

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Steven John Burdon
Nature of application:	Appeal against Commissioner for Licensing's decision to cancel out of hours permit
Premises: name	Venom
Premises: address	251 Liverpool Street, Hobart
Name of decision:	Venom v Commissioner
Date & place of hearing:	22 nd March 2007 at Hobart
Date of decision:	22 nd March 2007
Members of the Board:	PA Kimber (chairman), L Finney and K Sarten (members)

DECISION

This is the summary of the reasons for decision delivered at the conclusion of this hearing today.

Application

Mr Burdon is licensee of Venom night club, which held an out of hours permit which permitted sale of liquor between midnight and 5am 3 days a week, and which in conjunction with the liquor licence, enabled at least 24 hour trading.

The Commissioner for Licensing Ms W K Sawford had cancelled the out of hours permit consequent on consideration of complaints from residents and the Tasmania Police regarding intoxicated people in the vicinity of the premises, and violent incidents in that vicinity.

Law

The onus of proof is on the Commissioner. Messrs B Elson and M Brazendale for the Commissioner gave evidence and called witnesses. For convenience we do not set out the full content of the evidence here at this time.

The cancellation was made under the following (paraphrased) provision:

S 40(1)(b)(ii) of the *Liquor Licensing Act 1990*:

The Commissioner may cancel an out of hours permit granted in respect of licensed premises if the 'Commissioner is satisfied that the sale of liquor on those premises between the times specified in the permit is causing the occurrence of disorderly conduct in the premises or in the neighbourhood of the premises.

The Board's process is regulated by ss211 to 215 of the Act. In summary, a person aggrieved by the Commissioner's decision to cancel an out of hours permit may appeal to the Licensing Board, a hearing is convened by the Board, the Appellant and Commissioner is given opportunity to be heard, evidence is received (as the parties may wish to provide it), the rules of evidence do not bind the Board, but the rules of

natural justice (procedural fairness) apply, and the Board is to make a decision confirming, revoking or amending the Commissioner's decision.

Consideration of facts

Evidence was received in the form of copies of memoranda and correspondence covering most of calendar 2006 regarding internal notes and discussions and information from the Commissioner to the Mr Burdon, the Police, memoranda of incidents in the neighbourhood of the premises, and submissions put by Mr Burdon to the Commissioner. In addition Police officers gave evidence of their attendances at the premises, the records of incidents at or surrounding the premises, and the Commissioner's representatives gave evidence of their conversations and correspondence with Mr Burdon regarding those asserted incidents.

The incidents related to assaults and intoxicated behaviour immediately outside the premises, some of which were the result of action by people in the premises and others by people either seeking to gain entrance or simply present outside the premises (whether having been inside, or declined entry or not having sought entry, or later perhaps to seek entry, is of no significance to our decision).

There were no assertions that Mr Burdon or his staff were the direct cause of the violent incidents or even the intoxicated people becoming intoxicated who were involved in the incidents. Again, we reserve our conclusions on that as it may well be inferred from the evidence that intoxication of patrons and those outside the premises was caused by liquor sold or supplied on the premises. It is not however necessary to decide that here and now for the purposes of reaching our decision.

We determine that there were a number of incidents of unruly, disorderly, violent and intoxicated behaviour outside the Venom premises over at least a 10 month period to December 2006, whilst the out of hours permit was in force, and relevant incidents occurred during the hours of operation of the out of hours permit. Assaults, other violent behaviour, abuse, disturbance, unconscious people in the vicinity, refusals of entry, occurred on a weekly basis.

The parties had discussions and entered into correspondence to try to contain the issues. Mr Burdon made endeavours to contain the issues. He may have been partly successful, but he has not been wholly successful.

The evidence was to a large extent as one would expect: reports of incidents, reports of victim complaints, reports of court action, reports of first hand attendance by police at melees and fights between intoxicated people.

Whilst the evidence might imply a greater level of disruption, annoyance or disturbance, it is not necessary for the Board to take account of such as might be implied. It is sufficient to take account of the minimum that has been proved to our satisfaction to reach our conclusions.

Decision

The premises “Venom” is licensed under the *Liquor Licensing Act 1990*. The licensee is Mr Burdon.

He held an out of hours permit in respect of the Venom premises, as described above.

It operated for a number of nights a week on a regular basis through to 5am or 6am.

The Commissioner cancelled the permit, hence the closing time must be midnight at the latest, unless another permit is granted by the Commissioner.

The sale of liquor on those premises during the times permitted by the out of hours permit was causing the occurrence of disorderly conduct in the neighbourhood, and we think also (although not required for this decision) in the premises. The nature of disorderly conduct is described above (including intoxicated people in the neighbourhood, fighting, and violence and assaults, and more general ‘disturbance’ of a lower key but nevertheless relevant).

The sale of liquor was causing this in two ways:

First; due to the consumption of liquor sold during those hours by customers, and their interaction with each other and other non-customers in the vicinity.

Second; due to the fact that the premises was open and able to sell liquor, and people were drawn to the premises to gain entry (or to be refused entry), and their interaction with other such people and other people who were customers.

Cancelling the permit will reduce these incidents. Since the cancellation of the permit, a permit for lesser hours on a temporary basis has been issued, and the Commissioner gave evidence that less incidents have occurred in that time.

Some collateral issues arose:

- Mr Burdon submitted that if he had greater Police assistance in a presence at or near the premises, the incidents would be contained. Comment: it is not relevant that outside intervention might assist or reduce the problem. The problem is there and the sale of liquor during the relevant times is causative. Removal of the permit will remove a significant if not the total problem.
- Mr Burdon submitted that more police resources are made available in other areas. That is irrelevant, if it is true. Again, it is not for the Police to contain the problem so far as relevant to this appeal. How the Commissioner of Police allocates resources is not to the point. The submission is not accepted as demonstrated and if it were, it would be irrelevant. Clearly in any event significant police presence and resources have been made employed in attending the premises.
- That there is financial pressure (as submitted in evidence by Mr Burdon) to remain open longer to be viable is not relevant to our considerations. We can sympathise with his difficulty in gaining sufficient income to remain viable, and accept that he perceives that it is necessary to remain open from late

evening to dawn, but if it is causing disturbance, the licensee's profitability is very much secondary, if a consideration at all. Indeed, it may well be a consideration in favour of cancellation, as the fact of being 'financially compelled' to remain open in the face of such disturbance may be undue pressure on a licensee.

- That some potential customers will be disadvantaged because a service is not available is not of such significance in the balancing of issues where recurrent violent incidents and intoxication around premises is demonstrated.

We affirm the Commissioner's decision to cancel the out of hours permit.

We contemplated whether we should 'direct the Commissioner to take such action as we consider appropriate (for example, amend the terms of the permit) but conclude that a decision as to providing an alternative permit should be left with the Commissioner, who is better equipped in this instance to take account of broader considerations and issues surrounding these premises. The Commissioner should have significant discretion in considering the grant or refusal of a permit application, and the terms (especially hours permitted), and such permits may need to be flexible, to vary and be amended from time to time.

PA Kimber; Chairman.

L Finney; Member.

K Sarten; Member