

20<sup>th</sup> September 2020

Standing Committee on Environment and Public Affairs  
Legislative Council – Parliament of WA

**RE: PETITION NO 162 – PETITION AGAINST TAVERN IN ILUKA PLAZA**

Thank you for inviting us to provide a written submission in relation to points we raised in Petition No. 162.

Since the petition was tabled before Legislative Council on 20<sup>th</sup> August 2020, despite majority objection, the MOJDAP Panel voted in favour of change of Land Use to Tavern for tenancies T1 to T3 in subject site of Iluka Plaza, in the zoom meeting held on 31<sup>st</sup> August 2020. The Agenda for that MOJDAP meeting which includes all deputations in opposition of the change of land use, the RAR report provided by City of Joondalup Planners as well as submissions of applicants can be found on pages 13 to 57 and 186 to 249 of PDF document -

<https://www.dplh.wa.gov.au/departmentofplanninglandsheritage/media/daps/metro%20outer%20jdap/agenda/2020/august/20200831%20-%20agenda%20-%20no.33%20-%20city%20of%20joondalup.pdf>

While the decision was arrived at via due JDAP process, we believe, the decision makers in favour of the change of land use were not entirely objective nor did they adequately regard the concerns raised by the citizens and residents against the establishment of a Tavern in Iluka. In fact, 3 of the 5 panel members of MOJDAP panel for this particular application (DAP18/01543), voted in favour of change of land use despite recommendation of the Council planners to reject the application.

We urge the Legislative Council to look into this matter and through Legislative Council, we beseech relevant authorities and ministers to correct a grave “wrong” and :

1. Overturn the approval of change of land use to Tavern for Tenancies T1 to T3 on subject site of Iluka Plaza
2. Not approve any liquor licensing application under Tavern or Tavern restricted licenses for the subject site.

In our deputations (Deputations of Mrs. Nanette Brammer and Mrs. Shailee Desai – Pages 35 to 57 of [Agenda 33](#)), we have covered our main concerns regarding size and scale and incompatibility of land use as well as lack of adequate parking, detriment to our peaceful amenity, social impact, antisocial behaviour and general nuisance in great detail. Additionally, our objections are further reinforced by following issues.

**1. CONTRIVED, PRE-EMPTIVE ACTIONS OF DEVELOPERS:**

- Developers AGEM touted in their original application of 11<sup>th</sup> March 2019 that they had applied for all contemplated land uses (which did not include Tavern) because they did not want to apply for change of land use later and yet that is exactly what they did.
- As part of an aggressive and targeted marketing strategy, AGEM advertised and acquired a tavern operator tenant – even before they applied for change of land use
- The most shocking discovery though was that, despite initial approval being for 3 separate tenancies, AGEM provided for plumbing and trade water supply commensurate to operations of a large Tavern.
- This was discovered through our FOI into the plumbing plans of AGEM which were retrospectively approved in December 2019, despite the fact that AGEM had begun ground works and provision of plumbing as first step of site works as early as July- August 2019.
- Their plumbing plans clearly show connections for trade water in an area outside the marked wet floor space/ kitchen/ toilets in Tenancy T2, the connections quite conveniently for AGEM being in the line of where the Bar will be situated in the proposed tavern.
- Tenancy T2 being a small café/ restaurant tenancy would not have required such a plumbing trade water connection.
- So the plumbing provisions made at the very start of construction went against the approved plans and were very much contrived to house a future tavern and AGEM only submitted change of land use to Tavern once they had secured NIDO Early Learning as an anchor tenant and also only after Bode living Apartments – 1 Iluka Beach had achieved sufficient pre sales.
- Had AGEM declared their intentions of housing a Tavern, they would have found it hard to secure NIDO as their tenant nor would the apartment developers have achieved adequate presales – this is confirmed both by most buyers of the apartment and NIDO Early Learning Centre in writing.

**2. LACK OF ADEQUATE CONSULTATION WITH ALL STAKE HOLDERS WITHIN COMMUNITY:**

- City never advertised the change of land use on site and only 200 arbitrary residences were invited for public consultation.
- While City’s policies do not require advertisement on site because Tavern Land Use is discretionary, the subject site is totally surrounded by residential zone and as duty of care, City could have exercised discretion and invited all impacted residents to participate in public consultation
- Additionally, City’s policy in relation to requirement of advertisement on site is at significant odds from most other Councils in WA which recognize that Tavern land use can be contentious matter and merits advertisements.

