had been presented of any noise complaints.
- 10.6 Importantly the Licensee reiterates that a licensed venue has operated out of this building for over 2 decades. This is not a new venture in the community, it is something residents in the area have long been aware of / become accustomed to.
- 10.7 In the witness questionnaire administered by the applicant, respondents were asked, *“Should this application be granted, do you think the amenity, quiet or good order of the locality might in some manner be lessened? If so, please explain”*,
 - 10.7.1 Of the **45** responses to this question, **40** respondents (**89%**) said, **“No”**.
 - 10.7.2 The applicant puts forward that the 5 respondents who said “Yes” would appear to have intended to select “No”, given their further comments they left under this question.
 - 10.7.3 Elaborating on their answers;
 - 10.7.3.1 H Maszniew said, *“Mr Darcys is not a ‘pub’ type venue. People don’t loiter”*,
 - 10.7.3.2 Lynn said, *“The extension provides more space for more people to enjoy the venue. A few more tables won’t affect the locality in any way.”*,

10.7.3.3 Marisa said, *“I think it is important to have social meeting places. Mister Darcys attracts clients that are respectful, there is no 'riff raff' that I have ever seen at Mister Darcys.”*,

10.7.3.4 Lena-Mireya said, *“No, because more area will stop crowding and allow staff to easily and better monitor noise, capacity limits, crowding, and control in busy times.”*

10.7.4 More responses can be found in the raw witness data sheet - attachment MD02.

10.8 Ultimately, this restaurant continues to provide the local community with a venue they can enjoy responsibly without negatively impacting the amenity.

11 Section 38(4)(c) of the Act - Offence, Annoyance, Disturbance or Inconvenience

11.1 Section 38(4)(c) of the Liquor Control Act (1988) asks the Applicant to consider “*whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises*”.

11.2 The licensee commissioned Stantec Acoustics to carry out an Acoustic Report for the premises. This report is attached.

11.3 Under section 5.1.1 ‘Music’, the applicant is keen and able to comply with the following recommendations for amplifier / PA systems to be used;

The following is recommended for any amplifier / PA system used:

- The system should have known output sound levels indicated on the controls to assist in ensuring the amplified sound is kept within acceptable limits at nearby receivers. The limits should be set based on field measurements at nearby sensitive premises;
- The system should incorporate a frequency equalizer that is set to control low frequency sound (bass);
- Internal music should be kept at an ambient or background level to allow normal conversation to occur (based on site measurements, less than 80 dB(A) average Sound Pressure Level within the restaurant, inclusive of patron noise);
- The noise from the system (coming from within the building) is to be limited so as not to exceed the set levels and made tamper proof. The venue amplifier / PA system should be locked away, accessible by management only;
- Outdoor speakers should not be used after 7pm.

11.4 Under section 5.1.2 ‘Patrons’, the applicant is keen and able to comply with the following recommendations for their alfresco area;

- Use signs or “table talkers” throughout the alfresco area to remind patrons to limit their noise and respect the neighboring residences;
- Venue staff are to monitor the behaviour of patrons and relocate inside any who are becoming loud or disrespectful of the neighbors. Preferentially, locate these patrons well away from the windows of the venue;
- Venue staff are to monitor dispersal of patrons after closing and manage any noise issues arising.

- 11.5 Importantly, through the implementation of the noise management plan put together by Stantec, the applicant will be able to comply with Noise Regulations;

6. Conclusion

Stantec were commissioned by Pierre D'Arcy Pty Ltd (care of Canford Hospitality Consultants) to prepare an Acoustic Report and Noise Management Plan for the Mister D'Arcy Restaurant.

Noise emissions were assessed for all operational periods, using both attended site measurements and unattended noise monitoring for a period of one week. Noise management measures to ensure the ongoing maintenance of acoustic amenity in the area have been provided.

In summary, in view of the available information, we consider that the development will be able to comply with the EPNR. The predictions in this report consider that the recommendations and Noise Management Plan provided will be implemented.

