

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: KAPINKOFF NOMINEES PTY LTD
PREMISES: CARRAMAR FAMILY PUB
PREMISES ADDRESS: CNR JOONDALUP DVE & CHERITON DVE, CARRAMAR
LICENCE NO: 12377
NATURE OF MATTER: APPLICATION FOR CONDITIONAL GRANT OF TAVERN LICENCE

This is an application by Kapinkoff Nominees Pty Ltd ("the applicant") for the conditional grant of a tavern licence for premises to be known as Carramar Family Pub and situated at corner Joondalup and Cheriton Drives, Carramar. The application is made pursuant to sections 41 and 62 of the *Liquor Control Act 1988* ("the Act").

Pursuant to the provisions of section 67 of the Act, the application was advertised on the site of the premises for a period of twenty-eight days commencing 30 June 2008; by way of a notice published in The West Australian newspaper on 30 June 2008; by way of a Notice to Businesses and Residents that was distributed within a 200 metre radius of the proposed premises and by a General Notice distributed to educational, health care and local and regional government institutions, as well as community and church groups situated within in the locality.

Pursuant to section 38 of the Act, the applicant is required to satisfy the licensing authority that the granting of the application is in the public interest. The matters to which the licensing authority may have regard when considering the public interest are set out in section 38(4) of the Act.

In this respect, section 38(2) of the Act places an onus on the applicant to satisfy the licensing authority that the grant of the application is in the public interest.

Furthermore, section 33 of the Act provides that the licensing authority has an absolute discretion to grant or refuse an application under the Act on any ground, or for any reason, that the licensing authority considers in the public interest, provided that the application is dealt with on its merits.

Pursuant to sections 13 and 16 of the Act, I have decided to determine this application on the written submissions of the applicant.

DOCUMENTS CONSIDERED

The following documents were considered in this decision:

- Applicant's Public Interest Assessment, lodged with the application ('the PIA');
- Objection of Heather Beswick, lodged 21 July 2008;
- Objection of Thomas Escott, lodged 22 July 2008;
- Objection of Ernst Heinrich Collins, lodged 22 July 2008;
- Objection of Sue Boscih, lodged 23 July 2008;
- Objection of Nicholas P Neale and Julie A Neale, lodged 24 July 2008;
- Objection of Daphne Maureen Lee and Reginald Denis Lee, lodged 24 July 2008;
- Objection of Helen Maher, lodged 24 July 2008;
- Objection of Robert and Linda D'Annunzio, lodged 25 July 2008;
- Objection of Melody and Oliver Dexter, lodged 28 July 2008;
- Objection of Douglas Ian Gordon, lodged 28 July 2008;
- Objection of Jennifer Gould, lodged 28 July 2008;
- Objection of Sean George James Greenacre, lodged 29 July 2008;
- Applicant's Response to Objections, dated 23 January 2009 ('the RESPONSE');
- Applicant's Submission dated 16 March 2009 in Response to Department of Racing Gaming & Liquor Letter dated 16 February 2009.

DETERMINATION

The objectors raise concerns about the offence, annoyance and disturbance to residents that would be likely to occur, together with the lessening of the amenity, quiet or good order of the locality if the application for the tavern licence is granted. They also objected on the grounds that the grant of the application would not be in the public interest or that it would cause harm or ill-health to people, or any group of people, due to the use of liquor.

The Applicant categorised the objectors' concerns into the following issues:

1. Generic concerns about liquor in the community;

2. Adequacy of car-parking facilities at the proposed premises;
3. Noise generated at the proposed premises;
4. The potential for anti-social behaviour in the community;
5. Traffic-related issues; and
6. Lack of demand/need for the proposed premises and the services to be provided.

In its RESPONSE to the objections, the Applicant states:

“At best, these concerns are based (not upon the proposed operations of the proposed Tavern) but upon perceptions of existing levels of alcohol-related harm, ill-health and anti-social behaviour in the wider Western Australian community ... (T)he majority of objectors base their concerns about anti-social behaviour... on perceptions they have obtained from the media and the press about anti-social behaviour as a result of liquor and/or drugs.”

