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| Licensing Board of Tasmania | Decision |
| Legislation: | Liquor Licensing Act 1990 |
| Applicant: | Carlton Dixon |
| Nature of application: | For an off licence |
| Premises: name | Ravenswood Cellars |
| Premises: address | 2 Ravenswood Rd, Ravenswood |
| Name of decision: | Ravenswood Off Licence |
| Date & place of hearing: | 23 rd September, 2010, Launceston |
| Date of decision: | 18 th October 2010 |
| Members of the Board: | PA Kimber (chairman), K Sarten and D Logie (members) |

Reasons for Decision

Background

Carlton Dixon made application to the Commissioner for Licensing for an off licence on the 17th August 2010. The Commissioner published notice of the application in the Examiner Newspaper, and by obliging the applicant to place a notice in a prominent position on the proposed premises. The Commissioner determined that the Applicant is qualified to hold the liquor licence (in regard to the Commissioner's responsibilities as to fitness and propriety, and good character).

A hearing was convened and held at Launceston on the 23rd September 2010.

As the only parties present were the Applicant and members of the public either in support or against the grant of the licence, the Board indicated that it did not see the Applicant to be represented was justified in terms of the *Liquor Licensing Act* s 213(6). The Applicant submitted representation should be permitted, others present submitted it was not appropriate, and the Board ruled that representation was not permitted as we were not 'satisfied that injustice could otherwise result'.

The Applicant had tendered his formal written documentation as to his application, the Commissioner's Compliance Inspector Mr B Krushka provided an inspection report, numerous people who reside or work in the vicinity of the premises lodged written notice of objection or support (as the case may be), the Applicant replied with a response to objections document, and the hearing was held.

At the hearing numerous people who have lodged notices gave verbal evidence in support of their submissions, and the Applicant gave evidence and called evidence from members of the community who were in support of the application.

The Board reserved its decision.

The Applicant's Case

The Applicant's case may be summarised as follows:

He and his brother have a contract to purchase the freehold and improvements on the property 2 Ravenswood Road at the corner of Henry Street and Ravenswood Road.

The Applicant has involvement in a number of other licensed premises, and is owner or part owner of several hotels in Tasmania. He has an impeccable record as a licensee. He intends to fit out, equip, staff, stock and operate the best bottle shop facilities in the region, with safety and convenience, highlighting accessibility, comprehensive range of stock, wide selection of Tasmanian wines and beers.

He says the top quality fit out will cost \$600,000.00.

He says employment will be provided to 2 or 3 full time and 2 or 3 part time local staff, to be fully trained in RSA.

He says he will conduct the premises and business to avoid and prevent alcohol related harm, and to ensure responsible service of alcohol.

He says the service will be better and more comprehensive than alternatives available in the vicinity.

For these reasons, he says, the grant of the licence will be in the best interests of the community.

Numerous parties in excess of 100 lodged notice of objection.

Their objections may be summarised as follows:

- Concern at the addition of a bottle shop outlet in Ravenswood;
- People in the local community cannot afford the temptation of purchasing liquor with relatively low income;
- Increase of traffic due to the opening of a commercial enterprise on the currently unused ex service station site;
- That there are sufficient alternative venues for people to purchase liquor in the neighbourhood, and there is no 'need' for a further venue;
- Planning considerations regarding increase in activity, road use, congestion;
- The application is pretentious as locals drink very little wine and little boutique beer, consequently these offerings are of no consequence;
- There are no community benefits from the simple opening of a bottle shop;
- The people in the suburb have a history of alcohol related issues. A new bottle shop in a highly visible location with ease of accessibility will increase alcohol consumption to the detriment of the people in the locality;
- The onus is on the applicant to prove benefit; it is asserted that the opening of a bottle shop near an hotel does not (in the mix of the two) provide a net 'valuable contribution to the local community and to the Tasmanian economy' as the applicant claims;
- People in the local community do not want the facility;
- There has been a failure in the consultation process as people with an interest (neighbours etc) have not known of the application and have not lodged objection, when it would be expected that they would; and

- Numerous identical copied objections stated that traffic, increase in public drunkenness, and increase in underage drinking would arise, and consequently the objectors did not want the facility.

The application was heard and the following evidence (of relevance) was presented:

The Applicant responded to the objections:

- Objections by the proprietors of the local hotel should be seen as a 'competition objection' and discounted;
- Many objections were orchestrated or arranged by the proprietors of the local hotel, and should likewise be rejected or discounted;
- Accessibility (in the sense of public convenience), social impact, health and safety and location relative to other institutions or community facilities are relevant;
- The local hotel is in a remote part of the suburb. The intended facility will provide convenience to the public;
- The general assertion that by making alcohol available thereby alcohol related harm will increase is not accepted by licensing authorities, and more specific evidence is required before an assertion that greater harm will result should be accepted;
- Increase in number and density of outlets is not per se sufficient to justify refusal;
- The Board should not protect existing outlets from competition;
- Each application should be determined on its merits. There is no factual evidence that Ravenswood is particularly vulnerable to adverse impact from sale of liquor from the proposed off licence premises;
- There is no evidence that the application, if granted, will have any potential to cause harm or cost to the community;
- Many in the community would welcome better, newer, and more safe and convenient facilities, against having to travel further, to older and less convenient and attractive premises;
- The objections are orchestrated but without substance; and
- In all likelihood the result may be that existing purchasers of liquor products will buy from the Applicant's premises, by change of point of purchase, and not by an increase in overall liquor purchases.