- 11.6 As detailed earlier in these submissions the Liquor Commission has recently assessed this venue in relation to noise emissions and, at that time, elected to relax the trading conditions relating to entertainment and the trading hours of the alfresco areas, see section 7 above.
- 11.7 It should also be borne in mind that at the time of this application being made, a new planning approval has been received from the City of Stirling, approving the entirety of 97 Flora Terrace under restaurant use (being 97, 97A & 97B Flora Terrace). Separately, there are other physical works that have been undertaken by the applicant or were a legacy from the previous owner and unapproved, e.g. retaining wall which have been approved.
- 11.8 Lastly, in the witness questionnaire, respondents were asked, *“What do you say about the potential for annoyance, offence, disturbance or inconvenience that the granting of this application may cause people who live, work, visit or otherwise resort to the locality?”*;
- 11.8.1 Troy said, *“I live across the road and cant see any issue arising from a small extension”*.
- 11.8.2 Steve said, *“That could happen with what they have at the moment and it hasn't”*,
- 11.8.3 Raelee said, *“It is a coastal destination already - any disturbance was possible when deciding to reside here & can be avoided by living elsewhere. The coastline must have adequate facilities + cannot remain 'untouched'!”*,
- 11.8.4 Lynn said, *“The patronage at D'arcys tends to be more mature people enjoying a meal and a few drinks./ We're not talking about creating a nightclub type of environment that might otherwise attract the type of antisocial behaviour one expects of nightclub districts.”*,
- 11.9 More responses can be found in the raw witness data sheet - attachment MDO2.

12 Section 5(1)(a) of the Act - Primary Object

- 12.1 Section 5(1)(a) states that a primary object of the Act is;
- 14.1.1. *“to regulate the sale, supply and consumption of liquor”*.
- 12.2 Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 12.3 To regulate means;
- 14.1.2. *“to control or direct according to rule, principle, or law”* or
- 14.1.3. *“to put or maintain in order”*
- 12.4 It does not mean to restrict or to reduce.
- 12.5 There may be some circumstances where a restriction or a reduction is warranted, but the word “regulate” implies more flexibility than either “restrict” or “reduce”.
- 12.6 Therefore, this primary object should not, of itself, prevent this application from being granted. It is possible to properly regulate the sale, supply and consumption of liquor and grant this application.
- 12.7 In a “Note from the Director General on applying for a liquor licence” on the licensing authority’s website the Director states, amongst other things,
- 12.7.1 *“The public interest, as ascertained from the scope and purpose of the Act, involves catering for the requirements of consumers of liquor and to have liquor outlets consistent with good order and propriety in relation to the distribution and consumption of liquor. What is often overlooked is that one of the primary objects of the Act is to regulate the sale and supply of liquor and that the disposition of the Act, read as a whole, is to regulate that good order and propriety.”*
- 12.8 As clearly shown in these submissions the restaurant provides a licensed service not currently available in the locality.
- 12.9 It is very material to this application and these submissions that;
- 12.9.1 Ordinarily, under the Act and Regulations as they stand today, an application for to redefine a restaurant licence does not require the production of a public interest assessment, and
- 12.9.2 The licensee proposes no change to the way the venue operates should this licence be granted, and
- 12.9.3 The licensee proposes no new upright drinking spaces will be created as part of this application,
- 12.10 Whether or not this application is granted, a licensed venue trading in the same manner will remain at these premises.
- 12.11 The Liquor Commission has recently assessed this venue and raised no concerns over noise emissions in its Orders dated 19th February 2024.

