

Licensing Board of Tasmania

In the matter of an application by Krzysztof Kowalski for an On-licence for premises at 180-184 Collins St, Hobart, to be known as "Club 7".

REASONS FOR DECISION

This application was heard in Hobart on the 17th June 1999.

APPLICATION DETAILS

The applicant filed substantial material before the hearing and also 'support material' at the hearing, and the applicant gave evidence and called evidence from his business associate Mr M Stanojevic, and Ms M Cengia.

The substance of the application is set out in the support material, which may be read with these reasons for decision .

In summary, the applicant seeks an on-licence to enable him to develop a night club in Collins Street, in premises which had, some time ago, been used as a church.

He indicated his experience as having been a casual barman at the Polish Club, some casual work overseas during travel in Europe in 1995, and a 12 week (one night per week) Drysdale course. He presently works at the RHH.

The applicant has undertaken a Responsible Serving of Alcohol evening course. His application addressed concerns advanced by objectors regarding car parking, vandalism, mess in the streets, crowd control and noise emissions, sound proofing, broken glass, opening hours, and general propositions regarding s216 and 39 of the Liquor and Accommodation Act 1990.

He proposed that there are 22000 people in the vicinity in his 'target' audience of 18 to 30 year olds. This was gleaned from Bureau of Statistics data. There was no contention about these numbers.

Food was not proposed as a predominant part of the operation. Indeed, details of proposals to enable food to be available were quite veiled; a possible arrangement, not yet formalised, with a take away food premises some 75m away from the subject premises, was advanced. Food in the nature of pizza parts might be brought to the site, or suggested to patrons as being available from the other premises 75m away. No further detail was given. Other than this, no food would be prepared or be available from the premises.

The applicant said he would ensure exemplary service from staff. He said what he intended to offer was currently in demand in Hobart, and unsatisfied by local licensed establishments. He said he intends to offer a new atmosphere, and thereby overcome the boring nature of existing licensed premises. He said the major competitors to his proposal would be Club Surreal (St Ives) and Regines (Wrest Point).

He said he would offer a ground floor dancing area with hitherto unprovided styles of recorded music. Three bars would supply tap beer, spirits, mixed drinks, bottled drinks, shooters, etc. A video games area would be available, a mezzanine area would provide some couches for patrons, and a pool table area would add to the games area. He said these themes are completely different to what is currently on offer in any one venue in Hobart.

The venue would be called Club 7, and the marketing theme would be around the seven deadly sins. Each night of the week, thematic alterations to décor, lighting or other services would reflect the different sins; he said, not in a manner to accentuate the sin aspect but rather in a take off manner. For example, he said, "envy" would be reflected with green lighting, and "gluttony" would be reflected with chocolate icecreams or cocktails. Other details were sketchy; relating only to vague assertions that the thematic changes would be reflected in music, lighting, special drink offers, competitions, cover charge, and happy hour times.

The applicant said the premises would be open 7 days a week, but that this might be re-assessed after 2 or more months, to ensure the opening hours were viable.

Capital investment, in the premises, intended to be rented from the freehold owner, was stated to be \$56,000 for building/structural, \$22,000 for bar systems, \$15,000 for furniture. Other recurrent expenses but included in initial set up estimates were \$10,000 for bar stocks, \$7,000 for administration, \$15,000 for advertising, and \$25,000 for starting capital. A total of \$150,000.

Plans were tendered illustrating the set up of the premises.

Security details were given (refer to the application documents). It seems the Applicant proposes to have 6 or 7 security staff on force at all times. One for each of the 3 bars, 2 on the door, and one roaming streets outside and in the vicinity. Proposals for the outside security personnel to be effective revolved around sighting inappropriate behaviour, and counseling patrons (or non patrons) to desist, seeking name and address details, and reporting to authorities of illegal behaviour. Surveillance cameras are intended to be located inside the club.

The applicant stated that to attract the clientele the applicants seeks to attract, dress and behaviour codes would be implemented.

The applicant said that providing food with alcoholic beverages is an ideal of responsible service of alcohol, and that the abovementioned arrangements for

directing patrons to a nearby pizza place would be arranged to implement this ideal; he said it is impractical to serve meals within the club, due to the nature of its operation. Otherwise, chips and nuts and bar snacks would be available. Free pizza squares would be provided on Wednesday, Friday and Saturday evenings; throughout the evening.

No parking is required by the Council town plan, and none is intended to be provided. Street parking is therefore proposed.

Evidence was given that noise emissions would not cause detriment to neighbours. This evidence was based on consideration by the applicant and his colleague, but no expert evidence was tendered. Internal noise levels would, he said, not exceed 100db. It was admitted that some noise would emit from the premises, but was stated to be less than the noise of cars driving past.

