

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

Applicant: Australian Leisure and Hospitality Group Pty Ltd
*(represented by Mr Henry Jackson on instructions
from Cullen Macleod Lawyers)*

First Intervener: Commissioner of Police
*(represented by Mr Warren Fitt of State Solicitor's
Office)*

Second Intervener: Director of Liquor Licensing
*(represented by Mr Warren Fitt of State Solicitor's
Office)*

Objectors: Commissioner of Police
*(represented by Mr Warren Fitt of State Solicitor's
Office)*

- Mr Kevan James and Ms Maureen Annette McGill
- Ms Angela Margaret Burke and Mr Gregory Charles Chidlow
- Ms Louanne and Mr Rodney Wakefield
- Ms Lisa and Mr Mathew Kenrick
- Mr Thomas Haywood
- Mr Ashley Palmer
- Mr Peter Passera
- Mr Laurence Walter and Ms Bernadette Anne Passmore
- Ms Lucy Mary Stuart
- Mr Beng Ding

Commission: Mr Seamus Rafferty (Chairman)
Mr Eddie Watling (Member)
Mr Alex Zilkens (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* for review of the decision of the delegate of the Director of Liquor Licensing to refuse an application for the alteration, variation and redefinition of the “Carine Glades Tavern”.

Premises: Carine Glades Tavern, 493 Beach Road, Duncraig

Date of Hearing: 29 June 2016

Date of Determination: 10 January 2017

Determination: The Commission makes the following orders:

- a) the decision of the delegate of the Director is quashed pursuant to section 25(4)(a) of the Act;
- b) the application for a alteration/redefinition of the licensed premises known as the Carine Glades Tavern is granted pursuant to section 25(4)(b) of the Act.

Authorities referred to in the determination:

- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*, LC16/2015
- *Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police* [2016] WASC 40
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227
- *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210
- *Hone v The State of Western Australia* [2007] WASCA 283, (2007) 179 A Crim R 138
- *Kapinkoff Nominees Pty Ltd v Director of Liquor Licensing* [2010] WASC 345
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208

Background

- 1 Pursuant to section 25 of the *Liquor Control Act 1988* (“the Act”) Australian Leisure & Hospitality Group Pty Ltd (“the applicant”) applied for a review of the decision of the delegate of the Director of Liquor Licensing (“the Director”) to refuse an application for approval of the alteration/redefinition of licensed premises known as “Carine Glades Tavern”. The written reasons outlining the reasons for refusal of the application before the Director’s delegate were published on 30 September 2014.¹
- 2 On 27 July 2015, the Liquor Commission of Western Australia (“the Commission”) refused the application for review and affirmed the decision of the delegate of the Director at first instance.²
- 3 On 12 February 2016, His Honour Martino J quashed the decision of the Commission refusing the application for review and remitted the matter to the Commission for reconsideration.³ The basis upon which the Commission’s decision was quashed was that in considering the issue of harm and ill-health, it failed to evaluate the evidence, make findings and draw conclusions as it was required to do.⁴
- 4 On 29 June 2016, the Commission reconsidered the application for review in accordance with the order of Martino J.
- 5 The background of the application prior to the original hearing before the Commission was adequately set out in the original reasons for decision⁵ and is adopted for the purposes of these reasons.

Evidence

- 6 As with all applications of this nature, the Commission has a voluminous amount of material before it that has been tendered by the various parties. The probative value of much of that evidence is questionable. There is a tendency on the part of some parties to include as much information as possible without giving any serious consideration as to how such evidence will assist the Commission in determining an application. However, all evidence tendered by the parties has been considered in the determination of this application. The failure to refer to specific evidence in these written reasons does not mean that the evidence has not been considered.