13 Section 5(1)(b) of the Act - Primary Object

- 13.1 Section 5(1)(b) states that a primary object of the Act is;
- 15.1.1. *“to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor”;*
- 13.2 Being one of three primary objects means that it is of equal importance to the other two primary objects of the Act.
- 13.3 In paragraph 46 of *Carnegies v Director of Liquor Licensing [2015] WASCA 208 (“Carnegies decision”)* in respect of the National Hotel, Fremantle (attachment MD08?), the following conclusion is found.
- 13.3.1 *“It is not sufficient to simply reason that, where there is already a high level of harm in the particular area, even a small increment in potential or actual harm may be determinative, without making specific findings on the evidence about the level of alcohol related harm which is likely to result from the grant of the particular application.”*
- 13.4 Paragraph 62 of that same decision reads;
- 13.4.1 *“the reasons of the Commission reveal that it considered the application was not in the public interest, but not:*
- 15.1.1.1. *(a) the positive aspects of the application that were weighed;*
- 15.1.1.2. *(b) how the Commission reached the conclusion there was a likelihood of increased harm and ill-health if the application was granted; or*
- 15.1.1.3. *(c) the degree of increased harm or ill-health that was likely to have resulted if the application was granted.”*
- 13.5 In this application, therefore, the Applicant is not required to show that no harm whatsoever may occur if this application is granted, only that the Applicant will do all that is reasonable to minimise harm and ill-health that could potentially occur if this application is granted, and that any potential for harm or ill-health is minimised and is not “undue”.
- 13.6 This then must be weighed, in equal measure, against the benefits that will accrue not only to the members of the North Beach community.

14 Section 5(1)(c) of the Act - Primary Object

14.1 Section 5(1)(c) states that a primary object of the Act is;

14.1.1 *“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”;*

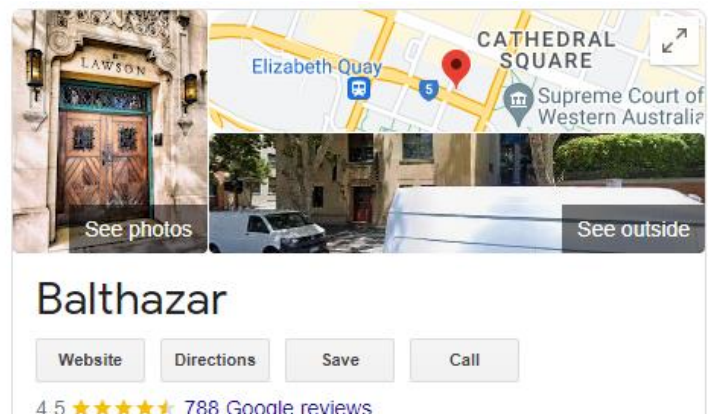
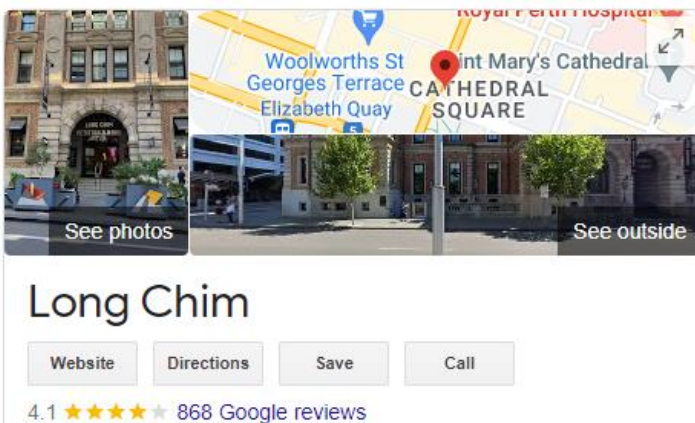
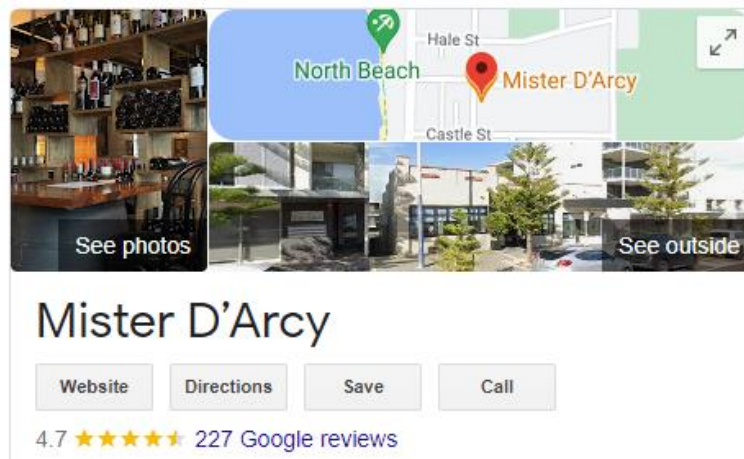
14.2 Being a primary object means that it is of equal importance to the other two primary objects of the Act.

