

LICENSING BOARD OF TASMANIA

In the matter of an Application under the
Liquor Licensing Act 1990 by
Eusebio Bosch for an
on-licence for premises at
Upper Level, Murray Street Pier, Hobart
known as **Sisco's**.

Reasons for Decision

Dated: 26 April 2006.

THE APPLICATION

This application was heard at Hobart on 20 April 2006.

The Applicant lodged an application describing intended changes to the operation, style and format of his existing, long established restaurant 'Sisco's'. The application was advertised and signposted.

He explained at the hearing that he intended to apply for an out of hours permit for the premises, should he be successful in the application for an on-licence.

He asserted his intention is to offer an expensive, exclusive and smart venue with an emphasis on comfort, quality and variety of services. His family would surrender the existing special licence (restaurant) in the event he is successful in this application. He stated he intends to spend between \$200 000 and \$300 000 in refurbishment.

A previous application for an on-licence (restaurant) was successful, but was not proceeded with due to failure of the Applicant to proceed with the necessary leasehold arrangements to extend his licensed area as then planned.

He now seeks an on-licence per se, on the basis that his intentions are not now to run premises which are predominantly a restaurant, as is a requirement for such a licence (ss. 8, 24A(3) and 42(1)(fa)).

Mr Bosch seeks the on licence because of the greater freedom it offers over an on-licence (restaurant) or a special licence (restaurant), each of which have their own limitations. The principal additional freedom will be the ability to serve liquor without meals, and removal of the obligation to be, predominantly, a restaurant.

The Applicant stated he intends to continue to run his restaurant during normal dining hours, for lunch and dinner, but does not intend to offer food from the normal menu, or to be obliged to offer any relatively extensive range of food at all after normal dining hours (e.g. 10.30 p.m.), but would seek to be open for catering to the more mature and more financially able customer seeking an evening drink or late night drink without necessarily dining, or after having dined elsewhere or having been out to some entertainment. He explained that he perceives the clientele he wishes to obtain would be likely to stay until 2 00 a.m. but would seek a 3 00 a.m. out of hours permit for nights later in the week.

Of course, the issuing of out of hours permits is a matter for the Commissioner, not the Board, but the consideration of the application for a licence will be dependent on factors including the intended out of hours operation. The on licence itself operates only until midnight (s. 8). The Board takes account of intentions, and as the Commissioner and Board, albeit independent, act with the same substantive criterion in mind (the best interests of the community – s. 24A(1)) the decision making for licence and associated permit inter-lock. The intentions expressed by the Applicant in the licence application regarding his out of hours business should be honoured in the manner in which the business is run during those hours. The expression of intent in the application should be re-inforced by the terms of the out of hours permit, and the conditions attached to it.

The Applicant stated he did not intend to engage security personnel, 'crowd controllers' or the like, as he did not expect he would need them, given the clientele he desires to attract. This aspect of the application drew criticism from objectors, as appears below.

In response to such criticism, the Applicant stated that 'if it became necessary' he would engage security personnel to protect his existing client base, his desired patrons, and from other persons congregating or moving in the vicinity.

He stated he did not intend to provide entertainment on any regular basis, but as at present, a Flamenco night or similar associated with a Spanish restaurant would continue.

He stated that an open balcony area would be closed off in the process of renovation. Consequently, patrons desiring to smoke would be shown down the stairs to an external area where ashtrays would be provided.

The Applicant also gave some evidence, although not supported by any documentation or corroborative material, about requirements of planning authorities and head landlord (Tasmanian Ports Corporation Pty Ltd - TasPorts) apparently intent on preserving the quality and integrity of the premises.

This too was a concern of Mr Geoff Copping, the proprietor of adjacent "Blue Skies" restaurant, and a suggestion that the matter be adjourned to enable the head landlord and possibly other interested parties and the Applicant to confer on a formal agreement about what will be permitted and agreed to be provided, was not taken up by the Applicant.

In more detail, the Applicant described his intended business in his application document received 7 March 2006. If the licence is granted, then we expect those factors to be adhered to. If they are not, then it would be evident that the licence had been procured by misrepresentation.

We mention some of those matters, as expressed by the Applicant to be provided in the restaurant and bar/lounge:

- Style & décor upgraded to more 'up market' level;
- White table cloths;
- Ice buckets on stands;
- Extended wine list;
- Vintage wine display;

- Formal waiting staff uniforms;
- Regular staff training/education;
- Revision to the current menu;
- Riedel glassware throughout;
- Remodelled first class international standard cocktail bar with emphasis on upmarket beverages;
- Lounge: Sophisticated style with table service of beverages, soft mood lighting with romantic feel, aimed towards a mature and select market. If the market dictates, late supper meals available from a small menu selection of house favourites; and
- Décor; comfortable, lavish and luxurious.

Evidently the Applicant has some degree of particularity about his intentions, but also seeks to have some degree of flexibility, in case the market he intends to encourage does not seek exactly what he intends to provide.

