

## **LICENSING DECISION**

**In the matter of the Liquor & Accommodation Act 1980**

**In the matter of an application by David Castle**

**In the matter of an application for a general licence for “Finz” 135 Paterson Street Launceston**

### **REASONS FOR DECISION LICENSING BOARD OF TASMANIA**

This application was heard at Launceston on 15<sup>th</sup> November 2001.

The applicant Mr Castle appeared and presented evidence as well as presenting witnesses Don McQuestin, Jack Birrell, Fiona Jones, Robbie Jones.

The application was advertised and no submissions or objections were made.

Mr McQuestin presented evidence on behalf of the applicant; he and his family having the substantial interest in the freehold and business of the associated and adjacent TRC Hotel and the Finz Restaurant premises (as they are at present).

A comprehensive booklet of evidence and submissions was presented detailing the background to the ownership of the TRC hotel, the purchase of the Finz site, planned tourism, food, gaming and kitchen arrangements, plans for future development, perceptions as to unmet needs in the vicinity, provision for meals and snacks throughout the course of the day as well as at traditional meal times, provision for meeting and function requirements, and details about music, accommodation and sale of Tasmanian produce intentions.

In June 2001 the TRC Pty. Ltd. purchased the freehold adjoining property to their existing TRC Hotel which property was commonly known as “Finz”.

Their intention is to substantially redevelop their operation at the TRC site and Finz site. In expanding and redeveloping the Finz site he seek to have a general licence for that property (135-143 Paterson Street).

The property currently trades as Finz Restaurant, mainly catering for functions which are either unsuitable or inappropriate to be held at the TRC Hotel.

The applicant perceives that changing the venue to fit within a more liberal licensing arrangement under a general licence, in the style of a café bar, with food always available, better meets his perceived understanding of the market and customer needs and trends.

The applicant seeks to differentiate between the Finz and the hotel site by style of operation, in order to attract people who may not feel as comfortable in a traditional "pub". Stated points of differentiation were:

#### In Finz

1. Meals and snacks would be light and simple and available at all times between mid day to 8.00 pm
2. Entertainment at Finz would be live music as opposed to sport and gambling at the TRC.
3. At Finz food and beverage would be available at counter service only.
4. There would not be sale of bulk beer but rather a range of coffees and fresh fruit juices to compliment the bar service, with an emphasis on Tasmanian beer and wines (presumably in small bottles so far as beer is concerned and bottled wine regarding the latter).
5. Dining would be available indoor and in an outside marquee and the applicant thereby intends to cater for smokers and non-smokers separately (taking account of relevant legislation).
6. The intended café bar would be open Thursday to Sunday, midday to 10.00 pm and available for functions outside those times.
7. The applicant intends to include an ice-cream component, a childrens' menu and a play area to encourage families to the Finz facility.

Given the history of applications for general licences in Launceston, it was somewhat surprising initially that there were no objections to the application. Indeed the owners and operators of TRC Hotel have recurrently objected to nearly all licence applications in recent years. Perhaps this application is evidence of a softening of their attitude to new competition in the locality ?

The site is in an area where there are quite a number of licensed premises and the applicant and adjacent licensed premises owners or operators have regularly opposed other general licence applications on the basis that the area is well catered. Perhaps in some part this is explained by allegiance or alliances between existing licence holders and the Hotels Association and hence a policy of non objection or implicit support where an existing operator/member seeks what is effectively an extension of an existing premise or new development. It might also be explained by there having been a critical analysis by likely objectors and an acceptance that the proposal is generally likely to be in the public good. It is difficult for the Board to know as there was no evidence either way.

The Board's obligation is to take the evidence and assess whether the applicant has overcome the burden of proof to demonstrate that the application, if granted, would meet the criteria in s. 216 of the Act and the relevant guideline.

The development appears to some extent to have been crafted around maximising flexibility at the two sites (TRC and Finz) and to enable flexibility around legislative issues regarding smoking and non-smoking (and collateral inability to serve food if smoking is permitted) and gaming (at the Hotel) and non-gaming (at the Finz).