14.3 In other words, it is just as important for the Director to cater for the requirements of consumers, as stated above, as it is to minimise the potential for harm or ill-health due to the use of liquor.

14.4 In the end it is a weighing and balancing of these equal objects which will determine whether a liquor licence should be granted or not.

14.5 In this application, it has been shown there is little potential for increased harm or ill health that could potentially result from the granting of this application (please see Section 5), and there are very real benefits to residents and other visitors who will resort to the newly redefined restaurant.

14.6 Mister D'Arcy is highly reputable and has garnered the approval of the public. It's star rating, per Google reviews sits at 4.7, after 227 reviews (as at 10th May, 2023). This is above and beyond other highly reputable restaurants - see below.




14.7 Further, see below some google reviews left by customers of Mister D'Arcy;

Biewtiful
5 reviews · 7 photos

★★★★★ 2 months ago

Excellent food. Menu is extensive and seasonal to a particularly high standard. Highly recommended. Atmosphere is chill and cool but the staff is also really friendly. Must try watermelon salad is quite refreshing and duck pancake! I will definitely come back often.



👍 4

angelica plagemann
1 review

★★★★★ 2 weeks ago **NEW**

Dine in | Lunch

Excellent cocktails and an amazing food!! Highly recommended. We went for a lunch during the weekend and the service was amazing! Thanks Virginia, she gave us a warm welcoming and she explained all the menu and gave us a good recommendation about what we can order. Food ready on time and perfectly cooked. I will come back with no doubt.

👍 Like

Mason Edwards
1 review · 2 photos

★★★★★ 7 months ago

Dine in | Lunch | A\$20–40

We had lunch at Mister D'Arcy on Sunday, 18th September 2022. It's so hard to find restaurants who can provide gluten free food that's safe for coeliacs, but Mister D'Arcy delivered, and then some.

Wes, Virginia and the team provided a great atmosphere, and the food was to die for. So much flavour, and it left you wanting more. The wings were incredible! The tastiest I've ever eaten, and I've eaten a lot of wings in my time.

We highly recommend this place, and will be visiting again soon.



👍 1

Adam Foster
3 reviews

★★★★★ a week ago **NEW**

Exactly what this area needed!! Superb quality food and a great atmosphere within the whole place! Staff very friendly, and good table touching throughout the meal! Virginia was particularly pleasant and made us feel very welcome! The tuna tartare was a great dish to start, all drinks were very well presented and cocktails worth the price charged. Will certainly be back here very soon!!

- 14.8 In the witness questionnaire, respondents were asked, *“If this application is approved in what ways do you think it may change the locality?”*,
- 14.9 Of the **46** responses to the question, all **46 (100%)** said **“Positively”**.
- 14.10 Elaborating on their answers;
- 14.10.1 Anna said, *“There are limited evening eateries in the area. This business is needed!”*,
- 14.10.2 Cardyn said, *“A change for the better. We walk to Mister D'Arcy one of the few places we can do that in the area. Much needed!”*.
- 14.10.3 Raelee said, *“Brings life + a social venue to an area that is otherwise lacking options - especially at night”*,
- 14.10.4 H Maszniew said, *“North Beach is growing into an area where we locals can actually hang out in our own area.”*,
- 14.10.5 Darren said, *“Allow more of the local community to eat/drink here as the premises is small as more locals keep coming”*,
- 14.11 More comments can be found in the raw witness data sheet (attachment MD02).

15 Section 5(2)(a)(d)(e)(f) of the Act - Secondary Objects

- 15.1 In carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and also to the following secondary objects -
- 15.1.1 (a) *“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”*; and
 - 15.1.2 (d) *“To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor”*; and
 - 15.1.3 (e) *“To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act”*: and
 - 15.1.4 (f) *to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.*
- 15.2 Further Section 5(3) states *“If, in carrying out any function under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence”*.
- 15.3 Through the granting of this application the licensing authority will be facilitating the further development of a much loved and popular licensed hospitality premises. The applicant, being a local and long time resident to the area has identified that this licence type is a natural progression for Mister D'Arcy and a necessary development to keep up with the wants of the local community.
- 15.4 Additionally, the licensing authority can be assured that the operator is a seasoned, responsible and exemplary licensee.
- 15.5 Therefore, in the opinion of the Applicant, in granting this licence the Director of Liquor Licensing will be fulfilling his obligations under section 5(2) of the Act.

