

**IN THE MATTER OF THE LIQUOR AND ACCOMMODATION ACT 1980**  
**IN THE MATTER OF AN APPLICATION BY MATTHEW GODFREY HAMILTON**  
**IN THE MATTER OF AN APPLICATION FOR A GENERAL LICENCE FOR JOE'S**  
**GARAGE, 52 COLLINS STREET HOBART**

***DECISION OF THE LICENSING BOARD OF TASMANIA***

This application was heard at Hobart on the 18<sup>th</sup> December 2001.

The applicant Matthew Hamilton appeared and presented evidence. The application was opposed by Susan Butterworth on behalf of the Australian Hotels Association (Tas Branch), Maureen Healey from the Theatre Royal Hotel and Justin Parr from the Central Café Bar (General Licence, Collins Street Hobart).

The application was opposed on a number of grounds:

1. That there are a large number of general and other liquor licences in the area.
2. That the premises are near a youth centre "Youth Arc Centre" and near the Alcohol and Drug Services detoxification unit at 56 Collins Street, and that there are public interest concerns in having licensed premises adjacent to such endeavours.
3. That the premises, not providing a bottle shop or intending to provide meals, do not justify a general licence and that if a licence is considered appropriate at all then an on-licence would be more appropriate consistent with the s 216 obligation to consider orderly development of the hospitality industry.
4. That licensing the premises will increase the number of people "in need" congregating in the area and make the area less safe for ordinary users.

The applicant has had an extensive application for planning approval determined by the Hobart City Council and the Board was provided with a copy of the consideration and determination document associated with that. The Council has authorised the use of the site for a general licence subject to conditions that the hours of operation are not to exceed 5.00 p.m. – 12 midnight Monday to Friday, 12.00 noon. – 12 midnight Saturday, 12 midnight to 2.00 am Sunday and 12.00 noon Sunday to 12 midnight Sunday.

The planning permit (Application No. 210677) has been considered carefully by the Board and should be read in conjunction with these reasons. Facts and conclusions therein are accepted by this Board.

The plan tendered by the applicant should be considered as well, Adjacent premises, part of the one title, are currently used for a takeaway food shop and the fore-court of the adjacent premises (previously a service station) is part of the drive through process for that takeaway business.

One of the areas of concern expressed by the objectors was in relation to off-premises sales. The applicant made it clear that he does not seek to have any significant component of his business directed towards off premises sales, but rather to meet anticipated market demand where people who attend the premises for on-site consumption of liquor or who may be collecting vehicles from the intended new car park (610 spaces adjacent) may wish to buy some liquor home for home consumption.

It is clear from the area delineated which the applicant seeks to have licensed, that the takeaway area and the ex-service station fore-court cannot be part of the licensed premises under this application and the prospect of any significant off-premises sales of business being developed is minimal.

In addition, the applicant expressed hope, in regard to future development, to open a restaurant/café in the takeaway area adjacent. If an application is made for those premises in the future (to extend the licence currently applied for), it can be limited in such a way to be a restaurant licence or otherwise covered with conditions to prevent off-sales becoming predominant – if that is considered appropriate.

This answers the issue with regard to off-sales concerns expressed by objectors. At the same time, this should not be treated as a determination by the Board that the premises are not suitable or appropriate to be licensed for larger off-sales focus. We are simply making no determination about that but noting that the premises cannot presently, if licensed, physically be used for extensive off-sales.

The applicant previously owned and managed premises at what was the Black Prince Hotel in Elizabeth Street Hobart of the same nature as that which he intends to operate from this Collins Street venue. That is, an automotive theme (50's American Bar with one counter, bathroom facilities, and offering light snacks).

The applicant described how "Joe's Garage" at the Black Prince Hotel operated and the Board was familiar with that automotive theme style. It is clear that the applicant is quite passionate about his desire to resurrect that business at this new site and is extremely enthusiastic to meet the inherent difficulties in operating such a business in this Collins Street precinct. At the same time there are significant development opportunities given the large influx of domestic dwellings in the area and other business endeavours.

The applicant has a large amount of automotive memorabilia which he would install on site and integrate with the premises. This is the intended theme of the premises.

The applicant explained that his previous "Joe's Garage" was nationally renowned and internationally commented upon for its unique qualities. He hopes to develop the new site and thereby provide himself with full time employment and members of

his family and others with employment. He anticipates the premises would provide employment for approximately 6 people on a full and part-time basis.

