

LICENSING BOARD OF TASMANIA

In the matter of an Application under the Liquor Licensing Act 1990 by Matthew Grice for an on-licence for premises at 7 Watchorn Street Hobart to be known as Red Square, previously Zambesi.

Reasons for Decision

Dated

This application was heard at Cambridge on 9 May 2005.

The applicant lodged a two page submission that states that he wishes to provide a venue where music will be played, liquor will be available, and aiming to target the 18-35 year old demographic, supporting local and interstate indigenous music (sic- in verbal evidence he clarified that he simply wants to play recorded music and live local bands or musicians would perform) in a safe and comfortable environment for patrons.

The submission states that due to public health legislation the applicant finds he must do works to the building to create an internal open area court-yard for smokers. It states there would be a bar upgrade, new furniture and a staging (sic - stage) area.

The premises are operating under a temporary permit, as the previous licence was surrendered by the former licensee. The works scheduled are not going to be done unless a new licence is granted.

The submission asserts that there has been 100% growth in turn-over in the last five months and employee numbers have increased. It states that the increased patronage is in the traditional late night market as well as an increasing early night market. No information was given as to the turn-over of the business and hence there was no information about the level to which it has grown. Employee numbers

were described at between 1 and 2 people as serving staff and 2-3 people as security staff.

The submission asserts belief that Red Square has potential to become a “leading, reputable entertainment venue”. This rings of hyperbole.

The submission asserts that the applicant’s intention has been to “resist attempts by unruly patrons from nearby venues to gain entry” and claims success “in the main”. This admits of unruly behaviour in and around the premises together with attempts to limit the impact of that.

The applicant asserts adherence to responsible service of alcohol practices. He acknowledged two noise complaints in recent times and claims remedial measures had been undertaken. He notes the premises had been licensed continuously (except for recent times when it has only held a permit) for 30 years.

At the hearing the applicant appeared and gave evidence. He did not call any other evidence.

The Commissioner for Licensing appeared via officer Mr M Brazendale.

In evidence it was further acknowledged

- No food would be provided at the premises
- The intended opening hours had a core of around midnight to 6.00 am on Wednesdays and Thursdays and to 7.00 am on Fridays and Saturdays (Saturday and Sunday mornings).
- The applicant undertook to pull back the closing time for Sunday morning to 8.00 am (this was inconsistent with the written purported closing hours of 7.00 am and was not explained) to avoid potential discomfort or conflict between exiting patrons and those attending nearby places of worship.
- Staff: bar staff 1 -2 people, security 1-3 people.

- Security staff: surveillance cameras and RSA practices would contribute to safe environment. No particular detail of intended RSA practices was given apart from security staff mentioned and that there would be surveillance cameras and that whatever the applicant's interpretation of "RSA practices" was, it would be adhered to.
- Changes to the fabric and facilities were planned or partly executed - for the purpose of enabling patrons to smoke – somehow inside the premises but in the open air, apparently in compliance with new or proposed anti-smoking legislation. No detail of these alterations was provided or how the operation would proceed to cater for its stated demographic target audience or how these alterations meet the philosophy behind the asserted anti smoking legislation. How this was in the community interest was not addressed.
- Brief details of incidents at or near the premises which involved police attention in the period 3 April 2005 – 30 April 2005 were submitted by the Commissioner's representative. No further police evidence was provided. The applicant sought to explain some of the incidents. For the purposes of this application the list of incidents evidence some level of violence in or around the premises.

There has been ambiguous evidence relating to the ownership and management arrangement. The applicant at the hearing said he would be employed by the owner of the business Roxy Holdings Pty Ltd and would manage the business it and if it all went well he might seek to take a lease himself, in two years' time.

After the hearing the applicant wrote to the Commissioner. That information was provided to us. It states that Roxy Holdings Pty Ltd is the freehold owner and the property is to be leased to the applicant. He stated in the letter "upon a favourable determination I will have sole and exclusive control of the business pursuant to a written lease . . . I propose to execute forthwith . . . [the lease] is conditional upon my application for a liquor licence being granted." For present purposes the application is considered on the basis that the applicant will have a lease granting to him exclusive occupation and thereby control of the premises and the only relationship between the applicant and Roxy Holdings Pty Ltd and its directors will be

the lease, the obligation to pay rent and outgoings and to maintain the property in accordance with the covenants in the lease.

The applicant stated he expected a 20% increase in turnover due to “smoking, cleaning out unruly behaviour”. This statement was not further explained and does not make any particular sense to us.

The applicant stated in evidence that the licence and the business provided a service to hospitality industry staff who finish work at 3.00 – 4.00 am. He implied that a majority of patrons were from that sector and category. There was no other evidence about this.

Conclusions

This is a significant application. It is for a broad category licence which would permit sale of liquor between 5.00 am and midnight, the ability to seek an out of hours permit (which the applicant has stated he intends to obtain) to permit trading from midnight to dawn, and the applicant states he intends to cater for late night to past daylight on a regular basis.

The evidence provided was not convincing to the effect that licensing the premises would be in the best interests of the community.

There was no supporting or corroborative evidence.

The evidence, such as it was, may generally be seen to be self supporting and generalized statements. There was only little detail.

On considering the evidence provided we are not clear what it is that the applicant intends to do which would alleviate concerns expressed regarding police calls, unruly behaviour and intoxicated conduct in and around the premises.

It is not for the Board to fill in the gaps. Applications relating to late night venues, especially those intending to operate all night and through to and past dawn, and with little services other than provision of liquor and music as an adjunct to that, carry a significant onus to demonstrate a benefit to the community.

This is even more so when there are unsatisfactorily answered or unanswered questions regarding conduct near or in the premises. There is to be no food available at the premises. Conceivably patrons could be there from 10.00 am to 6.00 am with the only substantial service being the provision of liquor and with recorded music as an adjunct and on occasions live musicians. No detail of this latter point was provided.

There is no adequate objective description of the local community and the effect the premises has or is likely to have on that community.

There is no adequate evidence of the nature of people likely to utilize the services (and to do so would not be difficult as the premises are already in operation).

A demographic profile in the nature of that considered as a prerequisite for a licence in NSW by section 18E of their Liquor Act would be instructive, but was not provided.

Social health considerations for the area and target patrons were not provided. Issues like noise, amenity of the local community, potential for increasing littering, vandalism and public drunkenness were not adequately addressed.

The prospect of the grant of the application and the provision of the applicant's licence having potential to increase social and community amenity (regeneration of the locality or buildings, employment opportunities, expansion of entertainment – apart from drinking and gambling – details of sponsorship or contribution to local community and sporting groups or projects), were either absent, or inadequately supported by cogent evidence.

There was no evidence of consultation with the local Council, Tasmania Police, and any body or organization (such as Chamber of Commerce or Australian Hotels Association) representing business interests in the locality.

The Council of Social Service, Anglicare, health services, network of drug and alcohol agencies, any convenor of any relevant local liquor accord for licensed premises, occupiers of premises in the immediate vicinity of the premises: these potential sources of relevant evidence were either not explored by the applicant or not presented to us.

In conclusion, for the potential the licence has, the evidence was underdone.

The Commissioner is directed to refuse the licence application.

PA Kimber
Chairman

L Finney
Member

K Sarten
Member