The applicant said that Regines, at Wrest Point did not cause adverse noise affect to in house guests, but the evidence on this point was from an unofficial source, and did not cover the question of whether external noise had been or is a problem from Regines. The relevance of noise emissions from Regines, in the context of whatever controls there are at that establishment, to the likely noise emissions from "Club 7" was not stated.

To counter external noise from patrons leaving the premises, the applicant said he would provide confectionery, to limit talking, and distract patrons from causing disturbance. How this would work, was not stated. The Board is aware that similar proposals form part of the strategy at St Ives, but, again, details were not advanced as to how this work, or its part in the effectiveness of the strategy at those premises, nor how (by analogy) the varied strategy would work at Club 7. The applicant admitted to not having consulted with 3 residential tenants in upstairs premises directly opposite Club 7 in Collins St, or to have taken their likely concerns into account.

In addressing s216, the Applicant said that his business would help the CBD hospitality industry in Hobart by introducing a new venue, adding to the variety of businesses. This, he said, would attract more people to the CBD, improving trade for all businesses. How this would occur, given the acceptance that most businesses in the vicinity would be either in opposition (competition) or closed (having day time trade) was not made clear.

By adding to activity and foot traffic in the CBD, the applicant said the streets would be made safer.

1. OBJECTIONS

The objections came from roughly three sources; those associated with the St Joseph's Catholic church and monastery, adjacent and at the rear of the proposed night club, and from nearby businesses of a different character (in particular, the proprietors of the "Teddy Bear Shop", Mr and Mrs Miller), and

from trade objectors seeking to explore the nature of the proposed business and the affect on the amenity of nearby residents and businesses. The AHA was represented by Ms D Harris, who gave evidence and made submissions helpful to the Board's deliberations.

The effect of the submissions countering the application is summarised, where relevant, in point 5 below "Consideration and Conclusions".

2. EVIDENCE

The Board took account of the written submissions of the applicant, and the written submissions of objectors, and verbal evidence at the hearing from the applicant, Mr Stanojevic, Michelle Cengia (all in favour) and Ashton Shirley, Adrian Coetzee, Denita Harris, Fr Peter Addicoat, William Craig, Mr and Mrs Miller, and Hydn Reynolds.

The submissions were cogent and directed to the issues required to be considered in accordance with s216 and the guidelines.

3. LIQUOR AND ACCOMMODATION ACT

All parties were aware of s216:

Policy to be followed when considering an application for a licence or permit

- 216** (1) *When considering an application for a licence or permit the Commissioner or the Board shall make a decision which, in the opinion of the Commissioner or the Board, will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State.*
- (2) *While, in coming to that decision, the Commissioner or the Board may have regard to any legitimate interests and concerns of any section of the community the Commissioner or the Board shall have greater regard for the legitimate interests and concerns of the community as a whole.*

4. GUIDELINES

The relevant guidelines, which need to considered in the context to give paramountcy to s216, in accordance with the Supreme Court judgment of Crawford J in *R v Kimber*, state:

THE GUIDELINES

The following is the policy which the Licensing Board of Tasmania intends will generally be followed when consideration is given as to whether or not a liquor licence or liquor permit should be granted and the conditions or variations to those conditions to be imposed in a special licence or permit, and other matters in relation to the administration of the Act.

Definitions:

Where, in these guidelines, the Board is to take account of the "interests and concerns of the community" that phrase means:

- (a) will have regard to representations made to the Board--
 - (i) by the council of the municipality in which the premises to which the application relates are, or are to be, situated;*
 - or,*
 - (ii) by any other person;**
- and*
- (b) will have regard to the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the Applicant.*
- and*
- (c) will determine whether the grant of the application is likely to have an adverse effect on the interests of the community in that area--*

but will not have regard to-

- (d) whether the business of any other licensee or permit holder may be adversely affected by the grant of the application;*
- or*
- (e) whether the business proposed to be carried on under the licence or permit would be successful.*

LIQUOR LICENCES

1 General Licence

The Board will direct the grant of a general licence unless the Board is of the opinion that the granting of a general licence would be contrary to the interests and concerns of the community in the neighbourhood where the premises to which the application relates are situated.

2 *On-licence*

The Board will direct the grant of an on-licence unless the Board is of the opinion that the granting of an on-licence would be contrary to the interests and concerns of the community in the neighbourhood where the premises to which the application relates are situated.

5. CONSIDERATION AND CONCLUSIONS

The witness for the applicant, Michelle Cengia, persuasively argued that the age and relative inexperience of the applicant should not tell against him. She said that people tell young people to 'get a job', but then significant barriers are erected preventing them starting new businesses. She said young people need to be given a chance to commence businesses, and that the ideas of the young need to be given some free range, as they would be catering for people of like mind.