The Applicant also submits “...that the existing levels of harm or ill-health in the locality are in fact less than the levels commonly accepted by the community in this State.” It is, therefore, understandable that the residents have concerns with the proposed Tavern and its potential impact on the amenity, quiet or good order of the locality and the offence, annoyance, disturbance that may occur. However, the Liquor Control Act places the burden on objectors to establish the validity of any objections, which they have not done.

Section 38(2) Determination

Section 38(2) requires the Applicant to satisfy the licensing authority that granting the application is in the public interest. Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include :

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor;
- (b) the impact on the amenity of the locality in which the proposed licensed premises are to be situated; and
- (c) 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.

The applicant submits that the zoning of south Carramar and north Tapping is predominantly “residential”, with the southern section of Carramar now an established residential community, with significant residential development still occurring in the neighbouring suburbs of Banksia Grove and Tapping.

The proposed tavern is in close proximity (in some cases approximately 25 metres) to residential properties in Innesvale Way and Kirkimbie Street.

In the PIA the applicant submits:

“It is fundamental to the exercise by the Licensing Authority of its “public interest” discretion to grant a licence that the Licensing Authority achieve a balance between accommodating the requirements of the community for liquor and related services, and achieving the other objectives under the ‘Liquor Control Act’ (including the objective to minimize harm and ill-health and to minimize offence, annoyance, disturbance and inconvenience to persons who live in or resort to the locality. This fundamental principle has been recognised in case-law from various jurisdictions in Australia – namely, that persons who reside in a particular area must be expected to tolerate a certain degree of offence, annoyance, disturbance or inconvenience arising from the advent of licensed premises in the vicinity of their residence, to achieve the public interest imperative of accommodating the requirements of the community for licensed premises and for liquor and related services.”

In putting its case to the licensing authority to exercise this balancing exercise, in the PIA the applicant refers to the possibility of harm or ill-health, the impact on the amenity of the locality and the possibility of offence, annoyance, disturbance or inconvenience in terms of “minimal likelihood”, in the following manner:

- *“(T)here is no significant likelihood that the grant of this Application will result in or contribute to increased safety or anti-social issues (vandalism, public disorder, public drunkenness etc) within the locality”.*
- *“(T)here is no significant likelihood that the grant of this Application will result in or contribute to increased criminal acts, vandalism or litter within the locality”.*
- *“(T)he adoption by the Applicant of responsible server practices and responsive management practices will minimize any potential for negative impact on the amenity of the locality and any potential harm or ill-health to any person or group of persons within the locality”.*
- *“(T)here is no likelihood that the grant of the Application will lead to greater consumption of liquor, increased harm or ill-health for residents or visitors to Carramar or the locality, or any measurably greater cost to the community as a result of the use of liquor.”*
- *“The operations of the proposed Tavern are therefore unlikely to negatively impact on the amenity of the area or on residential premises in the vicinity of the premises”.*
- *“It is unlikely that the proposed Tavern would become a focal point for any anti-social behaviour”.*

- *“These measures will also ensure that residents within the locality are not unduly disturbed, offended, annoyed or inconvenienced as a result of the operations of the Tavern or the movements of patrons to and from the Tavern.”*
- *“The likelihood of an offence, annoyance, disturbance or inconvenience being caused to any person who works or resides in the vicinity of the proposed premises (or indeed within Carramar locality) is minimal, for the following reasons:*
 - (1) It is not likely that the operations of the Carramar Family Pub will cause offence to any person who lives in or resorts to the locality...;*
 - (2) It is not likely that the operations of the Carramar Family Pub will cause undue annoyance to any person who lives in or resorts to the locality...;*
 - (3) It is not likely that the operation of the Carramar Family Pub will cause undue disturbance to any person who lives in or resorts to the locality...;*
 - (4) It is not likely that the operations of the Carramar Family Pub will cause undue inconvenience to any person who lives in or resorts to the locality....”*
- *“The Public Interest Assessment identifies that there is minimal potential for offence, annoyance, disturbance or inconvenience to be caused to any persons/s or group/s as a result of the grant of this Application, particularly given the proposed business practices and management strategies proposed by the Applicant to minimize offence, annoyance, disturbance or inconvenience”.*
- *“It is submitted that the combination of these measures will be effective in minimizing any potential for harm or ill-health in the suburb of Carramar and the locality, and the wider City of Wanneroo area, which may arise from the grant of this Application. Particularly, the adoption and enforcement of responsible server practices at the premises will be effective to:*
 - Reduce or moderate potential harm or ill-health which may be caused to persons residing in or resorting to the Premises and the locality, as a result of the use and availability of liquor; and*
 - Reduce or continue to minimize instances of alcohol-related crime or road fatalities, in the City of Wanneroo, thereby reducing the potential for harm or ill-health.”*
- *“On balance, and in the light of the analysis given to this issue in this Public Interest Assessment, it can be accepted that the grant of this application is not likely to cause or lead to harm or ill-health to any person or any group of persons in the locality, within the greater City of Wanneroo or within the State of Western Australia.”*