16 Conclusion

- 16.1 The intention and rationale for these applications is to respond to the increasing demand from the local community for the licensed food and beverage services offered at Mister D’Arcy.
- 16.2 It is not to change the style of the venue, but to offer “more of the same”, to cater to a growing demand.
- 16.3 The Applicant has invested significantly in noise attenuation measures (see paragraph 5.8 above) to reduce further the potential impacts on the local community. This, in part, gave the Liquor Commission the confidence to relax trading conditions at the venue to allow for entertainment, and longer trading hours in the alfresco areas.
- 16.4 As stated throughout these submissions, this premise is already licensed and is run by a very experienced hospitality operator.
- 16.5 There are no major changes to the style of operation of Mister D’Arcy proposed through this application. This application to redefine the licensed area and vary the extended trading permit area is simply to allow the licensee to respond to the demands of the local community.
- 16.6 This licensee is experienced in the management of quality licensed premises in suburban areas of Perth and can be trusted to manage this small addition to the licensed premises capably and responsibly.
- 16.7 In particular Wes D’Arcy, director of this licensee company, and the licensee company for Jarrah Café, Hillarys, has a reputation for quality meals and food, scoring 4.7 on Google for Mister D’Arcy and 4.1 for Jarrah.
- 16.8 Both are quality venues, which are very popular and successful.
- 16.9 Wes’ attention to detail, both in the kitchen and in service to patrons, is admirable and results in highly regarded licensed venues.
- 16.10 It is, in the end, open for the licensing authority to conclude, on balance, the positive aspects of the application, including the findings of the Liquor Commission in the Orders, far outweigh any potential for negative impacts, thus clearing the way for an approval of this application.

Drafted for and on behalf of Pierre D’Arcy Pty Ltd;

Phil Cockman
Canford Hospitality Consultants Pty Ltd

ATTACHMENTS

MD01	ALDI South Fremantle Decision
MD02	Raw Witness Data
MD03	Hard Copy Witness Questionnaire
MD04	Floor Plans
MD05	Map of the locality
MD06	Intended Manner of Trade document
MD07	Acoustic Report
MD08	Carnegies vs Director of Liquor Licensing Decision

ACN 120 623 449 ABN 28 120 623 449

Friday, 21 July 2023

Dear Director

Re: Restaurant licence 6060144973
Premises Mister D'Arcy
Address 97 Flora Terrace, North Beach WA
Licensee Pierre D'Arcy Pty Ltd

This cover letter provides evidence of the footpath permit the above licensee has lodged with the City of Stirling. Below is the confirmation of their application, as well as the type of footpath permit applied for.

Payment confirmation

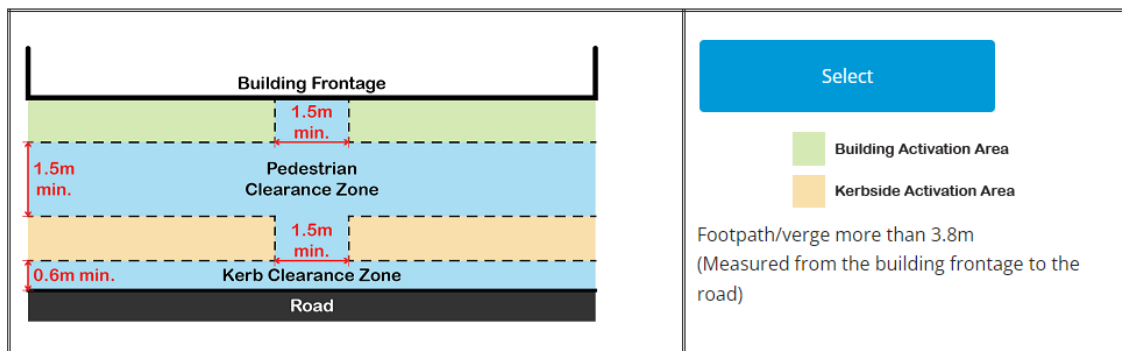
[City of Stirling Website \(http://www.stirling.wa.gov.au\)](http://www.stirling.wa.gov.au) / Online Services

