

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Marcus Allan Kelly
Nature of application:	For a general licence
Premises: name	Shorewell Park, Burnie
Premises: address	11A Shorewell Park, Burnie
Name of decision:	Shorewell Park General Licence
Date & place of hearing:	24 th September, 2009. Burnie Civic Centre
Date of decision:	7 October 2009
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

DECISION

For the reasons set out below we direct the Commissioner to grant the licence.

Application

Marcus Kelly applies for a general licence for premises 11A Wiseman Street Shorewell Park Burnie. The general licence would permit sale of liquor on premises or off premises consumption between the hours of 5 am and midnight daily. The Applicant was approved by the Commissioner as having demonstrated he was a fit and proper person to hold a licence.

The premises form part of the Hilltop Shopping Centre and the applicant intends renovations such that the licensed area will cover 750 square metres and be of good high standard and suitable for the purpose. The estimated cost of renovations and improvements (excluding stock) is \$750,000.00.

The premises are at Shorewell Park, a residential suburb some 7 km from Burnie CBD and the nearest hotel is the "Top of the Town" which also comprises a BWS off-licence outlet which is within 5 km from Shorewell Park Site.

Mr Kelly submitted a comprehensive written application and the Board has taken account of all the material in that application and the supporting expert evidence report prepared by EMRS.

In summary, the applicant intends to create a new retail outlet and café/bar, intending to offer to local residents and those from the Burnie general area convenience, value for money, service and an increased range of product. The applicant asserts experience in management, occupational health and safety and diverse business experience. He has extensive experience with fit out and design of licensed premises.

The applicant invested \$1,000,000.00 for the purchase of the site, including a contiguous IGA supermarket premises let out to Mr & Mrs Cutner. A further investment of \$750,000.00 is intended to provide a quality venue with off-premises sale capacity and modern café/bar, providing dining facilities.

The applicant submitted his application is in the best interests of the community principally by providing convenient access, quality and modern premises, a safe environment, and convenience to the target market. His research report submitted, dated July 2009 by Enterprise Marketing & Research Services, indicated that at the 2006 Census there were 6,357 in the target market which had increased by 11% from 2001 to 2006.

The applicant stated there was only one hotel with a bottle shop in the primary target market which he described as an older style traditional public bar and compared that with his intentions to offer a modern café bar as an alternative choice.

His research indicated 57% of residents in the target market were “very likely” or “quite likely” to use the new bottle shop/café/bar if it opened.

He asserted flow on beneficial economic impact including ongoing permanent employment for approximately 8 people as well as employment for trades people and others during their development phase.

The development is permitted under the planning scheme.

The premises into which the intended licensed premises would be developed is a U shaped shopping centre “square” with existing car parking, entrances and exits and parking spaces for approximately 50 vehicles in the centre. It is adequately lit for convenience and safety.

The Board inspected the site. On the left hand wing is the IGA supermarket. Directly in front as one drives into the car park area is the area intended to be available for the bottle shop off sales area, and to the right comprising half of the other wing is the area intended for the on-premises café/bar. At the point of that wing is an existing pharmacy which is to continue to be part of the centre.

The applicant stated he intends to offer high quality food and value for money with light and healthy options from the café bar area together with a comprehensive range of alcoholic and non alcoholic beverages.

The freehold property in title 123422/1 is owned by Marcus Kelly Property Developments Pty Ltd a company owned or controlled or both by the applicant. The property is at the corner of Agar Court and Wiseman Street.

The market report/research gave information regarding the population distribution, socio economic profile of Shorewell Park residents, information

about population increase in recent years and alcohol purchasing behaviour of the target market. The Board has taken that information into account and it was uncontradicted by any other relevant/credible evidence. In brief summary the assertions made were:

- Shorewell Park population 6,357 people including suburbs of Shorewell Park Acton, Brooklyn, Hillcrest, Romaine and upper Burnie.
- One bottle shop within the suburbs being the Top of the Town.
- By comparison suburbs of Burnie, Cooeee, Montello and Parklands have an adult population of 2,582 and are catered for through 3 bottle shops (Beach Hotel, BSW Regent and Club Hotel).
- Demographics of Shorewell Park indicate the socio economic status of the residents is equivalent to the average for the Local Government area of Burnie.
- One-third of the residents/respondents from Shorewell Park say they buy liquor, as do 43% of Burnie residents. Of those who buy alcohol 97% had visited a bottle shop in the last 12 months (as had 99% from Burnie). Shorewell Park compared with Burnie respondents were almost identical purchasers of beer, wines and spirits from a bottle shop.
- Evidence indicated respondents would be likely to use the new facility with prices and specials, product range and convenience touted as attractions.
- Research indicated a licensed restaurant or café/bistro associated with off premises sale would be appealing (as to a one-third of the respondents). A further 23% indicated “that bar where you could get a drink” was favoured and 14% claimed no preference. 11% indicated for preference for no licence.

Submissions

It is interesting to note that whilst a number of submissions in opposition to the application were lodged none of the representors attended the hearing notwithstanding an invitation to do so. Consequently their evidence was unable to be tested and to a large extent their material remained as unsubstantiated general propositions.

