

Licensing Board of Tasmania

In the Matter of an application by **Paul Brian Halton**
For an on-licence for premises at 69 Mount St Burnie

In the matter of the *Liquor Licensing Act 1990*.

Hearing date: 8th January at Devonport.

Date of decision: 8th January 2006.

Sirocco's Bar and Nightclub

Decision

This application was heard at Devonport on the 8th January 2006. A decision was given at the hearing, and these are notes of the decision and reason for decision.

On the day before, the Board inspected the intended premises, and viewed the current premises from which the business is run.

Mr Halton gave evidence and called evidence from Roy Fox and Richard Hammond, the authors of a 'Security and Risk management Assessment for Planned Relocation to 69 Mount St, Burnie' report.

Respondents to the application were present and gave evidence: Reverend Keith Alcock, John Packham (Property Officer of the Uniting Church) and Peter Brumby (Chair of Uniting Church Council).

The essence of the application was that the night club business had outgrown present premises, the applicant had acquired the disused cinema premises elsewhere in the same town (but now closer to the premises for which the respondents have responsibility) and has plans to redevelop, update and improve those premises, and thereby to serve existing patrons better and develop the ability to provide a greater range of entertainment and garner new clientele.

The essence of the respondents concern was that the application could not be looked at as a simple relocation of an existing business, and that there are concerns about the likely adverse impact on the amenity of the immediate neighbourhood, and particularly, the Church properties in the immediate vicinity.

The Burnie Council has approved the premises for the intended use.

The question for the Board is whether the ability to sell alcohol from the premises with the benefit of an on-licence, is in the best interests of the community.

We noted that the authority of the licence was from 5am to midnight, but that the applicant intends to obtain an out of hours permit from the Commissioner, and desired hours of actual trading were:

Monday to Wednesday: noon to midnight

Thursday: noon to 3.30am the following day

Friday: noon to 5.00am the following day
Saturday: noon to 5.00am the following day
Sunday: noon to 12. midnight

And in each case, with a permit condition that no entrance allowed after 2.30am.

The applicant intends to provide food (as per a draft menu submitted), which would have a reasonable cafe menu during normal meal hours, and a scaled down version at all other times whilst the venue is open. We are content the applicant intends to provide this service, and note that to cease to do so may be viewed as a fraudulent component of the application, and grounds for an application to cancel the licence.

The Security and Risk Assessment tabled by the applicant indicated a comprehensive consideration of relevant issues both for the benefit of the applicant's intended relocated business, the patrons, and the neighbours.

The representors expressed their concern in terms of risk to their property, and the amenity of users of that property. These quite logical concerns are understood. Although this is not the exact relocation of an existing business to similar premises, because it involves expansion of size and activities, the intended management is the same, and the manner of running the business is to be as before.

The applicant has a good reputation in the locality, and generally for his manner and style of providing the services he does. There is clearly a legitimate need for the services in the community. It is a question of balance between the desire to provide those services, and the benefits which flow and (on the other hand) the risk of harm associated with the activities.

On balance we believe it is in the best interests of the community that the existing business be permitted to relocate, and expand. It is a sensible progression. It enables the effective use of presently disused facilities. It injects economic benefits into the community. The risk of poor behaviour, damage to property, and reduction of amenity to the neighbourhood -those who work, recreate and worship in the vicinity, can be alleviated by:

*** application of the restrictions available to the Commissioner in placing terms and conditions on the out of hours permit, which can be recurrently reviewed, either unilaterally or on application of the licensee or people in the neighbourhood;**

*** application of restrictions in the *Liquor Licensing Act 1990* to enable review of the continuation of the licence in the event the provision of services under the licence cause undue distress to neighbours or the public generally or if there are other breaches of obligations under the Act. Clearly this requires management of patrons when they move out of the premises in the early hours.**

The respondents did not, in their conclusion, argue that there should not be the grant of the licence, but that there should be safeguards and restrictions proper to protect their legitimate concerns. We agree.

We therefore direct the Commissioner to grant an on-licence, on the proviso that the existing licence is surrendered.

Phillip Kimber; Chairman. Louise Finney: Member. Kerry Sarten: Member
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