

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Adam Diggle
Nature of application:	For an on licence
Premises: name	Rapport on the Pier
Premises: address	Elizabeth Pier, Hobart
Name of decision:	Rapport on the Pier II
Date & place of hearing:	Hobart on 12 th October 2007
Date of decision:	1 November 2007.
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

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DECISION

We direct the Commissioner to grant the on licence for the reasons set out below.

Application

The Applicant previously applied, but through lack of evidence to support his application, it was refused. See decision *Rapport on the Pier 26th July 2007*.

The Applicant has made changes to the nature of his intended business and hence to his application, and the evidence in support was useful to support the application.

For a history of the premises, and the nature of the premises and the Applicant's intention in the first application, see the decision of 26th July 2007.

The application continues the concept originally advanced, with some refinement, some more specific undertakings to the Board, and changes.

It continues to be principally focused on sale of liquor in a tourism locality, and with a long bar with small lounge area at one end. Glass sliding doors would provide access. It remains an application for what would be a wine bar, with some more select beer on tap.

The locality is described in the earlier decision.

The objectors were the same people as in the earlier hearing, with substantially the same concerns.

The Applicant's proposal was presented in a series of marketing or flip charts. That did not assist the Board, as it lacked substance or content. It would have been of more use in trying to encourage people to attend to find out more; that is, it was a marketing or advertising proposal lacking detail, substance or relevance.

However, in verbal evidence given by Mr Diggle and in answering questions from the Board and objectors, the Applicant was able to develop and advocate for his proposal. Whilst not the best presented application given the opposition presented, we find it is

adequate to address the criteria of the Act, notably the requirement that the applicant demonstrate that the grant of the application would be in the best interests of the community.

As much by position as by intent in presentation, the premises is intended to have a tourism focus. It could not help but do so. The State has an effective and important tourism industry, and tourists and locals concentrate in the Sullivans Cove area at various times.

The Applicant asserts that it is essential that hospitality premises continue to be developed and have a significant diversity to satisfy tourist demands, and to encourage development of the tourism industry. We do not disagree with that, but whether or not any particular proposal contributes to that depends on an assessment of it.

The Applicant says that the proposal has been a long term vision of his and his business partners, which has slowly developed over the last few years with the assistance of advertising and design consultants Chris Drury and Associates.

He says that the market he is focusing on is the 30 to 55 demographic and the 55+ demographic, principally professional people with a particular interest in the business environment. He says this market is not well catered for, and whilst it may have found a place in T42 (adjacent) in the past, the principal audience which that licensed premises caters for is not the demographic the Applicant seeks to attract.

The Applicant states that his architect consultant firm is well renowned and with a proven record of developing excellent establishments, and that in conjunction with an enthusiastic brief, the premises will be of high quality and designed to attract the desired audience.

The predominant service will be, as expected, beer and wine. The intention is to focus on Tasmanian wine. A point of difference is intended to be provision of detailed information about the wine, winery or brewery, and recommendations, details of location and history.

The Applicant supported his contentions of there being an audience for his intended service with data from Tourism Tasmania, and general assertions that tourists seek to visit at least one winery whilst in Tasmania.

Marketing will focus on this to seek to attract the desired clientele.

In effect the applicant says there is a niche in the market ready for exploitation to the benefit of both the business and customer for the audience described, as the other facilities in the Sullivan's Cove area from Elizabeth Street Pier to Hunter Street do not cater for the audience they seek to attract. His example is that T42 is mainly aimed at a lower demographic: the 18 to 35 years, and the Hobart Function Centre is host to larger events rather than individuals or small groups. Marque IV (restaurant) he says is of an entirely different style to his planned enterprise.

He says the target market is considered to be more loyal (i.e. likely to provide repeat business) and has a 'higher spend ratio'. It is difficult to see how loyalty will be relevant with interstate or international tourists, and no explanation was given of the term 'higher spend ratio'. Suffice to say we expect it means that at least locals in the target demographic are likely to return if they enjoy the premises, and that they are not likely to have difficulty paying the bill.

Security plans were detailed, acknowledging that the Hobart waterfront area has continuing challenges in this regard. The Applicant indicated a willingness to work with existing operators and authorities to minimise impact and to provide 'adequate' security. He has experience as a licensed crowd controller, or security person.