¹ A225010

² LC 16/2015

³ *Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police* [2016] WASC 40

⁴ *supra*, at [20]

⁵ LC 16/2015 at paragraphs 1 to 9

7 The evidence before the Commission is as follows, namely:

- notice of application for approval of alteration/redefinition of licensed premises lodged on 24 October 2013;
- Public Interest Assessment (“PIA”);
- review of licensed premises report;
- House Management Policy, Code of Conduct & Management Plan: The Carine;
- plans of proposed upgrade;
- socio-economic profile of the locality;
- map depicting geographical area of the locality;
- Certificate of Title for the relevant premises;
- Inspector’s Report dated 25 November 2013;
- petition register analysis (1 October 2013);
- Petition/Survey – Upgrade of Tavern;
- statements of:
 - Tarryn Lee;
 - Susannah Ott;
 - Shannon Del Valle;
 - Sacha Williams;
 - Rochelle Smith;
 - Robert Ryan;
 - Rosemary Colliver;
 - Phillip Colliver;
 - Oliver Guttinger;
 - Nick Stawarz;
 - Natasha Dawson;
 - Lisa Marie Youngs;
 - Kristyn Bates;
 - Justin Maishman;
 - Judith Ryan;
 - Joanne Rogers;
 - Jay Bowerman;
 - Hilde Guttinger;
 - Erin Carver;

- Christina Kolodynski;
 - Andrew Marr;
 - Ashleigh Bowerman;
 - Nickolas Staikos;
 - Nick Martin;
 - Justin Reid;
 - Frank Iemma;
 - Barry Cloke;
 - Reginald Paul Bateman; and
 - Ross Duffield;
- MGA Town Planners Report;
 - Porter Consulting Engineers Report;
 - Caporn Report;
 - analysis performed by the solicitors for the applicant relating to health, crime and socio-economic statistics for the locality of the licensed premises;
 - various notices of objection;
 - notice of objection and intervention of the Commissioner of Police;
 - Macro Plan Dimasi Report;
 - various letters and declarations; and
 - various other documents of limited probative value.

Submissions on behalf of the applicant

- 8 The submissions on behalf of the applicant were summarised in the original decision. No criticism was made of that summary by Martino J and it is therefore adopted for these reasons.⁶
- 9 Further written submissions dated 15 June 2016 were filed on behalf of the applicant that dealt with:
 - a) how the Commission should consider the remitted application; and
 - b) submissions as to findings of the Commission at first instance in respect of various contentious matters.

⁶ LC 16/2015 at paragraphs 10 to 28

Submissions on behalf of the Commissioner of Police and Director of Liquor Licensing

- 10 The submissions on behalf of the Commissioner of Police (“the Police”) and the Director were summarised in the original decision. No criticism was made of that summary by Martino J and it is therefore adopted for these reasons.⁷
- 11 Further written submissions dated 15 June 2016 and 22 June 2016 were filed on behalf of the Police and the Director. These submissions expanded upon submissions previously made or responded to submissions made on behalf of the applicant.

Submissions on behalf of the residential objectors

- 12 The submissions of the residential objectors were summarised in the original decision. No criticism was made of that summary by Martino J and it is therefore adopted for these reasons.⁸

Statutory Framework

- 13 In *Woolworths Ltd v Director of Liquor Licensing*⁹ His Honour Buss JA set out the statutory framework for a determination of an application pursuant to section 25 of the Act in the following terms, namely:
 - a) by section 38(2) of the Act, an applicant has to satisfy the Commission that the granting of an application is in the public interest;
 - b) the expression 'in the public interest', when used in a statute, imports a discretionary value judgment;¹⁰
 - c) the factual matters which the Commission is bound to take into account in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act as set out in section 5(2) of the Act;

⁷ LC 16/2015 at paragraphs 29 to 48

⁸ LC 16/2015 at paragraphs 49 to 51

⁹ [2013] WASCA 227

¹⁰ *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of 'the public interest' will ordinarily be confined only by the scope and purposes of the statute.