However, one exception to that were representatives from Tasmania Police who attended and observed and listened to the proceedings, and made submissions to the Board which have been taken into account and are helpful.

Before dealing with the Police submissions and evidence we will deal with the other objections.

1. Department of Health & Human Services

Leonie Halley submitted a one page letter indicated involvement with the Youth Health Service of the Department in the North West noting youth having experienced difficulties due to their own partners or adult support use and misuse of alcohol. Leonie Halley stated that the area relevant to the application is a low socio economic area mostly Housing Department rental properties with a high number of single parent families. She stated there is a community house and beneficial programmes are provided by Tasmania Police and service groups towards encouraging civic pride, sense of safety and inclusion. She noted residents are obliged to buy for consumption out of the area, that being the city centre or upper Burnie. She stated there are therefore fewer opportunities for over consumption, some level of constraint on spending on alcohol, and a small geographical barrier alleviating littering. She asserted a link between purchase and consumption would be damaging for a lot of residents, increase the probability of crime including domestic violence and family neglect, and prejudice continued positive growth of the community.

No expert evidence was tendered and the respondent was not present at the hearing.

2. Ben Hibben – licensee of the Club Hotel Bottle Shop

Lodged an objection.

We have previously referred to the self serving motive of trade objectors as being generally unpersuasive. However to the extent that the objection may relate to community interest rather than self interest and economic factors financial viability etc of existing licensed premises, then the objection may be relevant.

Mr Hibben was not present at the hearing to be questioned about his objection.

3. Alderman Sandra French – President of the Burnie Community House Board

A one page objection was lodged noting that there was already a hotel in the area, that she objects very strongly to the times of 5 am to midnight daily (although of course it is not intended that the applicant be open those hours, they are simply the hours which are permitted by the legislation if the licence is granted). Alderman French indicated concern about having the premises within a shopping complex and additional concerns regarding vandalism of toilets.

Alderman French was not present at the hearing.

4. Alderman Sandra French

Alderman French lodged an identical objection on behalf of the Burnie Community Safety Committee.

5. Alderman Sandra French

Alderman French lodged a shorter objection on behalf of Burnie Community House Board stating that World Health Organisation best practice policy for minimising alcohol related harms include, amongst others, restricting hours and days of sale of alcohol, restricting density of alcohol outlets, using pricing policies and taxation, random breath testing, lowering limits for blood alcohol concentration, imposing administrative suspensions of licences for driving under the influence of alcohol, reducing the Government monopoly of retail sales, graduating licensing for novice drivers, implementing brief interventions for hazardous drinkers, changing the legal age to buy alcohol.

This material was general and not specifically directed or extrapolated to the current application.

6. Burnie Primary School acting principal K Foster

Ms Foster lodged a letter stating that it would be responsible of the Licensing Board to consider granting the application with the extremely high percentage of people in receipt of Centrelink benefits. She stated that she considered it “quite outrageous to place small temptation in the road of such a vulnerable community”.

Ms Foster stated that she had for 10 years been “highly involved in upgrading the educational values and outcomes of students in the Burnie area”. She mentioned “terrific work done we attracted to substantial Government grants amounting to \$3,000,000.00”. She urged the Board not to destroy the gains made.

Ms Foster stated she is principal at Burnie Primary, an area servicing students also from the Shorewell Park area.

She stated that over 30 years with the education department working in Acton, West Ulverstone and Wynyard areas she regularly saw students were unfed and uncared for, as household money had been regularly spent on drugs and alcohol.

Ms Foster related in her two page submission a number of general stories regarding our alcohol and drug abuse, adverse impact on children, and the general propositions regarding the adverse impact of over consumption of alcohol. Mr Foster was not present at the hearing.

7. Brett Whitely MP

Mr Whiteley advised of concerns of a number of constituents who had contacted him regarding the application, interpreting the application as, in effect, a “local bottle shop”. He stated he shared those concerns. He said that while not seeking to deprive Shorewell Park of vital services he did not

see the provision of a liquor outlet in what is known to be a low socio economic area as in the best interests of the community. He also noted that upper Burnie, a small distance to Wiseman Street, currently has a very busy bottle shop.

Mr Whitely was not present at the hearing.

8. Rochelle Cunningham acting Principal – Acton School

Lodged a one letter objection suggesting that work in the community and the locality with people with substance abuse and addiction issues would be undone by the grant of a liquor licence in the area.

Ms Cunningham was not present at the hearing.

9. Paul McGrath director of the Top of the Town Holdings Pty Ltd and Kirkpatrick's Pty Ltd

Lodged a letter of objection but was not present at the hearing. Our comments regarding trade objections is restated.

9. Rhonda Sutton – Burnie Community House Inc, Wiseman Street

Lodged a one page letter of objection stating that she feels a liquor outlet (bottle shop) in the area would be detrimental to the positive work that local organisations and other agencies have been doing with the risk of vandalism underage drinking, anti social behaviour and placing young people at risk. She stated that a restaurant where alcohol could be consumed with lunch or evening meal would be a greater advantage to the local community.

Ms Sutton was not present at the hearing.