The applicant further submits in the:

- RESPONSE that *“there is no aspect of this Tavern Licence Application which is likely to give rise to a level of harm or ill-health (or anti-social behaviour) which is ... significant ... or which can be considered “undue” in all circumstances”*; and
- LETTER that *“(i)t is not expected that there is any significant possibility that the amenity of the locality will be negatively impacted by Tavern patrons engaging in street parking.”*

Finally, in the LETTER the applicant submits that:

“...the Applicant has identified strategies, building design features, operational restrictions and other practices which can be adopted and put in place to minimize the potential for offence, annoyance, disturbance or inconvenience to be caused to any of the Tavern’s neighbours. If this licence is granted, there will inevitably be other management practices and strategies which can be adopted along the way to deal with any issues which may arise for neighbouring residents and businesses.

Notwithstanding this, the reasoning of the Old Swan Brewery case accepts that there will be some annoyance, disturbance, inconvenience or offence which residents who live in the proximity of the Tavern must be expected to tolerate in the public interest of the services provided at the Tavern being provided for the benefit of the community.”

It should be noted, however, that the *Old Swan Brewery* case related to an existing licensed premises whereas this matter relates to the application for a tavern licence in a predominantly residential area in which no tavern licence has been granted.

As part of the applicant’s proposed business practices and management strategies to minimise any expected alcohol-related harm, the applicant’s proposals include:

- *“prompt and polite response to any noise or other complaint made to the Applicant by persons who reside or work in the vicinity of the Premises”*;
- *“encouraging patron awareness of the rights of neighbouring properties and persons who reside or work within the vicinity of the Premises”*; and
- *“liaison generally with local police and City of Wanneroo officers in respect of community issues generally”*.

The alcohol-related harms identified by the applicant that can be expected if the application for the tavern licence is granted, are consistent with data on indicators of alcohol consumption and related harms for relationships with type (e.g. hotels) and density of licensed premises presented in Monograph Series No 28 published by the National Drug Law Enforcement Research Fund, entitled “Predicting alcohol-related harms from outlet density: A feasibility study”.

Much of the applicant's submissions are predictive in nature, seeking to argue that '*it is not likely*' that any harm or ill-health will be caused to people, or that a negative impact on the amenity of the locality will occur, due to the applicant's proposed management practices and strategies. However, the applicant does concede that there is a potential, albeit minimal in the applicant's opinion, for offence, annoyance, disturbance or inconvenience to be caused as a result of the grant of the application.

In discharging its functions "...*the mere possibility of harm...*" is a relevant matter for the licensing authority to consider (*Executive Director of Health v Lily Creek International Pty Ltd & Ors (2000) WASCA 258*).

Based on the foregoing I find on a balance of probabilities, that if the application for the tavern licence is granted:

- (a) harm or ill-health might be caused to people or any group of people due to the use of liquor; and
- (b) offence, annoyance, disturbance or inconvenience might be caused to people who reside in the vicinity of the proposed tavern.

Accordingly, and having regard to the impact on the amenity of the locality in which the Tavern is to be situated, the applicant has not satisfied me that the granting of the application is in the public interest.