The Board agrees with these sentiments. At the same time, Fr Addicoat submitted, in conclusion, that whilst there may (or may not – depending on the success of the venture) be gains for the applicant, there would also be losses for neighbours both residential and business. He said there are 8 residents in the monastery adjacent, and there was evidence of 3 residential flats opposite the premises in Collins St. He said that the St Joseph church facilities are used for meetings of parishioners after 10pm (and other times) where there would be overlap with the opening times of Club 7. He gave detailed evidence of concerns regarding amenity to neighbours; particularly regarding noise concerns, detritus in the streets caused by exiting patrons or persons turned away ('moths to the flame'), potential problems of broken glass, personal security and health issues. Refer to Fr Addicoat's witness statement tendered in the hearing.

The AHA representative summarised the concerns of all objectors;

There are numerous licensed establishments in the vicinity catering in some manner directly or in combination with the services intended to be provided by the applicant. Given this, there was no demonstrable need for the licence to be granted. Indeed, she said, the evidentiary burden had not been surpassed, such that the Board could be comfortable that there was a need for the licence to be granted. Ms Harris pointed to a number of licensed establishments in the vicinity which provide some of the services planned to be provided by the applicant.

She highlighted that the applicant's evidence was based on supposition and direct extraction of ABS data, with no significant or accurate extrapolation from that to a position where the Board could be satisfied there is a need for the services proposed.

Ms Harris referred to the *Blackstone Heights* decision, and the *Salamanca Food Fair* decisions indicating the Board's view (confirmed today) that

provision of food on licensed premises is a desirable adjunct to ensuring adverse effects of provision of alcohol services are minimised. She pointed out that absence of concrete plans for provision of food detracted from the application, and would justify refusal.

Ms Harris said that the Board could not conclude the development would be “orderly” in the sense of s216 of the Act, as the evidence was not sufficient, or sufficiently cogent to prove this.

William Craig made point, amongst other things, that the whole concept of marketing on the basis of seven deadly sins, had an immoral basis. He highlighted that, although dress codes may keep people out that the applicant would not wish to serve, it might nevertheless draw undesirable people to the vicinity, contributing to adverse effects of liquor consumption. He said plans to limit this effect were not sufficiently developed to satisfy the Board that there would not be adverse effects.

The Board congratulates the applicant on the effort put into the application. Nevertheless, the concerns expressed by the objectors, set out above, are real and accepted by the Board. They go to the heart of s216 and the standard or cogency of evidence required to satisfy the Board that the development would be in the economic and social interests of Tasmania. They go to the question of whether accepting the application would contribute to the orderly development of the hospitality industry in the State. We feel that the insufficient weight of the evidence dictates that we can not accept s216 criteria have been satisfied.

So far as the guidelines are concerned, having regard to the representations of the objectors, and giving due weight to the applicant’s evidence, we can not be satisfied that there is a sufficient level of unsatisfied need in the vicinity, which would be satisfied by the applicant’s proposal. The Board accepts that the concerns of the objectors regarding residential and business amenity are genuine and the evidence of the applicant is not sufficient to satisfy us that there would not be adverse effect on the interests of the community in the area.

In particular:

There is insufficient evidence that the considerations of the neighbours regarding noise emissions have been taken into account, or that measures will be taken to ensure there are no (or limited) emissions which would trouble neighbours.

Security measures, although expressed in terms which should be adequate, could not be accepted as realistic in the context of the likely scale of the operation; measures were stated which would be sufficient, but the impression the Board has is that the proposed 7 day a week operation would not be able to viably provide such measures. Details of how the security measures would in fact be implemented were inadequate.

The proposed market has not been sufficiently considered; the limited evidence was in substance simply to the effect that there are 22000 people aged 18 to 30 years of age in the target area. Insufficient evidence was given as to the degree to which these people would like to use the service, or as to the degree to which they are currently catered for.

The absence of satisfactory arrangements for provision of food militated against the grant of the licence.

Insufficient detail was given as to the application of source funds of less than \$60,000 for capital improvement, to establish premises which would be attractive for the target audience. Consideration of this aspect was hampered by absence of sufficient detail about the target audience, and their entertainment proclivities.

Assertions as to noise containment in other supposed similar premises (St Ives and Regines) were inadequately developed, lacked sufficient cogency and persuasion, and were not backed by independent expert support.

The mere opening of a new venue does not, of itself, necessarily satisfy the s216 criteria.

It was apparent that impressions of the nature of the neighbourhood (as to the residential and business needs) were overstated and under investigated. Assertions by the applicant of consultation were not supportable when tested. For example, assertions of having consulted with numerous adjacent business proprietors was not backed by any evidence of support from such people and indeed was countered by the direct evidence from Mr and Mrs Miller, operators of a business almost directly opposite "Club 7" in Collins Street.

The need for the premises was not adequately demonstrated.

The measures to ensure no or satisfactorily limited adverse effect on the interests of the community (principally amenity of neighbours) were not adequately developed.

6. DECISION

Under s214 of the Act, the Board directs the Commissioner to refuse the application.

Dated: Monday, June 28, 1999
PA Kimber, Presiding Member.
W Morris, Member.
L Finney, Member.