10. Tasmania Police - letter of objection

The Division of Inspector of Burnie lodged an objection which included evidence that the Shorewell Park area has a significantly higher unemployment than other places in the vicinity and that the income (median family income) of the Shorewell Park area was the lowest of places in the vicinity and, for example, two-thirds of the median family income of Devonport.

He concluded that the proposed establishment would be targeting the lowest paid and highest unemployed area.

He noted the licence application states coverage 5 am to midnight 7 days per week (although as we have stated, the applicant's intention, as with most licensed establishments, is to have significantly less hours of opening). Consequently Police concerns about flow on from night clubs to continued drinking at 5 am is irrelevant. Concern of sales of takeaway liquor to

intoxicated people at 5 am is irrelevant. Potential for early morning 5 am opening of a café attracting intoxicated persons making their way home from late closing night clubs is irrelevant. The perception of a “corridor of disruption” based on these concerns is not the likely result of the grant of the application.

Applicant response to objections

We do note that Mr & Mrs Cutner’s objection was withdrawn after consultation between them and the applicant and they have expressed acceptance of the proposal. They state that Mr Kelly has explained the benefits to the community and surrounding businesses and the quality of the proposed premises and the responsible way in which he intends to operate and that he has satisfied their concerns and that they are now supportive of the proposed licensed premises.

Likewise the applicant in reference to the concern regarding early and late closing hours has stated that his intention is to operate the following hours

10 am – 10 pm Monday to Friday
9 am – 10 pm Saturday
9am – 6 pm Sunday

He states he does intend to trade after 10 pm with concern for the likelihood of customers coming from another venue where they may have already consumed enough alcohol. He stated he intends to operate strict responsible service of alcohol principles and that he has had experience and advice/mentoring from experienced licensees.

With regard to general concerns expressed by Ms Halley, Mr Whiteley and Tasmania Police and service groups, he stated his intention is to be as involved as possible with the beneficial programmes and to support improvement in the local community.

In response to the assertions that providing alcohol in the area would be damaging to many residents he notes, quite rightly, that alcohol is already available in the area and that no evidence directly relevant to the locality or the community as to the prospect that the new premises will exacerbate, contribute to or engender further harm associated with the consumption of alcohol has been presented.

He stated that the area is lacking in competition, lacking a quality venue such as the proposed café and bar, and that the community would benefit from the provision of a place where women who don’t wish to visit a public bar such as the Top of the Town, can go somewhere for coffee or to meet friends, etc, for an alcoholic drink without being in a public bar environment, with the capacity also to enjoy a meal.

In response to the assertions that the area is a “low socio economic area” the applicant stated that the area is experiencing significant growth (supported by

the evidence he tendered) and that house prices in the area are climbing significantly, that the area is out performing other areas of Tasmania in that regard (as to which some evidence was provided) and that the link between population growth, increased house prices and improving area means the social economics are improving rapidly.

He also asserted that the socio economic status of an area should not of itself necessarily mean that it should be deprived of the services.

The applicant contacted Mr Whiteley after receiving his objection and advised him of his perception of the benefits to the community provided by the intended premises with ongoing employment, investment in the area, improved premises, reduction in vacant shopping area space, willingness to work with community groups and intention to adhere to responsible service of alcohol.

The applicant tendered his intended food offering which represented a suitable menu for breakfast, lunch and dinner (breakfast Saturday and Sunday only).

The applicant presented as an impressive witness who has had considerable experience in fitting out licensed premises and after having done that work for numerous other operators, has determined to invest in his own local area to a considerable extent and to seize the opportunity to establish a business, improved currently disused areas of shopping centre, provide employment, generate income for himself and his employees, and provide a service to the community.

He readily recognises the risks associated with over consumption of alcohol and provision of alcohol to minors. He has undertaken to take responsible service of alcohol actions to ensure he minimises the likely impact of those risks.

During the course of the application process the applicant has demonstrated a serious concern for the local community and we were impressed with his review of the objections, approach to the objectors to seek to take account of their concerns, and to structure his application and the intended service he will offer in an appropriate manner.

The general submissions without tangible supporting evidence that liquor sold in the area will cause harm cannot be, without more, sufficient justification for refusing the licence. In our opinion the logical extension of the argument that the increased availability of liquor leads to an increase in youth drinking problems would mean that no new licences would be granted in order to minimise the harm created by youth underage drinking or over consumption. In our view the particular circumstances, site and premises should be taken into account and dealt with in a specific context (quoted from *Rogerson v. Director of Liquor Licensing* [2009] VCAT 1729 para 27).

The premises here are modest. The applicant has a talent and ability and a desire to improve them to a high quality. We have no doubt he will do so.

Whilst there is always risk that new premises will increase or exacerbate the harm associated with consumption of alcohol, we are satisfied that the applicant's intentions and abilities mean that this risk will be minimised in the present context.

We conclude that the granting of the licence will be in the best interests of the community.

We direct the Commissioner to grant the licence.

Decision

As stated above, we direct the Commissioner to grant the licence.

PA Kimber: Chairman.

K Sarten: Member

D Logie: Member

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