

## **Licensing Board of Tasmania**

In the matter of the Café Europa, corner Cattley and Wilson Streets, Burnie. Applicant: Mr Edgar Christofi.

In the matter of the Liquor and Accommodation Act 1980  
And an application for an on-licence.

Dated: 5<sup>th</sup> April 2001

### **Decision**

This application was heard at Launceston on the 8<sup>th</sup> March 2001.

The Applicant gave evidence, and presented evidence from his partner in the intended business, Ms Maree Leicester.

Mr Daniel Leesong and Ms Susan Butterworth from the AHA (Tas Branch) attended to object to the grant on the grounds that in the Burnie area “there are already sufficient licensed premises, and as such, granting of the licence would not encourage the orderly development of the hospitality industry”.

The AHA also expressed concerns regarding the responsible service of alcohol, “given that the Applicant does not intend to provide substantial meals on the premises”.

These are valid points for consideration in any on-licence application.

The relevant criteria are set out at s216 of the Liquor and Accommodation Act 1980, and in the Guidelines issued by the Board with consent of the Minister. These relevant criteria are set out below:

#### ***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.*

**AND**

As re-drafted to take account of the decision of Crawford J in the Supreme Court of Tasmania matter of Rv Kimber & others, where certain components of the guidelines were declared to be ultra vires, the guidelines need to be read down as follows:

### **THE GUIDELINES**

*Subject to s216(1) and (2) of the Act, 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 as a whole and also the interests of the community in that area--

but will not generally 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.

**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.

AND: s216 of the Act, which is the over-arching paramount legislative criterion for consideration in every decision of the Board:

- 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.*

## THE EVIDENCE

The Applicant presented a well prepared submission, which had been put together over a number of months. It dealt with issues associated with business analysis, adherence to legal and administrative requirements, provision of a well thought out marketing plan, a thorough operational plan, and a financial plan.

The first issue of contention was the question of the need for the premises in the locality. That is relevant by virtue of that part of the Guidelines which require the Board to *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.*

The AHA representatives advised of other premises in the area: the Hillside Motor Inn (Mr Ringrose), the Top of the Town (Mr Kirkpatrick) and others.

There was discussion at the hearing about the benefit of the facility in providing a different style of premises to that currently available in Burnie. The AHA representative Ms Butterworth noted that some of their members operating in the area were in favour of the licence being granted but maintained that the absence of a substantial food preparation area militated against granting the licence.

On balance, the Board determines that there will be a sufficient differentiation between the style of business offered by the incumbents and the Applicant that justifies the grant (so far as this point is concerned). There would be a contribution towards diversity of services. This is notwithstanding that there are other premises in the area providing the services intended to be provided by the Applicant.

In this regard the Applicant made the following points:

- The theme of the café will be unlike other cafés or restaurants in Burnie: the intention is to offer distinctly European theme.
- The genuineness of this intention is evidenced by the Applicant's significant travel experience.
- Thematic treatment of particular days: eg: European film nights in conjunction with the Film Society; Backgammon and chess evenings, wine tasting evenings (sponsored by wholesalers); travel and adventure evenings (guest speakers, film showings, etc); party evenings including Greek, Spanish, Scandinavian, and Caribbean flavours.

Positive economic benefits include:

- Drawing people into the Burnie city, with extensive trading hours.
- Providing value adding to other city services like cinema, theatre, and restaurants.
- Employment for the Applicant and other staff.

Positive social benefits include:

- Provision of hospitality services in a small, convenient, and comfortable environment close to the city centre.
- Internet and email connections
- Encouragement for people from diverse family and cultural backgrounds to enjoy the premises (refer the Applicant's extensive travel experience over a substantial period of time, and fluency in a number of languages).
- Provision for services desired (as per the Applicant's market consideration) by the 25 years and up demographic – often not catered by more intensive and larger premises.

The second issue raised by the objectors related to the low level of attention to provision of food.

The Board has consistently re-inforced that provision of food as a component of all liquor services is encouraged, as it leads to responsible consumption, and reduces the adverse effects of consumption of alcohol. Applications have been refused in the past due to insufficient attention to this factor.

The premises selected by the Applicant do not readily lend themselves to a full commercial kitchen. However, his intention is to provide a range of coffees, fresh juices, and food in the range of toasted foccacia, cold serves (sandwiches, cakes, biscuits, tappas, olives, cheese crisps and nuts).

The public do not always seek food associated with liquor service, but provision of access to some food is highly encouraged for prospective licence holders. In this instance, the Board feels that the positive approach taken by the Applicant, and the apparent community support are sufficient to overcome the deficiency of the limited range of food available.

It is apparent that there has been a move in recent years, Australia wide, towards a category of new premises, which cater for service of liquor in a small, cosy, and intimate environment, where the full range of social needs is not necessarily catered for. These type of premises value add to other premises. They enliven city environments, and encourage patrons to use other services and businesses.

The present application falls into this category.

Support from the community is evident in the tabling of a letter of support from the Burnie City Council. The Council state that the business proposed is new to Burnie, and is expected to provide a valued contribution to the city's business environment. The letter advises of positive welcoming comment by members of the public. Council

advise of assistance to the Applicant from their Community and Marketing Department, Economic Development Unit.

Burnie Cinemas also advised of support for the application, intending to work together with the Applicant to maximise returns to both businesses.

## DECISION

The Board is satisfied, in its discretion, that this application if granted, will contribute to the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State.

We have taken account of the representations by the local city Council, and by the AHA, and the letters of support. On balance the issues of concern raised by the AHA do not require us, in our discretion, to refuse the licence.

We do not see that the grant of the licence is likely to have an adverse effect on the community (as a whole or in the area). Indeed there is much evidence in the application of a positive fillip to the social and economic growth of the area, which naturally (in its small but not insignificant way) benefits the Tasmanian community as a whole.

We direct the Commissioner to grant the on-licence.

PA Kimber, Presiding Member.

WF Morris, Member.

L Finney, Member