- d) the factual matters which the Commission is entitled to take into account in determining whether it is satisfied that the granting of an application is in the public interest are those set out in section 38(4) of the Act;
 - e) section 5(2) is mandatory whereas section 38(4) is permissive;
 - f) on the proper construction of the Act (in particular, sections 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the Commission is obliged to take into account the public interest in:
 - catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
 - facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.
- 14 Pursuant to section 73(10) of the Act, an objector bears the burden of establishing the validity of the objection. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds that:
- a) the grant of the application would not be in the public interest; or
 - b) the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
 - c) if the application were granted:
 - undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
 - the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened; or
 - d) the grant of the application would otherwise be contrary to the Act.

Nature of the Application

- 15 The fundamental issue for the Commission to determine is whether the applicant has established on the balance of probabilities that it is in the public interest that this application for alteration/redefinition be granted.

- 16 On behalf of the applicant it is submitted that the existing licensed premises are tired and dated. It is further submitted that the proposed alterations to the licensed premises will provide a contemporary venue that will cater for the requirements of consumers for liquor and related services. Those proposed changes include:
- a) building a new rear entrance to the tavern, providing alternate access and better linking the tavern with the Carine Glades shopping centre;
 - b) removing two of the three function rooms, that area to be redesigned and provide a new large storage area for the bars and bottle shop;
 - c) building a new loading dock to service the bars and bottle shop;
 - d) building new staff and office facilities and relocating same onto a new second story to relocate the administrative side of the tavern away from the operational side and provide further space for the enlarged kitchen, preparation and storage areas;
 - e) redesigning the kitchen and food preparation areas by removing the two separate kitchens in favour of one kitchen closer to the restaurant;
 - f) building new facilities to service the new kitchen including an internal cool room/freezer, constructing new food preparation areas and dry store;
 - g) redesigning and upgrading the TAB facility;
 - h) replacing the existing BWS with a Dan Murphy's outlet; and
 - i) Aa redesign of the exterior of the tavern, parking areas and garden areas.
- 17 The applicant proposes making significant changes to the existing tavern and altering the existing bottle shop, which has a size of 100 square metres to a destination style liquor store, which has a size of 1280 square metres.
- 18 It was submitted by the applicant that the application had to be determined as a whole and that, 'different aspects of the proposal cannot be hived off and considered separately.'¹¹ The Commission accepts that submission and has viewed all aspects of the proposed redevelopment of the licensed premises and has not considered the application in a piecemeal manner.
- 19 The proposed changes to the licensed premises are significant and if allowed, will inevitably result in more people attending the shopping precinct where the premises are located. That gives rise to a number of considerations relevant to the public interest, each of which has been considered by the Commission.

¹¹ Applicant's submissions dated 16 March 2015 at [15]

Matters Relevant to the Determination of the Application

20 The primary issues for consideration identified by the parties were as follows:

- a) effect on amenity;
- b) traffic impacts, parking and access works;
- c) patron capacity;
- d) the nature of the application;
- e) functional integration;
- f) proximity of other large format liquor stores;
- g) harm and ill-health.

Effect on Amenity

- 21 In his reasons for decision at first instance, the Director determined that 'while I accept that the applicant will take steps to mitigate noise emanating from the proposed premises, I am of the view taking into consideration the closeness of some of the residents to the proposed licensed premises and the extended increase in the weekly number of patrons resorting to a Dan Murphy's liquor outlet, that the proposed upgrade will unduly inconvenience the residents in the vicinity of the Carine.'¹²
- 22 It should firstly be noted that none of the residents on the eastern border of the licensed premises who reside in Plumosa Mews have filed an objection to this application. There was also an expert report prepared by Herring Storer Acoustics which found that the premises would comply with the *Environmental Protection (Noise) Regulations 1997*. There is also a high brick wall on the eastern boundary of the licensed premises that was erected to mitigate the inconvenience of noise emanating from the licensed premises.
- 23 Whilst the Commission will always carefully consider the genuinely held concerns of residential objectors, in this instance there is no evidence that is capable of establishing that the noise that will result from the granting of the application would be of such impact on the amenity of the locality in which the licensed premises are operated that it would not be in the public interest to grant the application.

