

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Adam Diggle
Nature of application:	For an on licence
Premises: name	Rapport on the Pier
Premises: address	Elizabeth Street Pier
Name of decision:	Rapport on the Pier
Date & place of hearing:	Wednesday, 18 <sup>th</sup> July 2007, Hobart
Date of decision:	26 July 2007.
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

## DECISION

### **Application**

The Applicant is the operator of Fit Burger restaurant (formerly Pashas Restaurant), an operation which currently has a ‘special licence’ allowing the sale of liquor with a meal and limiting sales without a meal. The Applicant applied for an on-licence as a consequence of a proposed major shift in focus of the business from a restaurant to an operation the applicant described as a ‘wine bar’.

The Applicant seeks to trade from 11am-midnight and indicated the potential for an out-of-hours permit application. The proposed change would include a complete refit of the premises including the removal of the commercial kitchen and the installation of a bar running the length of the premises with a small lounge area at one end. There would be glass sliding doors opening to the current external seating areas, both toward the front of the Pier and the current pedestrian pathway at the side. The Applicant indicated the bar would cater for 50-60 patrons given the limited floor space. The Applicant clearly stated that the application was only for the interior of the premises and despite the leasehold incorporating some external areas the desire was to maintain all alcohol service and consumption to the interior. It was acknowledged that on occasion some patrons may wish to smoke outside, however they will not be permitted to take drinks into this area. Further, in consideration of noise, the doors to the premises will be closed at 10pm and no new patrons would be served after 11.30pm. Information would be provided to patrons about where they could go in the precinct should they wish to continue their evening experience.

Fit out work is estimated to cost \$123,000, and architects and builders have been consulted. Design and light entertainment features were described –including LCD displays of tourism information or graphics and news programs, also pre-recorded amplified music stream would form part of the ‘entertainment’. Acoustic treatment to prevent noise escaping to the accommodation premises above is part of the brief.

A DJ would be engaged on Friday and Saturday evenings. The Applicant asserted he would seek ‘high end business patrons’, but the exact marketing strategy, or dissection of the demographic factors and services in the vicinity was not presented, leaving the Board with the impression that this was very much a desire rather than something which could be guaranteed by the mere opening of the premises after the renovation and changed fit out.

The Applicant expressed that predominantly the desire was to operate as a wine bar and that to this extent and consistent with their desire to be supportive of the Tasmanian Wine Industry, all wine sold on the premises will be Tasmanian. In addition to this the Applicant stated that there would be four beers on tap from Boags, a Tasmanian Brewery. The selection had yet to be determined however the fourth was to be a “low carb” beer consistent with the clientele the premises hoped to attract. A full range of mixed drinks would also be available. Some bar type snacks in the nature of cheese and biscuits, potato chips and peanuts, etc would be available.

The Applicant stated that although the Fit Burger restaurant was successful the operating margins were low due to the high labour costs associated with transportation of goods to the premises (delivery of lettuce and tomato), processing of goods (‘cutting up lettuce and tomato’), serving the goods, and subsequent cleaning. By way of contrast the type of operation they would propose only involved ‘pulling the top off a beer’. Profitability with such low overheads would be much more attractive.

The Applicant asserted that the marketing would focus on marketing to groups for product launches, seminars as well as general bar operations. The expertise for drawing this business crowd (referred to by the Applicant as ‘suits’) being the synergy

between the type of clientele one of the partners currently offered training seminars to (real estate agents were named as a particular group).

### **The Locality**

The premises are on the right hand side of the commencement of Elizabeth Street Pier. They are located within an active entertainment and tourism precinct in Sullivans Cove. In the immediate vicinity are T42, Fish Frenzy, the Pier Convention Centre, and Marque IV. In addition accommodation premises are directly above, which has required the current operators to develop their businesses with sensitivity to the needs of guests. Pedestrian traffic paths available on the Pier will require those attending functions at the convention centre, accommodation guests and some guests of T42 and Marque IV to pass in the immediate vicinity to the proposed premises.

### **Law**

The substantive question we have to answer is whether, in our opinion, the grant of the licence is in the best interests of the community.