The applicant states that the general area has become the undisputed pre-eminent tourist precinct of Launceston and they list a number of tourist development sites in the area. No doubt it is a tourist precinct.

They state that during 2001 the opportunity arose to buy the Finz site, motivated by the following reasons:

1. The TRC kitchen is too small and lacking in storage area (refrigerated and dry) and it is difficult for the kitchen staff to service the Riverbank Bistro at capacity and the bar and lounge for bar snacks.
2. The TRC gaming room is cramped and would be difficult to proceed past the present configuration of 19 machines (they are seeking 30 machines).
3. They have no way to service requests for separate function or meeting rooms.
4. The Finz site is bordered by the TRC land to the east and the south, hence a natural fit to allow isolation of the dead area of the TRC car park in future development.
5. The TRC Hotel building does not lend itself to the development of al fresco dining.
6. The rationalisation of "Tote" facilities in Launceston has caused the TRC pub tab to be restricted for space, and more space is required within the TRC building to cater for increased demand.
7. Whilst trying to cater for tourists in the TRC Hotel, they naturally find some resistance, particularly from family groups, to enter a "traditional pub" from the front bar with gambling elements so prominent.
8. The essence of solving the shortcomings was perceived to be to maintain the traditional local pub aspect of the TRC Hotel, with an accent on sports in the front bar and a large gambling element, while at the same time developing a separate hotel catering for the tourist and function market.
9. The applicant perceived unmet needs in the Launceston tourist precinct, in particular a dining facility open all day. This has been a critical aspect of the application and has been persuasive in the Board's deliberations.

10. The Finz facility is intended to provide casual outdoor dining for approximately 80 seats which is something they assert is not well catered for in the tourist precinct.
11. They also assert there will be a substantial music component, generally not available within the tourist precinct. Live music is a critical component of that whilst there will still be a recorded music system.
12. The question might be asked why a general licence is required. The applicant seeks to provide for the functions market, to provide liquor without the necessity of consuming food, and to have a component available to sell liquor for consumption off-premises.
13. The applicant also seeks to be in a position to enable future development of the site as a tourist hotel and function facility by enabling the developers to attain the estimated \$2.8M dollar financing required and to make the premises commercially viable through the owners' ability to separately lease or sell the two entities (TRC Hotel and Finz).

During construction an estimated 10-20 full time jobs are estimated to be created and additional employment will obviously be available with the finished redevelopment.

The redevelopment was asserted to be in two stages. The first to costs approximately \$1,000,000.00 and the second approximately \$1.4M. Architects plans were included in the application and quantity surveying assessments provided. Some schematic diagrams were also submitted. Some of the redevelopment expense is involved in the TRC gaming and dining areas and other elements involve the adjacent Finz site for expanded bar areas, function rooms, restaurant, café and unit accommodation.

The question arises as to the nature of the two staged development and whether the second stage is a critical component from the Licensing Board's perspective for the authority to have a general licence.

The application has been placed quite firmly on the basis that both elements will definitely proceed although they will be staged in time through the natural need to keep existing operations going, and the time required to simply do the redevelopments.

Given the substantial nature of the total redevelopment and the improvement to its facilities and the overall benefit in providing facilities to the public for consumption of liquor, accommodation, provision of food, entertainment, and other facilities perceived by some as being advantageous (principally gaming) the Board has been inclined to see the overall development as essential for the Board to approve and direct the grant of a general licence.

On review of the evidence and submissions we were not certain whether unconditional undertakings were made by the owners/applicant to proceed with the entire development. Subject to the application being reconvened for that to be made certain, the Board has concluded it should direct the grant of the licence.

Should the development not proceed within the time framework asserted, then the Board would consider that the application had been procured by misleading statement and would be obliged to seek review and cancellation of the licence.

The matter is to be reconvened for further submissions and evidence.

Dated 31<sup>st</sup> January 2002.

PA Kimber  
Presiding Member

WF Morris  
Member

L Finney  
Member