Application Details

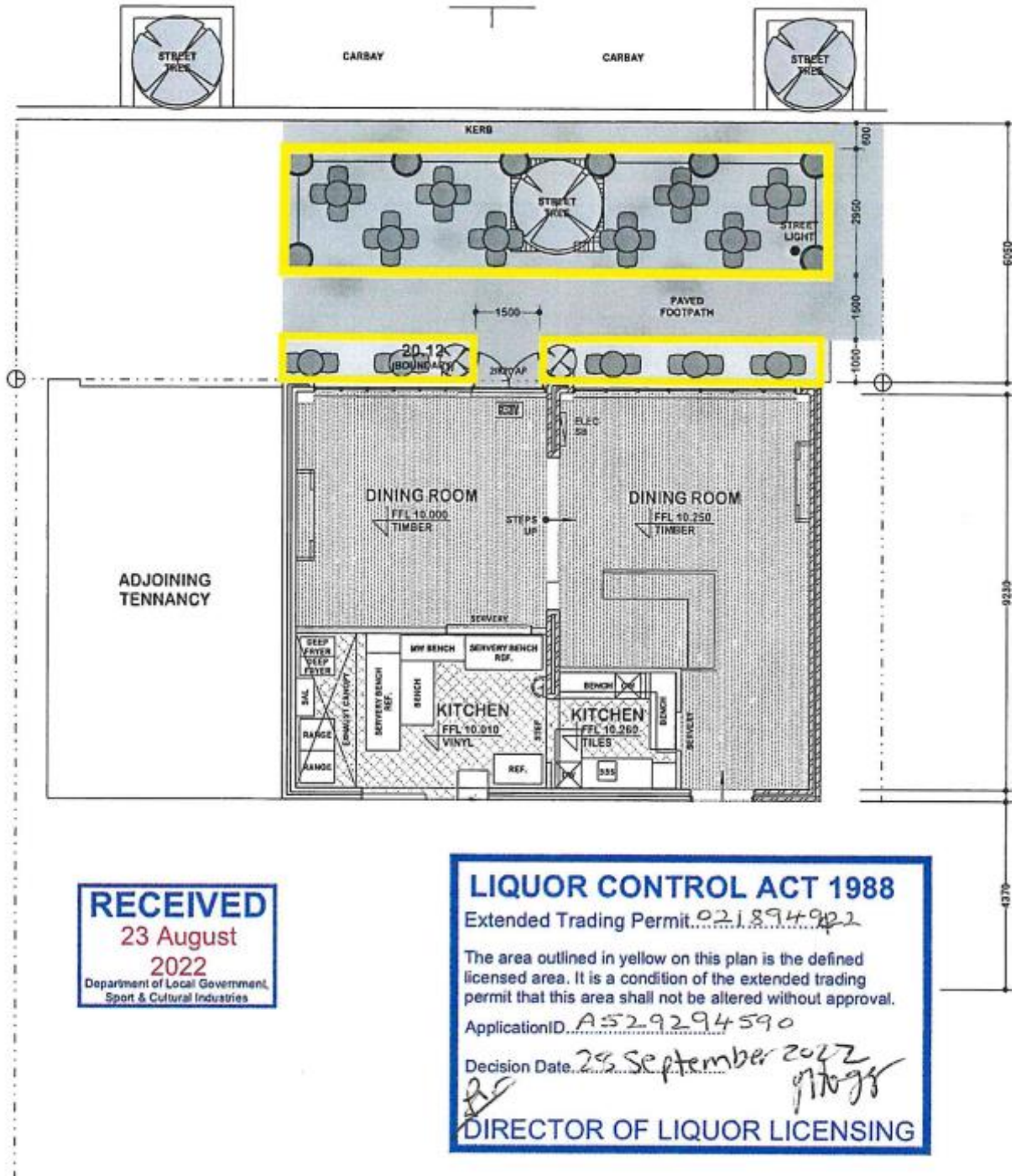
Reference Number FTP23/0004 Application Description Footpath Trading Permit - Footpath permit cat1 more than 3.8m Property Description 97 Flora Terrace NORTH BEACH WA 6020