REPRESENTATIONS

Representations were received from the Applicant's neighbour, Mr Copping of Blue Skies. Mr Copping indicates support for the intended improvements, but concern at the change in style of licence. The concerns expressed in Mr Copping's submission of 22 March 2006 were responded to by the Applicant in a subsequent document and at the hearing.

In part, he asserted that the licence he holds (a special licence – restaurant, with casual drinking authority for specific areas) would meet the requirements the Applicant pursues. However, Mr Bosch responded that he desires more flexibility, and in particular that he does not necessarily wish to be predominantly a restaurant, particularly after 10.30 p.m.

Mr Copping asserted he had concerns about noise that may emanate, and that problems in the past had been addressed, and the concerns were not of great significance in his representation. Mr Bosch responded that he would ensure noise would be appropriately contained such as not to be a nuisance to neighbours.

Mr Copping also expressed concern at the prospect that if the intended new 'formula' does not work financially, then the business might be sold, and a new operator may develop a different and more intensive formula, with deleterious effect to his (Mr Copping's) business, and the amenity of others in the vicinity.

This is a common expression of concern from those with existing businesses, and neighbours to intended new businesses. This Board has tried to reconcile the concerns in the past by letting it be known that we expect applicants to provide their service in the manner advanced in their application documents and evidence at the hearing. That applies in this matter. There are avenues within the Liquor Licensing Act to encourage adherence to such expressions, albeit that it is to be expected that businesses will evolve and change over time.

Mr Copping also expressed concern that he felt the lack of intention to provide security personnel was naïve on the part of the Applicant. In addition, he felt the absence of such an intention meant that the Blue Skies property might be at risk of damage from patrons refused entry or others 'drawn to the light' of activity.

Such matters can always be covered by requirement attached to the out of hours permit which will apply when the Applicant's premises trade past midnight. Such permits, issued by the Commissioner, are normally on an initial 3 month review, and additional conditions can be placed on the subsequent 12 month permits to meet changed circumstances or perceptions (for example, it may be that security personnel are perceived to be necessary, and hence a condition can be imposed requiring that, in detail).

Mr Bosch's response was generally to the effect that the patrons he expected would be interested in his premises were not likely to cause the problems of concern to Mr Copping. Be that as it may, there is a reality that open premises attract not only those the operators' want, but also those they do not want, and some must be turned from the door. The possibility of this means that the need for security personnel may need to be monitored.

The Board's conclusion is that whilst a legitimate concern, it is not something which, in the overall context of this Applicant, these premises, and the intentions regarding nature and style of operation, will be likely to lead to harm or damage associated with consumption of liquor. Further assurance will come from the Applicant's intention to make some management changes if needed to ensure that is the case, and that such changes can be reinforced by permit conditions or withdrawal of any out of hours permit if necessary. There is also the head landlord's intention, as expressed by the Applicant, to ensure that the premises do not become a contributor to adverse impact on the amenity in the locality.

Other representors were the operators of nearby licensed premises, Isobar and Customs House Hotel, Messrs Tony and Paul Jubb, and the Australian Hotels Association (Tas Branch). They echoed concerns (dealt with above) made by Mr Copping, and also about the prospect of noise escaping to the detriment of overnight guests at the Customs House Hotel. The Board indicated clearly that we do not expect noise will escape the premises and unreasonably interfere with the rest and sleep of overnight guests in nearby residential accommodation.

Ms Melanie Bonde on behalf of the AHA submitted that the Applicant had not demonstrated a need for the licence, particularly in what she asserted is known as a problem area with liquor. She also submitted that the Applicant over-estimated the nature of the clientele he will attract, and that if crowd control is not in place then the manner of sale of liquor will be irresponsible. Ms Bonde also noted the reluctance to provide food after normal dining hours, and that this was "a negative". She indicated she would withdraw objection if the Applicant sought, instead, an on-licence (restaurant) licence. The Applicant resisted this approach to change the application.

The Board's view is that the AHA's concerns are adequately met by the Applicant's intentions regarding the nature and style of the premises, the reality that it is a change of degree from premises which have for many years operated successfully and without incident, and that the Applicant has demonstrated integrity in the mode of supply of services, including liquor, in the past, and is likely to do so in the future.

Issues regarding the prospect of change in the future have been covered above.

In conclusion, we are of the view that the persons making representations have genuine concerns regarding the prospect of a change in the nature of use of premises in their neighbourhood, but that in reality the change can be managed, must be done in accordance with the application, and can be reinforced (if necessary) by appropriate permit conditions on any out of hours permit, and other enforcement methods available in the Liquor Licensing Act.

We are of the opinion that it is in the best interests of the community for the Applicant to be able to manage his premises under the authority of the more extensive licence for which he has made application, and that whilst this is a balancing issue regarding the greater ability to provide service, employment and to effectively use premises in a vibrant tourist and hospitality area (on the one hand), and managing the prospect of detriment arising from misuse of alcohol (on the other) the scales come down in favour of the Application being granted in this instance.

DIRECTION

We direct the Commissioner to grant an on-licence, provided the existing special licence applicable to the premises is surrendered.

PA Kimber
Chairman

L Finney
Member

K Sarten
Member