

## **Licensing Board of Tasmania**

In the matter of an application by John Jesse Stephens for an On-licence for premises at 63 St John St, Launceston, to be known as "The Lounge".

### **LICENSING BOARD OF TASMANIA**

#### **REASONS FOR DECISION**

This application was heard at Launceston on the 10<sup>th</sup> October 2001.

#### **APPLICATION DETAILS**

The applicant filed substantial material before the hearing and also 'support material' at the hearing, and the applicant gave evidence and called evidence.

The substance of the application is set out in the support material, which may be read with these reasons for decision .

In summary, the applicant seeks an on-licence to enable him to develop a lounge type premises, in premises which had, some time ago, been used as a central city banking chamber.

The Applicant indicated that the premises had been vacant, and to some degree caused a feeling of a void in the centre of the Launceston City, since the bank which previously operated out of the premises had vacated.

The main issue of concern to the Board was the absence of plans to have food cooking and preparation areas in the premises. However this was addressed by the Applicant by detailing a kitchen plan, albeit without cooking capacity. He stated that he was, perhaps by analogy with the banking industry, outsourcing this significant component of the business.

The Board was concerned that the food component would be seriously undervalued, and that this would be a negative point in regard to facilitating the safe provision and consumption of alcohol on the premises.

We were assured, vehemently, that there would be no down valuing of provision of food, but rather that food would be given an even higher profile with food being prepared and cooked in 'qualified restaurants and bakeries'.

Clearly the Applicant sees an opportunity to serve a market which does not necessarily want sit down formal dining; but rather food available as an adjunct to the provision of entertainment, and provision of liquor.

The Liquor and Accommodation Act, on-licence category, permits or authorises such a licence style; but adequate consideration of minimising the

harm associated with the consumption of liquor needs to be given in the plans for the venue.

Further food provision assured by the Applicant is in the range of gourmet wood fired pizzas, vol e vaunts, home made pies, light snacks, platters and sausage rolls.

The public do not always seek food associated with liquor service, but provision of access to some food is highly encouraged for prospective licence holders, in keeping with the Board's view that responsible service and consumption of alcohol is an implicit object of the Act to assist in minimizing the harm associated with consumption of liquor.

The Board concluded that it was willing to accept that the Applicant was intending to make food a satisfactory part of the overall plan for the business to be conducted on the premises, but that his assertions needed to be elevated. To this extent, the Board believes that its consideration of this point is such that, if the Applicant, or his successors in management or ownership of the business on the subject premises, does not continue with food availability at least to the level and extent asserted in the application documents (as reflected in this decision) then it would be patent that the licence was obtained by fraudulent assertion.

If the business is not profitable and workable without the provision of food at least to the extent undertaken by the Applicant in the application documents, then it should not operate at all. If the Applicant does not accept this perspective then he should not take up the licence. In addition if the licence is to be transferred within the medium term, then prospective purchasers should be alerted to this requirement, and counseled to adhere to it. Failure to do so would be seen by the Board as an attempt to avoid the licence holder being aware of the obligation to provide food. We suggest the Commissioner might note his/her file to provide any intending transferee with a copy of this decision.

The premises themselves are imposing; a significant cultural heritage building in the heart of a significant Australian city. No longer of use for the prime purpose for which it was built, its highest and best use in the current economic climate appears to be in the entertainment and service to hospitality arena. If retail services alone would be sufficient, no doubt a retailer would have stepped up and taken the premises for such a purpose. However that is not the case.

The Applicant stressed the "Lounge" concept. That there would be a large number of comfortable lounges throughout the premises.

Fit out is asserted at approximately \$200,000, with an overall cost of premises and fit out in the order of \$1,000,000.

## 1. OBJECTIONS

Many objectors were trade objectors seeking to explore the nature of the proposed business and the affect on the amenity of nearby residents and businesses. The AHA was represented by Ms Butterworth and their State Executive Director, Mr Leesong, who made submissions helpful to the Board's deliberations.

A number of objectors from alternative venues in the Launceston City had quite plausible concern about the number of outlets already providing what they perceived the Applicant seeks to provide.

Mr Brian Shelley expressed realistic concern that there is an oversupply of entertainment venues providing liquor, and that those already operating have an underutilised capacity. At the same time, the evidence indicated that some of the existing on or general licensed premises have quite strong demand at peak times.