Noise: the Applicant recognises the sometimes-sensitive nature of the premises and surrounds, and understands that noise must be contained within the premises.

Some support for the application was tendered in the form of documents or verbal evidence by consultants engaged. This was not particularly persuasive, but has been taken into account positively.

A draft income and expenditure statement was presented. Cross examination of the material led us to a conclusion that the figures are general predictions, based on the current operation of the Fit Burger business run on the premises and have a substantial prospect of being in fact at variance.

After conclusion of the hearing and criticism of not having a wine list or food menu, the Applicant 'dropped' a document 'suggestions for wine list' including a list of some Tasmanian wines. It is clearly not well developed in content or in purchase price or retail price. It was not made available to the objectors for comment. Nevertheless, the Applicant has indicated he has established links to advisors and is likely to develop an appropriate list to meet his intentions in due course.

As to food, the Applicant indicates the premises are not suitable for a fully fledged food operation in conjunction with their intentions as predominantly a wine bar. Whilst provision of food in any application is a positive factor, it is not always essential. Bar nibbles including cheese platters is all that is intended in this instance. The Applicant stated that food of the nature intended will be available at all times the premises is open.

Changed from the previous application is that the DJ proposal is out, and low level sound system music is included. That appears more likely to be in keeping with attracting the target audience.

The intended hours were stated as 11am to midnight 7 days a week, with earlier close if quiet. A clear expression that no out of hours permit would be sought was taken into account by the Board in determining this application, and we would not expect an out of hours permit application to be made to or approved by the Commissioner. In addition the Applicant said the method of operation would include 'last entry' at 11pm, no further service of liquor after 11.30pm, and clearing the premises at or very close to midnight. *With that undertaking*, it is difficult to see how the operation of the premises could cause any significant problems in the locality.

Research referred to and not contradicted indicated that in recent months there had been an increase in tourist economic activity in Tasmania. The Board takes account of local knowledge about the generally buoyant state of things in the Sullivans Cove area, and the present likelihood that this will continue during the spring and summer period.

Mr Diggle presented his ideas and intentions on consistency of uniform for staff, presentation, quality, dress codes, and on premises marketing, look and feel.

Concern was raised by objectors in regard to ensuring the walkway on the West side of the premises is not obstructed by the Applicant's activities if the licence is granted. Whilst there was significant debate about this, the Board is confident that the Applicant has the intention of ensuring the area is kept appropriately clear, that the Body Corporate and Landlord (Treasury and Finance Tasmania), and ultimately if necessary by enforcement or suspension or cancellation, the Licensing Board, have power to ensure this is honoured, such that it will not prove a concern. If it does prove problematical, it will be the Applicant's onus to fix it in the first instance.

Likewise with the prospect of noise emanating from the premises causing concern to people socialising, working or seeking to sleep in the vicinity: it is expected that noise will not emanate from the premises to cause annoyance. The onus will be on the Applicant.

The premises are already used for the Fit Burger business, and will be renovated at an estimated cost of \$120,000.00. Details of architect and building contracts were presented and are unobjectionable.

The objectors' main points taken into consideration are thus:

- Noise: intended arrangements if honoured are satisfactory. If not honoured, an application for suspension or cancellation of the licence would be expected.
- Blocking the walkway: refer above – adequate controls exist.
- Security: given the relatively early arrangement for last entry, drinks and closure, and the Applicant's experience in that area, the Board can be content that arrangements will be satisfactory, or amended to be so.
- Financials: whilst the budgets are considered 'waxy' or 'rubbery', the Board has the impression that the Applicant will manage to pursue his business plan, containing expenses or suffering slimmer margins. Whilst business failure is not desirable it is not the most significant concern of the Board.
- Apparent highlights of the application, as put forward by the Applicant, were underdeveloped, not internally consistent, nor comprehensible by an ordinary person to whom they are explained. The Board concludes that the Applicant had difficulty separating marketing puffery from intended reality, and that nevertheless he does have plans to establish the premises in a manner consistent with seeking to attract his target audience, and also, that there is opportunity for the Applicant in the premises to contribute to the services desired by tourists and locals in the waterfront area, without adverse repercussions.

