

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Nicholas Hanigan
Nature of application:	For an on licence
Premises: name	Cargo
Premises: address	148 Brisbane Street, Launceston
Name of decision:	Cargo
Date & place of hearing:	Launceston, 20 th June 2007
Date of decision:	24 th June 2007
Members of the Board:	PA Kimber (chairman), L Finney (member)

DECISION

Application

Mr Hanigan applies for an on licence for premises in the heart of Launceston, just west of the Brisbane Street Mall, with intent to seek an out of hours permit from the Commissioner for Licensing if successful in this application.

The application was advertised and signposted and attracted some opposition.

The expressed intention was to provide a ‘cocktail bar’, with target audience of ‘more mature audience’. Limited food would be provided, with no effective kitchen on the premises, and the Applicant stated he would provide ‘food platters on Thursday and Friday evenings for the after work crowd’.

Bar snacks of bagged chips and nuts would be available.

Entertainment was proposed limited to background music and periodically acoustic soloists or duos.

The premises are in the process of renovation. The Applicant stated he intended to make them into a non intrusive lounge atmosphere, with focus on a meeting place for after work or before and after dinner. He said he wished to be able to limit entry to those over 21 years of age (although that might be illegal relevant to the Anti Discrimination Act), his intention at least being to offer premises which would attract those over 21 years.

The Applicant indicated he would seek to make an arrangement with a nearby coffee shop to provide food to the premises for patrons, but the detail of this had not been agreed and could not be provided with any certainty.

Spirits, including those made in Tasmania, wines, and beer would be provided. The Applicant stated he would provide a range of no alcoholic beverages too, but no detail was given.

His indicative hours were noon to 1.30am the following day, seven days a week. Security cameras would be installed, and independent contractor licensed crowd controllers would be engaged, for safety, for Friday and Saturday nights.

The premises consist of a typical small inner city shop front 2 story building, of width approximately 5 metres by depth 15 metres, operating on ground level only.

Law

The Board must make a decision which in its opinion is in the best interests of the community. The only alternatives are to direct the grant or refusal of the licence.

Objections

The manager of the adjacent premises, Ms Tuyet Vo of “Fan Everyday Wear Australia” lodged a written objection and attended the hearing to submit that the licence should not be granted.

Ms Vo indicated concerns for safety of herself and staff with the risk of people impacted by consumption of alcohol being in and about her premises spilling out or entering or vacating or smoking in the vicinity. She gave reality to these concerns by relating circumstances which occur already in the locality where abuse, inappropriate language, harassment etc occur. She felt that these community issues were not likely to be assisted by the addition of adjacent premises the predominant business of which would be sale of alcohol.

In verbal evidence at the hearing, Ms Vo indicated she sometimes works until 2am from her Launceston store, preparing for supply to other stores, and that she finds it common place for there to be inappropriate behaviour from drunken people in the locality. The Applicant in response concurred that such was the case. He also thought that being open and having his premises alive and with security staff at the door, might tend to deter such anti-social behaviour. His comment was that he hoped his premises would be beneficial.

The AHA representative, Ms Melanie Bonde cross examined the Applicant and made submissions. This indicated that the Applicant was hoping that no adverse issues would arise, and would leave issues which might arise to the discretion of his independent contracted security personnel, who would be on site from 9pm on the later days of the week only.

Ms Bonde's submission was that this was a sensitive area, with a number of licences and alternatives already available for the public, that the applicant's strategies and policies were inadequately formulated, and that there was a significant risk of reduction in the amenity of people in the neighbourhood due to the business operating.

Consideration of facts

1. The facts are accepted as stated by the applicant.
2. The premises would provide a quite small inner city bar.
3. Food arrangements are not a substantial or significant component of the application. No operative kitchen is suggested, and food will not be available to patrons at all times when liquor is available, except to a very limited degree. Generally, provision of food is considered to be beneficial in contributing to minimising the adverse impact of consumption of liquor. To have the principal or even only purpose of premises to be the provision of liquor for immediate consumption, without alternatives of substance and import, brings with it the capacity for contributing to intoxication, and problems obviously associated with that. The limited arrangements proposed for food availability

from adjacent coffee shop premises were not demonstrated with clarity or persuasion to be likely to be feasible, functional or significantly beneficial. Little detail was provided. The proposition was added to and amended on the go whilst the hearing took place in response to apparent criticism.

4. Under cross examination, the Applicant indicated that he expects a not insignificant number of his patrons would wish to smoke cigarettes, and with the law prohibiting smoking in such premises, that they would be obliged to smoke on the street. As we understand it, smoking must be no less than 3 metres away from the entrance, consequently, smokers would be required to be directed and corralled to the front of adjacent premises, the coffee shop or the dress shop, or out on the roadway. Whether those adjacent premises are open or not, it is not a desirable arrangement. Consider *Ryan v Port Phillip City Council [2006] VCAT 1219*.
5. The Board is left with the impression that the premises might well offer an alternative to existing bars, but would not add significantly to the social or cultural landscape of Launceston by adding anything of any variety or interest.
6. The expressions of concern by the objectors, in common with such concerns in many instances, could be looked at as mere expressions of concern without a real prospect of the adverse amenity issues arising. However, in this case, the small nature of the premises, the absence of food of any significance, the likelihood of people spilling out onto the street and being obliged to move away from the applicant's premises, and the position of the premises in an area already accepted as having some ongoing problems (being near the Mall and two existing general licensed premises), do not satisfy the Board that on balance the premises will be adding anything of value the community
7. The onus is on the Applicant, to persuade the Board that the grant of the licence is in the best interests of the Community.

Decision

The Board has a number of applications like the present from time to time. Some satisfy the onus, others do not. There are broad issues to be taken into account in exercising the discretion vested in the Board by Parliament. To some extent the Board must have faith that an Applicant will be able to run premises safely, within the law, and that the result of the sale of liquor will be beneficial rather than detrimental. There is continuing concern in the community that the amenity of cities is being degraded by inappropriate conduct contributed to by intoxicated people, and that to a significant extent this occurs in and around licensed premises.

The Board has two significant opportunities to assist the social policy of avoiding the harm associated with the consumption of liquor: first by not licensing premises, and second by cancelling or suspending licences where undue disturbance or annoyance is demonstrated in and around such premises, and the use of the premises contributes to the cause of such disturbance or annoyance.

Other examples where the Board has declined to direct the grant of a licence in similar circumstances include *Proller* August 2006, *Red Square-Zambesi* May 2005,

In determining the balance in this matter, we are not persuaded that the premises will add to the social fabric, and have concerns that the use of the premises as intended will contribute to harm associated with consumption of liquor.

We direct the Commissioner to refuse the application.

PA Kimber; Chairman.

L. Finney; Member.