Mr Shelley felt that the perceived oversupply drove down service and quality.

The Board felt that this assertion, whilst understandable, was not supported by actual evidence, but rather, expressions of concern. The Applicant's response was to say that he would be offering the public an alternative venue, with good service and quality surroundings. The Board accepts this assertion as accurately reflecting the Applicant's intentions and the likely end product of his exertion.

In the end product the Board did not have sufficient evidence to conclude that the granting of the Application would be detrimental to the orderly development of the hospitality industry. The Applicant's enthusiasm was evident. There is a balance to be met between requiring the Applicant to demonstrate that the granting of the application will contribute to orderly development, and on the other hand, the role of objectors in providing information to the contrary. It might be termed a shifting onus. On the balance of the information before the Board, we felt that the viable use of the subject premises, and the economic benefits to flow from the development would outweigh the asserted detriment from the addition of a further on-licensed premises.

## 2. LIQUOR AND ACCOMMODATION ACT

All parties were aware of s216:

***Policy to be followed when considering an application for a licence or permit***

- 216** (1) *When considering an application for a licence or permit the Commissioner or the Board shall make a decision which, in the opinion of the Commissioner or the Board, will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State.*
- (2) *While, in coming to that decision, the Commissioner or the Board may have regard to any legitimate interests and concerns of any section of the community the Commissioner or the Board shall have greater regard for the legitimate interests and concerns of the community as a whole.*

### **3. GUIDELINES**

The relevant guidelines, which need to be considered in the context to give paramountcy to s216, in accordance with the Supreme Court judgment of Crawford J in *R v Kimber*, state:

#### ***THE GUIDELINES***

*The following is the policy which the Licensing Board of Tasmania intends will generally be followed when consideration is given as to whether or not a liquor licence or liquor permit should be granted and the conditions or variations to those conditions to be imposed in a special licence or permit, and other matters in relation to the administration of the Act.*

#### ***Definitions:***

*Where, in these guidelines, the Board is to take account of the "interests and concerns of the community" that phrase means:*

- (a) *will have regard to representations made to the Board--*
- (i) *by the council of the municipality in which the premises to which the application relates are, or are to be, situated;*
- or,*
- (ii) *by any other person;*
- and*
- (b) *will have regard to the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the Applicant.*
- and*
- (c) *will determine whether the grant of the application is likely to have an adverse effect on the interests of the community in that area--*

*but will not have regard to-*

- (d) *whether the business of any other licensee or permit holder may be adversely affected by the grant of the application;*  
or
- (e) *whether the business proposed to be carried on under the licence or permit would be successful.*

## ***LIQUOR LICENCES***

### ***1 General Licence***

*The Board will direct the grant of a general licence unless the Board is of the opinion that the granting of a general licence would be contrary to the interests and concerns of the community in the neighbourhood where the premises to which the application relates are situated.*

### ***2 On-licence***

*The Board will direct the grant of an on-licence unless the Board is of the opinion that the granting of an on-licence would be contrary to the interests and concerns of the community in the neighbourhood where the premises to which the application relates are situated.*

See the Board's decision in *Café Europa* 8<sup>th</sup> March 2001, where the Guidelines are re-stated taking account of Crawford J's decision.

## **4. CONSIDERATION AND CONCLUSIONS**

This is a difficult application. Whilst the Applicant was short on information in support, so too the objectors presented "unresearched pessimism" (Mr Stephen's words).

Assertions of likely unruly behaviour associated with the intended licensed premises were not justifiable except as concerns; not certainty, nor even likelihood. There are also avenues within the Act to limit the activity of licensed premises if they do contribute to unruly behaviour.

This is a substantial proposal, to make useful extensive premises in the heart of the City. Significant expenditure and employment will, in the Applicant's submission, accepted by the Board, give rise to a better use of the premises, to the betterment of the locality, and with economic and social benefits to

people associated with the redevelopment of the site, employment within it, and the public in use of the premises for entertainment purposes.

## **5. DECISION**

Under s214 of the Act, the Board directs the Commissioner to grant the application.

Dated: 27<sup>th</sup> November 2001

PA Kimber, Presiding Member.

L Finney, Member.

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