Applicant Details

Business Name Canford Hospitality Consultants Pty Ltd ABN 28120623449 Address Detail 17/36 Johnson Street Locality Name GUILDFORD Postcode 6055 Work Phone 0862782788 Fax Phone Mobile Phone 0417976009 Email Address phil@canford.com.au



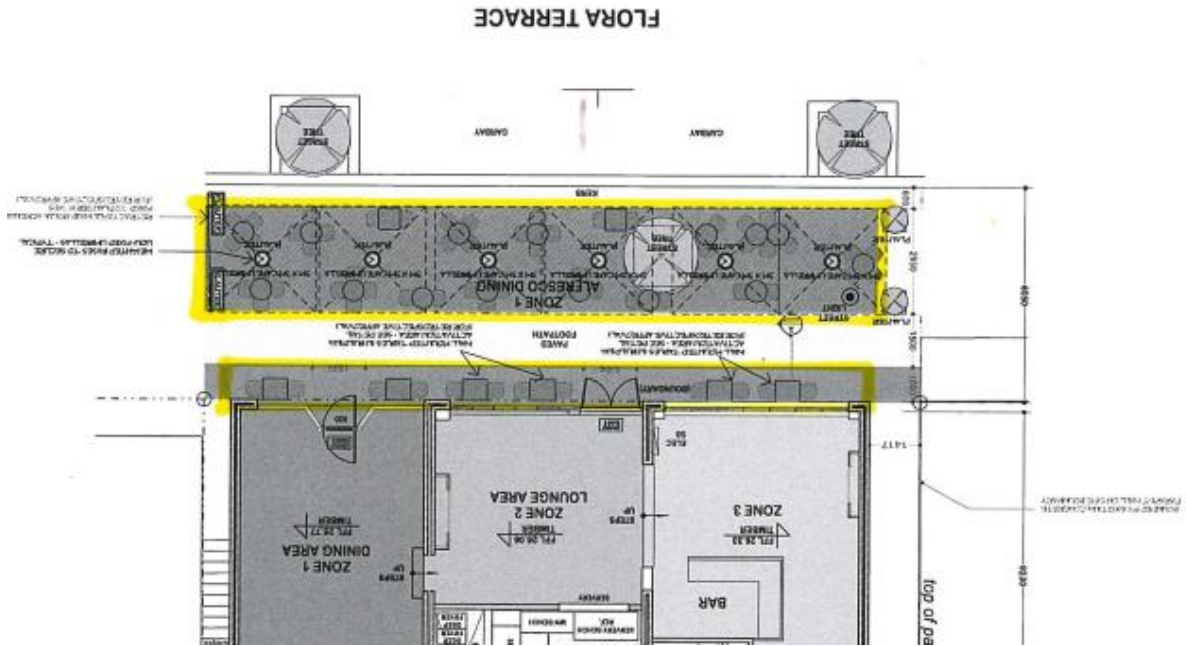
Currently, the alfresco is approved as per the snip on the page over.



RECEIVED
 23 August
 2022
 Department of Local Government,
 Sport & Cultural Industries

LIQUOR CONTROL ACT 1988
 Extended Trading Permit...021894922
 The area outlined in yellow on this plan is the defined licensed area. It is a condition of the extended trading permit that this area shall not be altered without approval.
 Application ID...A529294590
 Decision Date...29 September 2022
 [Signature]
DIRECTOR OF LIQUOR LICENSING

The licensee now seeks to have the alfresco area extended, as per the below proposed alfresco licensed area plan, as they have recently taken over the adjoining tenancy.



Please contact this office with any questions.

Regards,
Alastair Cockman
Canford Hospitality Consultants Pty Ltd