¹² A225010 at [143]

Traffic Impacts, Parking & Access Works

- 24 The licensed premises are located in a shopping centre precinct which is surrounded by car parks and which has various entrances. The proposed development of a destination style liquor store will obviously result in a greater number of people attending the licensed premises and increase the volume of traffic. This will impact upon the amenity of the locality in which the licensed premises operate and therefore is a relevant public interest consideration pursuant to section 38(4)(b) of the Act.
- 25 It was submitted on behalf of the applicant that in the absence of evidence to the contrary, the Commission was bound to accept the expert evidence in the Porter Report that if the application were granted that there would be an increase of between 302 and 399 vehicles per day on the roads surrounding the licensed premises and adjoining shopping centre.
- 26 The Commission acknowledges the general principle that in the absence of expert evidence to the contrary it is not open for a decision maker to reach a contrary conclusion¹³ and accepts the submission made on behalf of the applicant as to the increase in volume of traffic. However, the effect that these additional vehicles will have on the amenity of the location is a matter for the Commission to evaluate based on all known factors.
- 27 There are two direct entrances to the licensed premises off Beach Road, which is to the south of the licensed premises. There is also an entrance to the shopping centre precinct off Davallia Road, which is to the west of the licensed premises. This entrance would require a driver to pass through the shopping centre car park to get to the licensed premises.
- 28 The access to the licensed premises and the effect on amenity is a matter to which the Commission has given significant consideration. The Porter Report suggests that the increase in traffic volume generated by the granting of the application would be negligible. That may be the case on the surrounding roads, but it could not be concluded that the effect on the car park area would be negligible. Any additional traffic on the lane that runs off Davallia Road has the potential to cause significant traffic management issues, given the width of that road.
- 29 At the hearing of this application, counsel for the applicant submitted that a condition could be imposed that mandated that certain works be completed which included widening of the roadway running off Davallia Road and the creation of right and left hand exit lanes (as recommended by the applicant's expert witness - Porter Report, section 6.2), as part of the conditions allowing the application.

¹³ See *Hone v The State of Western Australia* [2007] WASCA 283, (2007) 179 A Crim R 138

- 30 Subsequent to the hearing of the application, correspondence was received from the solicitors for the applicant advising of the following matters relevant to the Davallia Road entrance:
- a) the land on which Access 4 [the Davallia Road entrance] is located is not owned by the applicant, nor does the applicant have any control over the land;
 - b) discussions and investigations by the applicant with the owner of the land have revealed there is physically not enough space to construct an additional exit at Access 4 as the existing commercial buildings to the south about the line of the southern crossover and car bays servicing the commercial building to the north align with the northern crossover;
 - c) in an attempt to find a solution, Porter Consulting Engineers have reviewed the modelling, outcomes and recommendation in the Traffic Report relating to Access 4. Porter Consulting Engineers have also carried out further modeling to specifically review the situation of an unmodified access in light of the proposed Dan Murphy's being developed. That review concluded that if the proposed Dan Murphy's development proceeded without any modification to Access 4 there would be an "insignificant change" in the operation of the access point with the level of service/performance of the access point remaining the same;
 - d) Given the above, it is apparent that no modification to Access 4 is warranted, even if it was achievable (which it is not).
- 31 Further materials were put before the Commission by the solicitors for the applicant that were annexed to the correspondence referred to above. That information has not been taken into account by the Commission as it was not before the delegate at first instance.
- 32 The Commission notes that the issue of traffic management would have been considered by the State Administrative Tribunal in granting planning approval for the development proposed by the applicant. However, that fact alone does not absolve the Commission of the requirement to consider the issue of potential effects on amenity (including traffic movement) in determining whether the granting of the licence is in the public interest.¹⁴
- 33 The ultimate conclusion of the Porter Report was that the overall effect on traffic movements at the access points would be minimal and the changes proposed would improve traffic movements at the access points.

¹⁴ *Kapinkoff Nominees Pty Ltd v Director of Liquor Licensing* [2010] WASC 345 per Hall J at [60]

- 34 Notwithstanding the concerns that the Commission has in respect to traffic movements, particularly at the Davallia Road entrance and laneway leading into the shopping centre precinct, the evidence before the Commission does not establish that the effect on that area would be of such significance that the application should not be granted.