Section 33 (1) determination

Whether harm or ill-health would arise in this particular case or whether the applicant will cater for the requirements of consumers for liquor and related services, is a matter for the future, and is essentially a matter of prediction. Justice Ipp quoted the observation in *Malec v J.C. Hutton Pty Ltd (1990) 169 CLR 638 (Lily Creek 2000 supra paragraph 26)* –

"The future may be predicted and the hypothetical may be conjectured. But questions as to the future or hypothetical effect of physical injury or degeneration are not commonly susceptible of scientific demonstration or proof."

The applicant has established on the balance of probabilities, that granting of the application will cater for the requirements of consumers for liquor and related services. However, the licensing authority has to weigh and balance this object of the Act with the other primary objects:

- (a) to regulate the sale, supply and consumption of liquor;
- (b) to minimise harm or ill-health caused to people or any group of people, due to the use of liquor.

Harm due to the use of liquor extends to harm caused to people other than the consumer (*Gull Petroleum (WA) Pty Ltd* (1998) LLC No. 13/98).

The applicant submits:

“...that there are no significant harm or ill-health issues associated with this Application in this locality, which cannot be mitigated by the adoption of management practices and responsible service of liquor practices.”

The applicant submits that the analysis of car parking, traffic, noise and anti-social behaviour in the RESPONSE, addresses the issue of the possibility of harm or ill-health to any person or group of persons due to the use of liquor.

Parking Bays and Traffic Flows

The City of Wanneroo has determined the number of parking bays that the proposed Tavern should have is 121, whereas the applicant proposes to have only 71 bays. However, it is proposed to address the shortfall in car parking by entering into a deed with the City of Wanneroo which binds the owner of the shopping centre immediately opposite the proposed tavern, to provide car parking rights for the tavern.

To support its representations and assertions in relation to car parking, the applicant submitted a Traffic Impact and Parking Assessment report which identified:

- (a) a high-level of “walk-in” trade to the proposed premises (based on the resident survey results and the “*excellent pedestrian facilities*”);
- (b) that there would be little overlap between peak shopping centre parking usage and peak tavern parking usage (the only significant overlap would be 7.00pm Thursdays during the late trading at the shopping centre); and
- (c) actual demand for parking for tavern use is very likely to be substantially less than the 121 bays, based on the results of the resident survey.

The proposed tavern will impact on local traffic flows particularly in relation to Innesvale Way and possibly Kirkimbie Street being used as part of the inbound and outbound trips to the tavern. It would also be possible for patrons to gain access to the Tavern via Keanefield Drive.

The City of Wanneroo does not restrict road network connections in accordance with its Liveable Neighbourhoods philosophy that recommends:

“...full connectivity to enable road users maximum alternatives in choosing the best Travel Smart route for their needs.”

Further, the City of Wanneroo recognised “...that the development of the tavern will affect traffic flows and pedestrian routes in the area...” and it has “...proposed to review the traffic volume and foot path requirements in the vicinity once the Tavern has been operating for a year.”

The Traffic Impact and Parking Assessment Report was based on resident survey results and “traffic turn count surveys” undertaken on Thursday 19 October 2006 between the hours of 4.00 and 6.00pm because no traffic data is available for this area. The time-frame was chosen as it represents the “critical peak” when the road network peak coincides with the retail and commercial peak.

Vehicular access to the proposed tavern will be a prominent aspect of the tavern’s operations, given that “(t)he visual aspects of the Tavern has... been maximized in relation to the major vehicular thoroughfares in the locality”, and the proposed drive through packaged liquor service. With respect to the latter service attraction, the executive summary of the “ANALYSIS OF THE CARRAMAR DOOR-KNOCK QUESTIONNAIRE” states:

“The majority of respondents supported and indicated they will use a drive thru facility on the site.”

These respondents were from the following streets in Carramar and Tapping:

- Innesvale Way
- Cheriton Drive
- Mandora Bend
- Lyndavale Loop
- Kirkimbie Street
- Tableland Way
- Palmerston Crescent
- Woodbine Loop

The main access to and from the proposed site will be by Innesvale Way particularly as those patrons who, after attending the tavern do not want to access Joondalup Drive, will use the Innesvale Way exit. In addition, patrons who unsuccessfully access the site for parking, will then exit the site via Innesvale Way to access off-site parking.