### **Objections**

Representatives from the Australian Hotels Association (Tas Branch), and adjacent licensed premises T42 and Fish Frenzy attended, made written submissions, and maintained objection to the grant on the basis that, as expressed, there was a risk of duplication of existing style of premises without corresponding benefit to the community in the sense of diversity or quality, that there was risk of exacerbation of noise and disturbance in the vicinity, and also that the public order impact of a bar simpliciter at the front entrance of the pier would have adverse consequences to patrons wishing to gain entrance to the other restaurants, accommodation, and function premises on the pier. In essence, that such an establishment would generally detract from the vicinity. Concerns were raised about the economic viability of such an operation, running with just a bar and limited floor space. Express concerns regarding the ability of the operators to maintain order on the Pier, keep people within

the premises while drinking and control noise emissions were stated to be at the heart of the concerns. In addition, the concern was if such a premise was to be poorly run that it may detract from the current enjoyment experienced by patrons at other establishments on the Pier, alongside concerns of what the business may metamorphose into if the monetary reward did not come as anticipated from such an establishment.

Normally the Board finds that the heart and substance of such objections is the perception of a threat to profitability caused by trade competitiveness. Often that threat carries with it potential benefits resulting in improvement to services to the public, and often results in an increase in activity economic and social, sometimes to the benefit of all concerned.

Nevertheless, the objections do raise the reality that the service intended to be offered is solely or substantially predominantly the provision of liquor.

### **Consideration of facts**

1. The immediate feature is the reduction of service of food. There is a clear intent on reliance on sale of alcohol. Indeed, the Applicant via his intended partner in the venture, Mr Daniel Spencer, indicated that the profitability was guaranteed by the ease of removing caps from liquor bottles to serve to customers, and that the removal of food services would reduce the cost of service. Whilst licensing can assist the economic good of the community by enabling a business to commence or to be more profitable, the simplistic statement by Mr Spencer as to the desire to serve liquor for a business is not of itself, in this instance, sufficient to satisfy the Board that the grant of the licence is appropriate in the best interests of the community.
2. The Applicant's presentation of evidence and submissions did not give the Board confidence that what was intended to be offered was going to add positively to the social, cultural, recreational or economic benefit of the community. The information was directed to the strategic realignment of the business to reduce cost and improve profitability by reducing services.

3. The positioning of the premises, in the heart of the Sullivans Cove area, means that care needs to be exercised before a licence is appropriately to be granted. In such circumstances a more careful and in depth consideration of the market, in the context of what is intended to be provided is appropriate. Such evidence in favour of this was not presented.
4. Whilst the Board can be sceptical of the objector's motives, including as they may well do, trade protective components, we set that aside, and consider that their objections do nevertheless have an element of legitimate community concern, and that the grant of the licence may have adverse impacts in the manner described in the objectors' material.
5. We note a supportive letter from Jenny Williams of the Hobart Function and Conference Centre, indicating that in her view the intended premises would offer 'globe trotting customers a private, state of the art venue, which will prove to be in keeping with world trends rather than the usual noisy, relaxed family style beer and skittles', and offering support for this "important application". Ms Williams did not attend the hearing and was not able to be examined on her beliefs regarding the intended premises. There was some debate concerning the legitimacy of support letters from objectors, again neither view in a position to be cross examined.
6. Similarly an entity "Wine South" (sic?) self described as a cooperative marketing body for 23 cellar door operations in Southern Tasmania provided a letter of support, but no one from the entity attended to be examined. Clearly, with a brief of marketing their product, support for a bar which may have expressed the intention to sell the product, is a likely result. In evidence at the hearing Mr Spencer indicated intent to focus solely on Tasmanian wines. That may well be the case, but how that differentiates the premises from other venues offering bar type venues was not made clear.
7. Mr Spencer's evidence was that the area is a high cost site. It may be, and it appears to the Board that the cost of the site may be directing the Applicant towards an enterprise that is lower cost, higher turnover, but not necessarily

providing as much beneficial service to the community as other mixed hospitality businesses in the locality.

8. The Sullivans Cove is a sensitive area. There have been recent reports of issues of concern regarding crowd control and anti-social behaviour. Some greater degree of evidence indicating benefit to the community is necessary in this instance than has been provided by the Applicant with regard to the intended nature and operation of “Rapport”.
9. The Applicant was given the opportunity to present further information in support of his application and, if required, an adjournment. The Applicant stated that such information as had been given to the Board in support of the application was all that was to be relied upon and should be determined to be sufficient. Unfortunately, given the sensitivity of Sullivans Cove precinct and the general policy expressed by the Board in previous decisions, in particular relating to on licence applications, such was not the case.

### **Decision**

We do not consider that the Applicant has met the onus on an applicant for such a licence in the circumstances surrounding the Sullivans Cove area in demonstrating that it would be in the best interests of the community for this on licence to be granted.

We direct the Commissioner to refuse the application.

PA Kimber; Chairman.

K Sarten; Member.

D Logie; Member