Mr Martin Robinson gave evidence for the Applicant. Mr Robinson is a consultant working with Chris Drury and Associates. He referred to growth in tourism in Tasmania. The information is accepted. Mr Robinson also spoke about the T42 premises generally being more attractive to a younger demographic than the one the Applicant seeks to pursue. In the end nothing much turns on the different premises or marketing intentions.

Mr Bill Lark from Lark Distillery gave evidence in support of the application. He supported the provision of an avenue for retailing Tasmanian goods including wine and spirits, and the benefit of increasing the number of vibrant premises working in the Sullivans Cove area. Mr Lark has considerable experience in the area and in manufacture, wholesale and retail of liquor. He indicated his perception that the intended premise would offer a complimentary service to T42 in regard to patron service.

Ms Kate Gotowski of 'Navigators' a ferry service in Sullivans Cove gave evidence. She indicated a plan to link the cruise company business with the intended *Rapport* business, and to promote and develop synergies of service to consistent clientele seeking a 'Tasmanian' experience. Some concepts and ideas regarding joint marketing were stated.

Mr Daniel Spencer gave evidence. He is involved in the Applicant's intended business.

Mr Richard Latham gave evidence opposing the application. He is a director of the company which owns and operates T42 and Marque IV and Fish Frenzy (all nearby businesses). His legitimate concerns are that the particular space is used effectively and does not become a negative aspect to the Pier. His concerns are genuine in that his perception is that it is a space which has not worked as effectively since the renovation of the Pier some 10 years ago, and has had a number of businesses.

Mr Latham indicates he welcomes competition, but that he doubts the accuracy of the Applicant's strategy, and fears it will fail, damaging the reputation of the Pier enterprises including those in which he has an interest. The Board understands Mr Latham's concerns, but find it a long bow to decline a licence on that basis. Generally the Board is concerned to ensure that the stated nature of operation is honoured, but does not have a significant interest in whether the Applicant's business is successful or not. If that were a criterion of importance, many premises would not get developed with the funds from hopeful operators. Sometimes it is development by one operator who fails which gives rise to an effective business in the same premises with a lower cost structure.

Mr Jim Reid and Mr Roger Palmer (both involved in the T42, Marque IV and Fish Frenzy operations) expressed the same concerns as Mr Latham.

Ms Victoria Sales from the AHA (Tas Branch) made submissions that

- There is no benefit to the community from the proposal;
- Concerns re amenity in the neighbourhood;

- Sullivans Cove being a sensitive area, that greater quality and probative evidence should be required to justify the grant of licence.

Ms Sales expressed concern at the absence of food in the proposal, and potential for the plan to fail. She referred to the recent *Cargo (Launceston)* refusal by this Board as an analogy.

The Board concludes that whilst Ms Sales' concerns are legitimate, that the mix of licensed premises in the vicinity of the premises will encourage the safe consumption of liquor in the area and that if the concerns do eventuate in reality, then the Applicant has the intention to contain and reverse any adverse trends, and that in any event the Applicant, Body Corporate, Landlord and Commissioner have power between them to ensure that the broad objectives enunciated are adhered to, for the benefit of the community.

The *Cargo* analogy is not entirely pertinent as in that matter the premises were intended to be of higher intensity, and the Applicant there had no plan or method for containment of amenity issues which were already in fact a reality in that neighbourhood.

Law

The principal concern is s24A of the Act which requires the Board to make a decision in the best interests of the Community.

Consideration of facts

For the reasons contained in the above review of the evidence, we conclude that the grant of the licence will be in the best interests of the community. Whilst, as with any application, there are risks of the business/premises meeting the hopes and aspirations of the Applicant, and finding the target audience enunciated in the hearing, the Board sees that these visible premises will need to keep to the business plan, keep seeking the target demographic and make all the endeavours stated to contribute to the amenity of the neighbourhood. If the reality turns out to the contrary, the licence holder can expect suspension or cancellation action.

Decision

We direct the grant of an on licence.

PA Kimber: Chairman.

K Sarten: Member

D Logie: Member