The applicant, while discounting the possibility of “any significant” impact on the amenity of the locality”, acknowledges in the LETTER, the possibility of “Tavern patrons engaging in ‘street parking’.”

The possibility of harm from the impact of the traffic and car parking issues on some members of the Carramar community is dependent on the relevance and validity of the assumptions upon which the “*Traffic Impact and Parking Assessment*” report is based.

The proposed distribution of inbound and outbound trips, based on existing travel patterns in the area and the general spatial distribution of land uses from which patronage to the development would be drawn, were determined to be:

“New Trips:

- *25% each to and from the east and west along Joondalup Drive/Cheriton Drive to the south of the site, respectively;*
- *10% to and from Innesvale Way to the east of the site;*
- *35% to and from Cheriton Drive to the north of the site; and*
- *5% to and from the proposed Carramar Village shopping centre development on the west side of Cheriton Drive.*

Pass-By Trips:

- *Inbound: 60% from the west along Joondalup Drive inbound and 40% from the east along Joondalup Drive; and*
- *Outbound: 40% to the west along Joondalup Drive and 60% to the east along Joondalup Drive...*

Furthermore, the traffic generation rates were sourced from “*Land Use Traffic Generation Guidelines, Director-General of Transport, South Australia*”, as it was the only document with traffic generation rates for the proposed land uses. The daily and peak hour traffic generation rates (including the Thursday period 5.00pm – 6.00pm that was identified as the “critical peak hour”) were established from this document.

The applicant submits that the 71 parking bays would meet parking demand under typical operating conditions. However, this is based on the survey results from the door-knock and the Residents’ Association Survey, which denoted a potential “*walk-in*” trade of 70% to arrive at the 71 bay requirement, assuming 50% of the tavern’s patrons would be located within a reasonable walking distance.

In the LETTER the applicant submits:

“It is not contemplated that the demand for carparking at the Tavern will ever be such that significant numbers of Tavern patrons will need to utilize the Shopping Centre

carparking facilities. It is reasonable to expect that a large proportion of Tavern patrons will:

- (a) share private vehicle transport (i.e. arrive in a family group, or adopt a “skipper” to drive a group of patrons);*
- (b) use the Tavern in conjunction with their use of the Shopping Centre facilities (i.e. patronizing the Tavern for lunch or a coffee whilst using the Shopping Centre); and*
- (c) walk to the Tavern from their residence, either alone or in a family group.”*

Noise and Anti-Social Behaviour

The possibility of alcohol-related harm has been identified above in relation to the section 38(2) determination.

However, if granted, residents can anticipate having to tolerate offence, annoyance, disturbance or inconvenience of “...*what could reasonably be expected from a facility of the kind...*” proposed [paragraph 72: *OSB Operations Pty Ltd Licensee of the Old Swan Brewery Restaurant - v - Jansen and ANOR (2006) WASCA 270*]. In this regard, Judge Greaves of the Liquor Licensing Court in *Old Swan Brewery Restaurant; Jansen & ANOR - v - OSB Operations Pty Ltd [2005] WALLC 14*, referred to the following comment made in *Hackney Tavern Nominees Pty Ltd v McCloud (1983) 34 SASR 207*:

“Any resident who lives nearby a hotel must expect a certain amount of necessary or unusual noise from people either arriving at, or more likely, departing from, the premises. From time to time, one or more of the patrons might be expected to be noisier than others – calling out, even yelling and screaming might occur. In extreme cases a fight or two. These are, in my experience, the types of disorder and inconvenience that might be expected by nearby residents.”

With respect to predicting the possibility of harm, well established health research can assist the licensing authority in understanding the circumstances that are associated with alcohol-related harm and the relationship to different licence types. There is a significant body of research demonstrating that there is a positive relationship between levels of per capita alcohol consumption populations and the frequency and range of social and health problems that include acute harms from, for example, violent assault, drink driver road crashes and pedestrian fatalities.