Clearly the application would have been benefited by some greater focus on availability of food. However, as explained by both the applicant and the objectors, complicated and intrusive legislation aimed at reducing smoking in licensed premises, has the counter productive effect of preventing hoteliers from offering substantial meals if smokers are present and permitted to smoke. This is a conundrum. The obvious immediate positive effect is a reduction in incentive to smoke in licensed premises whilst at the same time the negative effect is that some licensed premises find themselves obliged to offer liquor service to smokers and are thus unable to offer food. The applicant was informed and sensible about this dilemma and indicated his view that he believed in the longer term there would be societal and/or legislative changes which would facilitate reduction in smoking and capacity to provide food.

In the interim he would provide snack foods within the meaning of the relevant legislation, and would look forward to gaining the opportunity to acquire the adjacent takeaway food premises to provide a small smoke free restaurant in conjunction with the existing premises.

This explains why substantial meals cannot be provided at the site but does not then justify why a licence to serve liquor should be granted.

A further effect of accepting the objection that licensing the premises would draw people into a zone which has elements which might be perceived to be unsafe), is that by failing to permit new businesses to enter into the zone it becomes reserved for the unsafe elements which, itself, is not desirable. Refer to the *"Noodle Bar"* decision as to the Board's views about this. In general, we are in favour of development in such zones as it tends to draw positive influences to the area and deflect negative influences. To a large extent it is then a matter for management to ensure it works well and in accordance with the laws. There are avenues within the Liquor & Accommodation Act to restrict or cancel licences were the net overall effect is negative.

The applicant explained that the old Joe's Garage had affiliation with a number of automotive clubs: Classic American Car Club, Post Vintage Car Club, Early Ford Club, and had significant patronage from Targa competitors. Thus, the applicant expected the new premises would attract similar patronage and provide a hospitable area for members of such organizations to meet from time to time, as well as for tourists and locals alike to be entertained by the character of the bar and management. The Board is accept this as a positive aspect.

The Board notes that there was no objection from the management or operators of the youth centre or the drug and alcohol rehabilitation centre nearby. In addition, the Council limitation on opening (not before 5.00 p.m. Monday to Friday) is intended to address concerns of conflict arising between these two services and the intended licensed premises.

Concerns were expressed regarding safety and security. The applicant responded by describing certain methods he intended to employ for personal and business protection (surveillance cameras, direct line to adjacent 24 hour car park personnel, contract with roving security patrols etc). Whilst there is always a risk in late night businesses from a security perspective, the Board was satisfied that the applicant's experience and understanding of the industry would enable him to set up adequate preventative measures to the degree reasonably appropriate.

Concern was also expressed regarding people entering the intended licensed premises whilst they may be under medication or affected by illicit recreational drugs, with consequent danger to patrons and the public. Whilst, somewhat of a conundrum, the Board did not feel that to be justification for refusing the licence but, rather, for the applicant to explain measures whereby he would seek to offer safety and security to his patrons. He did so as described above.

The applicant in giving his evidence was clearly quite concerned about these issues and determined to facilitate an appropriate response, taking account of how things might develop should the licence be granted. He indicated a desire to work with local hoteliers and with youth who might congregate in the area, to seek a mutually beneficial solution to these concerns. The Board was content that the applicant had a positive approach and that his intended premises would not inherently be causative of problems.

The Board felt that the differentiating factor in this application between intended premises and other relatively small premises which might offer little or no other services than service of alcohol, was that the applicant was motivated first of all to provide a forum for his automotive theme. Inherently then, this has an element of entertainment (*cf Blackstone Heights decision*).

The question remained as to whether this would be "orderly development" in the context of section 216 of the Act. The Board concluded that, on balance, licensing of these premises would not create a precedent for licensing of any conjured up theme style hotel in currently vacant premises, but that here was something with an air of a unique quality which had some proven capacity. In addition, it was unlikely that the off sales component would threaten the viability of any nearby hotels, and nor would the on-premises sales be likely to attract custom from other nearby premises. For example, the Central Café & Bar has a food and gambling theme, unlikely to overlap with the automotive theme at the proposed premises. The Theatre Royal Hotel also has its market which is likely to remain distinct from the applicant's intended market. The two premises would have distinctive and separate atmosphere and personality, each attracting different niche markets.

## **Decision**

Taking the evidence and objections into account the Board concludes that the premises are appropriately zoned for the intended use, the applicant has met the Commissioner's criteria as a fit and proper person. The Board has taken account of the extent to which businesses carried on under licences and permits in the area are satisfying the need intended to be satisfied, and believes there remains a justification for the intended new premises at the particular site. The Board determines that the

grant of the application is not likely to have an adverse effect on the interests of the community as a whole nor the interests of the community in that area and that, on balance, the granting of a general licence would not be contrary to the interests and concerns of the community.

The Board directs the Commissioner to grant a general licence.

Dated 31<sup>st</sup> January 2002

PA Kimber  
Presiding Member

WF Morris  
Member

L Finney  
Member