Evidence given at the hearing included the following:

Mr Dixon: in the area there is one hotel and one club. The hotel has a bottle shop, and has a monopoly in the market with 95% of packaged liquor in the locality being sold via the hotel. The hotel is not convenient for many patrons and is not open extended or convenient hours. It is a small bottle shop, and is unable to offer choice the public should expect.

The business would be run by the Applicant in conjunction with his 'Black Stallion' hotel.

Prices of houses in the locality have increased in recent times, indicating economic increase.

Convenience, safety and diversity are valuable assets and should be encouraged.

Members of the community attended and gave evidence along the lines of the written material referred to above. In particular, there were a few people who indicated they wished to have the new outlet for the reasons asserted by the Applicant as being benefits. On the other hand, there were numerous people who asserted they did not want the outlet in their neighbourhood because they

believed it would exacerbate harm associated with alcohol consumption by increasing availability, and increasing consumption, and consequently intoxication, underage consumption, and other adverse effect generally.

Consideration of the Evidence

The sole criterion (which by its broad statement ropes in a very large area of consideration) is that the Board is to make a decision which in its opinion is in the best interests of the community. See s 24A(1) of the Liquor Licensing Act.

We have commented on that criterion in numerous previous written decisions.

In many ways it is a balancing item between the prospect of adverse consequence, and the possibility of net economic (employment, use of premises, provision of goods and services) benefit.

This application has the hallmarks of the recent *Hill Street Cellars – off licence application by Peter Morrison – August 2010*.

To summarise from that application: The applicant has the onus of proof. That onus will shift to the objectors when an applicant makes positive assertions.

The applicant has not addressed the social harm issues. In the absence of any particular issues, the mere prospect that a licence may lead to harm by the supply of liquor which may be misused is not of itself a justification to refuse the licence. There were not any particular issues raised in the application documents or hearing which evidenced that the community in that matter was particularly vulnerable. In this present application, the objectors themselves asserted that the nature of the local community is more vulnerable than normal, and for that reason some within the community wish to impose on themselves the ‘benefit’ of limiting access by limiting the number of outlets.

It is not the case that those who would prefer the new premises will be seriously disadvantaged in obtaining access to liquor: they will still have the local hotel and there are other hotels and bottle shops within relatively close proximity. Some without driver’s licences may be disadvantaged, but that is just one item to be taken into consideration in the overall mix.

Increase in traffic: that is something with which people in cities and town have to put up with – the mere prospect that commercial premises is used and thereby that people will drive to them is not seen, in this application as having any determining aspect.

The community’s expression of interest or lack of interest is of relevance. This is not a venture of major State significance. Consequently, it is not something which the Board and the entrepreneur will impose on the local community for the benefits which will arise to the whole community. Whilst liquor licence applications are not ‘beauty contests’ or straw polls, or referenda, the peculiar perspective of the people in the local community is a relevant factor.

Expression of benefit to the tourism industry is accepted as being relatively marginal.

Whilst the proposal may benefit a few, indeed some of whom attended the hearing to give evidence of the benefit they perceive, the Board needs to show respect for the community as a whole.

We do not believe that the grant of the licence would result in an overall lessening of services in the community.

We do not consider that we should take account of the strong local community opposition *irrespective* of the cogency of the reasons – but in this case we are obliged to determine the issue taking account of that opposition and the cogency of the reasons behind them. *Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24 at 40* gives indication of the proposition that the ‘likely reaction of the community to the action proposed’ is encompassed in relevant factors for consideration in making a discretionary judgment.

The general community has an interest in seeing the orderly development of liquor facilities, and the control of grant, suspension and cancellation of licences. The wishes of the local community ought not to be determinative, necessarily but will most likely be relevant.

Refer generally to the *Hill Street Cellars* decision (above) from page 13 onwards. The conclusions there are the same conclusions we would reach in this matter.

The residents are concerned that the proposal will be intrusive and unwelcome, and unnecessary for their needs. The overwhelming opposition from the neighbourhood, almost universal expression of that before the Board in so many submissions does, on weighing the factors in favour with those in opposition, dictate that the community desire as expressed should require that the licence application be rejected.

Decision

We direct the Commissioner to refuse the licence application.

PA Kimber – Chairman. K Sarten: Member D Logie: Member.