The expert testimony in *Lily Creek (2000 supra)* of Professor Dennis Gray summarised international and Australian literature and research, demonstrating that alcohol consumption levels are influenced by the availability of alcohol. Recent reviews of the literature were included in:

- Monograph Series No 28, National Drug Law Enforcement Research Fund (2007). *Predicting alcohol-related harms from licensed outlet density: a feasibility study*. National Drug Law Enforcement Research Fund: Tasmania.
- National Drug Research Institute (2007). *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*. National Drug Research Institute, Curtin University of Technology: Perth.

The literature reviews conclude that although the relationship is complex and may vary in magnitude over time and place, there is clearly a demonstrable, positive relationship between the availability of alcohol and the level of consumption.

The Monograph estimates that for every additional hotel/tavern with average annual regular strength beer purchases, there is an increase of 16.6 reported assaults on private premises in the metropolitan health regions. The Monograph also reports for hotels/taverns and liquor stores, there are consistently strong positive associations between wholesale purchases of regular strength beer and the following alcohol-related harm indicators:

- total assaults;
- total road crashes;
- total RBT;
- total alcohol-attributable hospitalisations; and
- total alcohol-attributable deaths.

The Monograph reported on the following associations:

- The Western Australian 1995 study of the National Centre for Research into Prevention of Drug Abuse reported *“(t)he positive association between night-time assaults and consumption was the highest when alcohol was purchased from either a hotel or liquor store.”*
- From a New South Wales study by Donnelly and colleagues (2006) *“(u)sing geo-coded locations of licensed premises linked to respondent residence, statistical modelling demonstrated that people who lived closest to licensed premises (relative accessibility) reported the highest levels of drunkenness and property damage in their neighbourhoods. The relationship remained significant after statistical adjustment for possible confounding facts. The study also demonstrated that outlet density was significantly associated with residents’ reported levels of drunkenness and related problems in their neighbourhoods. Although the authors identified a number of limitations in the design of their study including – an inability to assess the impact of outlet density on levels of domestic violence; an inability to compare relationships among different licence types (e.g. hotel versus liquor store); and some inaccuracy in geo-coding locations for licensed premises – they do not seriously detract from the overall veracity of the findings ...”*

In research of this nature, the results are qualified in recognition of, for example, the *“limitations and/or influencing factors: identified by the applicant in the LETTER. However, in relation to the literature review findings, the Monograph stated:*

- *“One of the greatest strengths of the outlet density research literature is the robust finding that assaults are highly correlated with outlet density; that is, as density increases so do levels of assault.*
- *Outcomes from outlet density studies in relation to violence are reassuringly predictable, despite problems with data quality and access, choice of geographical unit and outlet density measure, country or location of interest, methodological limitations, underlying assumptions and with reducing frequency and analytical error ...”*

Ipp J (Lily Creek (2000) supra) made the following comment with respect to the licensing authority being required:

“...to have regard to whether it would “be better for some members of the community if the application were refused” where that is necessary to minimise harm or ill-health caused to that community due to the use of liquor.”

Based on the foregoing, I find that, on a balance of probabilities, it would be in the public interest for some members of the Carramar community, particularly for those residing in the vicinity of the proposed tavern, if the application for the grant of the tavern licence was refused.

The applicant argues that it is a *“... fundamental principle... that persons who reside in a particular area must be expected to tolerate a certain degree of offence, annoyance, disturbance or inconvenience arising from the advent of licensed premises in the vicinity of their residence, to achieve the public interest imperative of accommodating the requirements of the community for licensed premises and for liquor and related services.”*

The southern section of Carramar is now an established residential community, with significant residential development still occurring in the neighbouring suburbs of Banksia Grove and Tapping. Furthermore, the proposed tavern is located within 500 metres of the Carramar Primary School and the Carramar Community Centre.

The applicant’s conclusions in the PIA about population demographics, includes the following:

- *“there is a significantly larger section of the locality population which is under 15 years of age than at State level”;*
- *“there is a significantly larger section of the locality population which is under 45 years of age than at State level”; and*

- *“...that the population of the locality is characterised by:*

(1) young married couples with young families; and

(2) home owners who are non-renters.”