Outlet Density/Harm and Ill-Health

- 35 Much emphasis has been placed on this issue in opposition to the application. It is contended that the existence of a First Choice store 1km away in Duncraig and a Dan Murphy's store 4km away in Balga is such that it would not be in the public interest to grant this application.
- 36 It was accepted by the parties that the issue of outlet density was relevant to two issues, namely:
- a) whether the granting of the application would create a monopoly or duopoly such that this would be contrary to the proper development of the liquor industry; and
 - b) whether the granting of the application would cause an unacceptable increase to harm and ill-health to the extent that the granting of the application would not be in the public interest.
- 37 The creation of a monopoly or duopoly in liquor retail such that it would crush competition offered by smaller outlets is a relevant consideration when determining the issue of public interest. A situation in which one or two retailers completely dominate the liquor market would not be in the public interest. However, there is no evidence before the Commission, either direct or circumstantial, from which the Commission could conclude that the granting of this application would have a crushing effect on other liquor outlets or that a point has been reached within the Perth metropolitan area that the two large liquor outlets (Dan Murphy's and First Choice) so dominate the market that other retailers are unable to compete and as such a monopoly or duopoly has been created. There is no evidence before the Commission as to how previous grants of licences to the applicant has affected other liquor retailers. In the absence of such evidence, the Commission cannot conclude that the granting of this application would be contrary to the proper development of the liquor industry and not in the public interest.
- 38 It is imperative that parties understand the crucial nature of evidence before the Commission. Whilst it is understood that the Commission shall act without undue formality and is not bound by the rules of evidence, submissions must be based on cogent and relevant evidence. If it is to be suggested that inferences should be drawn, there must be evidence before the Commission from which an inference may be drawn. In the absence of any evidence as to

the effect that destination liquor stores have had on the retail liquor industry, there can be no finding that the granting of a licence for such outlets is not in the public interest based on a conclusion that the granting of further licences is contrary to the proper development of the liquor industry.

- 39 The other issue relevant to outlet density was harm and ill-health. Section 5(1)(b) of the Act prescribes that the minimisation of harm or ill-health caused to people or any group of people due to the use of liquor is a primary object of the Act. This is therefore a matter that the Commission must have regard to in the consideration of this application.
- 40 Significant emphasis was placed on academic studies that establish a correlation between outlet density and harm and ill-health. The Commission has previously placed emphasis on such studies however as was rightly noted by counsel for the applicant at the hearing of this application, there must be some correlation between the general studies and the actual evidence relied upon in respect to an application.
- 41 The locality is predominantly comprised by the suburbs of Carine and Duncraig. Parts of Greenwood, Hamersley, Warwick, Karrinyup, Gwelup and Balcatta fall within the boundary of the locality. The 2011 ABS Census found that the combined population of Carine and Duncraig was 21,506 people.
- 42 The crime statistics for the suburbs of Carine and Duncraig between June 2012 and May 2013, based on WA Police crime data statistics, reveal that in each category of offending recorded, being assault, burglaries, graffiti, robbery and car theft, the crime statistics were much lower than the State average.
- 43 The evidence establishes that the existing levels of crime in the relevant location are relatively low. There is no evidence that establishes that there are “at-risk” persons in the locality, albeit the police did submit that families with children fell within the category of “at-risk” people. The Commission does not accept that argument as there is no evidentiary basis to do so.
- 44 The approach that the Commission must adopt in its determination of the relevance of harm and ill-health to an application is that outlined by His Honour Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*.¹⁵ Based on that decision, the Commission is required to:
 - a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
 - b) make findings about the likely degree of harm to result from the grant of the application;