- Most of residences adjacent to subject site, who would be severely and negatively impacted by change of land use were not informed or invited to participate in public consultation (e.g.: 6 and 8 Calis Avenue) and yet residences nearing Marmion Avenue (residences along Manhattan drive) were invited.
- If an inquiry in residential status of public consultation participants was conducted, it will become quite clear that most people in favour of a tavern leave either significantly further away not to face same level of impact or detriment or that they were in fact not residents but perhaps property owners within Iluka who also happen to be friends or business colleagues/ network of AGEM.
- Neither the buyers of apartments within 10 meters from subject site, nor the Childcare Centre co located in same building as subject site were invited to submit their views, despite developer's intentions to always build a tavern. Had developers declared these intentions clearly, it would have impacted childcare tenancy as well as sale of adjacent apartments
- City did not invite comment from either WA Police or WA department of health despite [Clause 66 and Clause 67. \(za\) of Part 9 of Schedule 2 of the Planning and Development \(Local Planning Scheme\) regulations 2015](#)
- Despite provisions made as per cited Clause 66 and Clause, Neither City nor MOJDAP Panel believed that they were required to consult any external policy or with Police or Public Health.
- Yet when I – Shailee Desai spoke to Acting Inspector MURRAY from the Licensing Enforcement Division he concurred with concerns we raised in relation to Tavern in the setting that is being proposed.
- We find it really difficult to therefore understand, why in city's or MOJDAP's view, the matter did not concern any other public authority such as WA Police?
- Neither City Planners nor MOJDAP found it necessary to consider external policies including Liquor Licensing Act which had specific requirements that govern a Tavern which is incidentally deemed a Public Building that needs to adhere to Public Building Regulations and BCA codes. They said, there is no planning instrument. Yet there is – Under Clause [67.\(f\) of Part 9 of Schedule 2 of the Planning and Development \(Local Planning Scheme\) regulations 2015](#)
- We also believe that the concerns raised about incompatibility of Child care Centre – which has already been fitted and kitted out to be co located in same building and sharing car parking with patrons of proposed tavern, with the use of car park creating parking demand conflicts especially at peak hour.
- There is a very clear planning instrument - [Planning Bulletin 72](#) – which states under clause 3.3.1) Child care centres generally should not be suitable where “the current use or any permissible use under the zoning of the adjoining premises produces unacceptable levels of noise, fumes or emissions or poses a potential hazard by reason of activities or materials stored on site” This too has not been adequately or objectively considered or given due regard.

### **3. BIAS IN FAVOUR OF THE ILUKA PLAZA**

- City Planners, recommended that the application of change of land use be rejected because of detriment, size and scale and incompatibility. Infact the issue of size and scale being incompatible with local character was also cited as a reason by Presiding member Ian Birch for his vote to reject change of land use.
- Yet, the Change of Land use was approved because of majority votes in favour which included those of Councilor Phillipa Taylor and member Ms. Sheryl Chaffer both of whom were involved in the original approval of Iluka Plaza (despite majority of public consultation voting against iluka plaza).
- For voting in favour of change of land use to tavern, they both mentioned their role in approval of Iluka Plaza which they believe is a great asset to the locality due to its design.
- In fact, Councilor Taylor said that she had spoken to people of Iluka who were in favour of the Tavern and that she too was looking forward to enjoying drinks with friends at the Tavern – now that is a very subjective view- not befitting a person in office – we ask – who are the people she spoke to who are in favour of the tavern?
- She certainly has not spoken to us nor the majority of residents (even if it was a small majority) which was against the Tavern. The design and especially the colour scheme and the inadequate parking is of great concern to the surrounding residents.
- She also said that most people in favour of tavern would not have voted, thereby suggesting that even if majority votes were against a tavern, that was not an accurate representation. Again, that is her personal hypothesis and not a fact.
- Therefore, we believe, their decision was not objective.
- We also pointed out a that change of land use of T1 to T3 tenancies into 1 large tavern will increase net lettable floor space by 42% which will have impact on already inadequate car parking.
- City Planners did not think this to be of major concern because they expect developers AGEM to ensure adherence to condition of no more than 2991sqm of net lettable floor space. City Planner Chris Leigh advised that AGEM could reduce net lettable floor space in other tenancies if tavern net lettable floor space has increased. But he did not advise how that was going to be audited especially when most other tenancies were already fitted out as per original plan
- AGEM says that they want to operate the Tavern as a Family Bistro – for that they did not need change of land use to Tavern. In one of their submissions, AGEM's lawyer Thompson Geer acknowledge that Tavern license is required for business viability
- So, the Tavern land use was approved via majority vote based on personal views and business viability of developer rather than need, size and scale and fit with locality, compatibility, adequacy in planning provisions which is not good planning.