In the LETTER, the Applicant further submits:

“These statistics reveal that Carramar is a new suburb which is characterized by a higher proportion of young families with children, and a smaller percentage of persons within the 15 – 24 yr age group.”

With respect to the present amenity of the locality, in the PIA the applicant submits:

“Neither noise nor anti-social activity is currently a problem in the locality and this is not likely to change if this Application is granted.” [emphasis added]

Furthermore, in the RESPONSE the applicant states:

- *“There are no significant existing levels of anti-social behaviour or alcohol-related harm or ill-health occurring as a result of the use of liquor within the locality at the present time”;*
- *“Indeed, the Applicant submits that the existing levels of harm or ill-health in the locality are in fact less than levels commonly accepted by the community in this State”;* and
- *“The objectors who raise concerns about harm or ill-health, or the potential increase in anti-social behaviour in the locality, do not base their concerns on any level of existing harm or ill-health, or currently experienced levels of anti-social behaviour...”*

Given this locality is a new, predominantly residential suburb where no similar licensed premises exists, it is not unreasonable for that there to be no significant levels of harm or any noise or anti-social behaviour occurring. However, there is the potential for that to change if the application is granted given the circumstances of the particular area in relation to which the application is made.

Therefore, in view of the present amenity of south Carramah and north Tapping, as a predominantly residential area, I am of the opinion that it is not in the public interest to grant the application for the tavern licence if residents *“...must be expected to tolerate a certain degree of offence, annoyance, disturbance or inconvenience arising from the advent of licensed premises in the vicinity of their residence...”* [emphasis added], notwithstanding the applicant’s assertion:

“... that there are no significant harm or ill-health issues associated with this Application in this locality, which cannot be mitigated by the adoption of management practices and responsible service of liquor practices.”

Conclusion

The discretion of the Director in section 33(1) of the Act is an ‘absolute discretion’ to grant or refuse an application on any ground or for any reason that the licensing authority considers in the public interest, the discretion only being confined by the scope and purposes of the Act (*Palace Securities v Liquor Licensing* (1992) 7 WAR 241).

In discharging its functions “...*the mere possibility of harm or ill-health...*” is relevant. “*The potential of harm or ill-health to people, irrespective of whether the harm or ill-health is proved on a balance of probabilities, would be a powerful public interest consideration.*” (*Lily Creek* (2000) supra)

I find on a balance of probabilities, that the possibility of harm due to the use of liquor if the application for the tavern licence is granted, on balance outweighs the granting of the application to cater for the requirements of consumers for liquor and related services. With respect to the requirements of consumers, the liquor store in the shopping centre immediately opposite the proposed tavern will cater for the requirements of consumers in Carramar, Banksia Grove, Tapping, Ashby, Neerabup and Marginiup, for packaged liquor.

Accordingly, pursuant to section 33(1) of the Act, the application for the conditional grant of a tavern licence is refused.

Barry A Sargeant
DIRECTOR OF LIQUOR LICENSING
14 April 2009



Your Ref:

Our Ref: 12377

Enquiries: Mary Ioannidis
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Dear Sir/Madam

APPLICATION FOR CONDITIONAL GRANT OF A TAVERN LICENCE: CARRAMAR FAMILY PUB

Please find enclosed a copy of the decision in respect of the above matter.

Should you have any queries regarding this matter please contact me on [08] 9425 1832.

Yours faithfully

Mary Ioannidis
ACTING RESEARCH & PUBLIC INTEREST ASSESSMENTS OFFICER

14 April 2009

cc: Licensing Enforcement Division
cc: Ms Heather Beswick
cc: Mr Thomas Escott
cc: Mr Ernst Heinrich Collins
cc: Ms Sue Boscih
cc: Nicholas Neale and Julie Neale
cc: Daphne Lee and Reginald Lee
cc: Ms Helen Maher
cc: Robert and Linda D'Annunzio
cc: Melody and Oliver Dexter
cc: Mr Douglas Ian Gordon
cc: Ms Jennifer Gould
cc: Mr Sean George James Greenacre

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