¹⁵ [2015] WASC 208

- c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
 - d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant had satisfied the Commission that it was in the public interest to grant the licence.
- 45 Based on the evidence before the Commission, it has determined that:
- a) the existing level of harm or ill-health in the locality is low;
 - b) the likely degree of harm that would result from the granting of the application is low. That finding is made on the basis that there is an existing liquor store on the premises, the locality is a predominantly middle class, affluent area with no at-risk groups within it;
 - c) given the existing levels of harm and ill-health are low and that the likely degree of harm or ill-health that would result from the application is low, there is nothing to suggest that the granting of the licence would result in an unacceptable degree of harm or ill-health in the locality;
 - d) given the first three findings, there is no need to undertake the weighing exercise referred to in *Carnegies* as the evidence does not establish that harm and ill-health is of such concern that it is a significant consideration in determining this application.
- 46 In upholding the Supreme Court appeal, Martino J observed that, ‘at no stage in its reasoning process expressed in the reasons is it possible to discern that in considering the issue of harm and ill-health the Commission evaluated the evidence, made findings and drew conclusions from the evidence as it was required to do.’¹⁶ In its original decision, the Commission simply stated that, ‘the significant increase in the retail liquor footprint for alcohol products in this locality that would result from the grant of this application does raise harm and ill-health concerns consistent with the established view of the Commission that it is not in the public interest to have large format destination liquor stores in close proximity.’¹⁷
- 47 The Commission acknowledges the error made at first instance in its evaluation of the issue of harm and ill-health and has applied the test outlined by His Honour Allanson J in *Carnegies* in determining this application. Having applied that test, there is no evidence before the Commission that is capable of establishing that harm or ill-health will be increased in the locality to a degree that would be considered unacceptable.

¹⁶ [2016] WASC 40 at [20]

¹⁷ 16/2015 at [79]

The Needs Test

- 48 Incorporated in the submissions on behalf of the Police and Director was the fact that there were two other destination style liquor stores in close proximity to the premises the subject of the application for a redefinition/alteration. In essence, it was submitted that the locality was already adequately serviced by those stores and that the requirements of consumers for liquor were adequately catered for.
- 49 The difficulty with that submission is that it implicitly invokes a “needs” test, that being the test that previously applied to applications of this nature. It is effectively being contended that the fact that there is a liquor store of a similar style approximately 1km from the licensed premises the subject of the application that there is no need for another store.
- 50 The previous needs test was repealed and as noted by Martino J in *Australian Leisure & Hospitality Group Pty Ltd v Commissioner of Police*¹⁸, ‘when it [the Commission] considers the application following it being sent back...the Commission cannot apply the “needs” test.’¹⁹
- 51 If the question of need cannot be considered, there is an issue as to what is meant by the third primary object of the Act, that being 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.
- 52 In the context of this application, the issues for the Commission to focus on are:
- a) Would the granting of the application cater for the requirements of consumers for liquor?
 - b) Would the granting of the licence be in accord with the proper development of the liquor industry?
- 53 The answer to the first question is “yes”. The proposed redevelopment would cater for the consumers of liquor in a modern tavern environment for those who choose to consume liquor on the premises. It would also involve the development of a destination type liquor store that would increase the range of products available to consumers from what is already in existence at the licensed premises.
- 54 The second consideration is the issue of whether the granting of the licence would be in accord with the proper development of the liquor industry. In other

¹⁸ [2016] WASC 40

¹⁹ [2016] WASC 40 at [28] following on from *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227

words, would the granting of the licence crush competition and create either a monopoly or duopoly in the retail liquor industry? In the absence of evidence that is capable of establishing that competition would be crushed by the granting of the application and where the requirements of consumers of liquor will be catered for by the granting of the application, the answer to the second question is “yes”.

The Nature of the Application

- 55 The PIA submitted by the applicant reveals that the changes it proposes will include:
- a) a further internal refurbishment;
 - b) upgrading and consolidating the two separate kitchen areas to provide one purpose designed and much larger kitchen;
 - c) designing new facilities and upgrading current facilities to service the new kitchen;
 - d) redesigning and upgrading the current BWS bottle shop to allow a larger purpose built bottle shop which will have more display space, greater product range, and be re-branded as a Dan Murphy's;
 - e) structural changes to the building to redesign the internal layout including adding a second floor;
 - f) broad changes to the exterior of the tavern including a new entrance, upgraded car-parking and landscaping throughout.
- 56 In considering whether the granting of the application is in the public interest, the Commission is mindful that this is not an application for a new licence. It is an alteration/redefinition to existing licensed premises that have been in existence for many years.
- 57 The totality of the evidence establishes that the application, if granted, will involve an upgrade of the existing facilities and the addition of a destination style liquor store that will increase the variety of products that are currently available from the premises.

Objections

- 58 The objections to the granting of the application can be summarised as follows:

- a) Kevan James and Maureen Annette McGill – noise and traffic management concerns;
- b) Angela Margaret Burke and Gregory Charles Chidlow – amenity and harm/ill-health concerns;
- c) Louanne and Rodney Wakefield – amenity, harm/ill-health and need concerns;
- d) Lisa and Mathew Kenrick – amenity concerns;
- e) Thomas Haywood – amenity and harm/ill-health concerns;
- f) Ashley Palmer – amenity and harm/ill-health concerns;
- g) Peter Passera – amenity and harm/ill-health concerns;
- h) Laurence Walter and Bernadette Anne Passmore – amenity concerns;
- i) Lucy Mary Stuart – amenity concerns;
- j) Beng Ding – amenity concerns.

59 The objections of each party are generally assertions or assumptions made by persons who live within the locality or utilise open space within the locality. The Commission is sympathetic to the concerns expressed by the objectors, however decisions of this nature can only be determined upon cogent evidence. The applicant has tendered a large amount of evidence that establishes that the concerns properly expressed by the objectors will be dealt with by the applicant in different ways. For example, concerns in respect to abuse of alcohol by young persons will be mitigated by service practices adopted by the applicant.

60 Based on an assessment of all of the evidence before the Commission, the objectors have not discharged the onus placed upon them in establishing that it would not be in the public interest to grant the application.

Determination

61 Based on the evidence before the Commission, the following factual findings are made:

- a) the location in which the licensed premises operate is a predominantly middle-class affluent area;

- b) there is no evidence of significant levels of harm or ill-health caused to people or any group of people due to the use of liquor;
- c) the granting of this application would not increase levels of harm or ill-health caused to people or any group of people due to the use of liquor to an unacceptable level;
- d) the licensed premises are a popular venue, attracting approximately 3000 patrons per week;
- e) the granting of the application will involve a significant upgrade and addition to existing facilities, with a specific focus on:
 - improving the aesthetics of the external areas of the licensed premises;
 - improving the kitchen and food preparation areas of the tavern, thus promoting the food service aspect of the operation of the tavern;
 - upgrading the liquor products and services available to those who purchase packaged liquor from the licensed premises;
- f) There may be traffic management issues that arise within the shopping centre adjacent to the licensed premises, but the evidence does not establish that the effects will be so adverse that it would lead to a conclusion that the granting of the application is not in the public interest;
- g) There is nothing to suggest that the granting of the application would result in offence, annoyance, disturbance or inconvenience to people who reside or work in the vicinity of the licensed premises. To the contrary, the applicant is an experienced and responsible licensee that will take steps to minimise the potential adverse impacts of the granting of the application.

62 Based on those factual findings the Commission has determined as follows:

- a) the applicant has satisfied the public interest requirement on the basis that the proposed alteration/redefinition involves a significant upgrade of existing premises and will include better and more modern services to customers than currently exist. The granting of the application is consistent with the primary and secondary objects of the Act;
- b) the objectors have not discharged their onus in establishing on balance that the granting of the application is not in the public interest.

Orders Made

63 The Commission makes the following orders:

- c) the decision of the delegate of the Director is quashed pursuant to section 25(4)(a) of the Act;
- d) the application for an alteration/redefinition of the licensed premises known as the Carine Glades Tavern is granted pursuant to section 25(4)(b) of the Act.



SEAMUS RAFFERTY
CHAIRPERSON