

Jason Bresnehan

From: Jason Bresnehan [jason@bresnehan.com]
Sent: Tuesday, 25 May 2010 4:56 PM
To: 'Anne.Watson@treasury.tas.gov.au'
Cc: 'Don.Challen@treasury.tas.gov.au'; 'michael.aird@parliament.tas.gov.au'; 'mark.shelton@parliament.tas.gov.au'; 'kim.booth@parliament.tas.gov.au'; 'rene.hidding@parliament.tas.gov.au'; 'bryan.green@parliament.tas.gov.au'
Subject: RE: Liquor Licensing: Hadspen

Mr Kimber,

It is government bungling at its best, but not inconsistent with most Tasmanian government Departments and Boards, that you appear not to understand your role. You are remunerated to make decisions with regard to liquor licensing and consider those aspects of social impact that the serving of alcohol might have on a community. You are not a town planner, you do not work for the Meander Valley Council and you are not a publically elected Councillor. You have erred at law by basing your decision on areas which are well outside to the criteria which should be making a decision on.

You have erred in that you have not made a decision, you have simply said "come back another time when you have planning approval". What specific section of legislation under which you operate allows you to refer me to the Meander Valley Council? What specific section of legislation under which you operate allows you to ignore the issues of liquor and make a decision based upon the planning issues of traffic flow, headlights, and landscaping.

If LLBs are suddenly town planners and the Board has the right to consider planning issues in its decision, you could easily grant an approval with a condition precedent that Planning approval is granted. That way the Meander Valley Council, and its elected officials taking advice from expert planners could make a decision on the planning issues, rather than a lawyer who should be focused on making decision based on the potential social impacts of serving alcohol.

Nevertheless I will address all the town planning issues that you have raised.

1. Your own application process expressly states that it is not necessary to have a planning permit before coming to the Board. It does not then go onto state that if you choose this option that the LLB ignores liquor issues and focussed only on town planning criteria.
2. You are correct that much of the concern of the neighbours was based on issues concerned with planning. The neighbours conveniently ignore the fact that they purchased houses next to a 12 hour a day fully functional service station and now they don't want to be next to a business zoned block. The other concern was from a professional objector who rambled on about recent subdivision approvals, children's skate parks, people getting "stabbed", bars causing husbands being away from their wives and his own wife's illness. Frankly I was shocked that do you did not curb all this nonsense and control the meeting like you should.
3. Agree, that's why there is a Council and that's why they take advice from expert planners.
4. I was not well prepared to answer town planning questions because I was at a LLB hearing and not a Council meeting considering a planning application. The LLB is charged with making a decisions regarding the impact of liquor licences based upon the social impact that the ALCOHOL can have on a community. You simply do not understand your role if you think landscaping and traffic flows are a criteria of concern to you.

5. My responses were not simplistic, my response was that I would ensure that alcohol was served at the premises in accordance with the RSA. The questions from the floor were things like "how can I guarantee that nobody will ever drive a car after leaving the premises?". My answer concerning the planning issues that were raised were to "work with my neighbours with the Council to satisfy any planning issues". It is not simplistic to suggest that planning issues are for the Council and not the jurisdiction of the LLB. The only simplistic things that were happening at that meetings was a "nutter" talking about people getting stabbed, a LLB board who thought of itself as a Councillor, and an absolutely appalling meeting management which allowed said "nutter" banging on about people getting stabbed in Launceston and probably 30 minutes of other nonsense completely unrelated to the issues at hand.

6. It is not my assertion that it is zoned Commercial. I stated that the property is zoned "Business" which is a fact not an assertion. Moreover, it is a fact that cafe/bar is an intended use in the business zone. It's ironic that with regard to this one planning issue that is an unequivocal fact that you choose in your email to attempt to dilute it with the words "assertion", while you make assertion after assertion about landscaping, traffic flows and headlights. You are not an expert planner, you have never visited the site so what you say can be nothing more than poorly informed assertions.

7. It is not for the LLB to decide which is the cart and which is the horse. The LLB is charged with making decision so that the community is not negatively impacted by the serving and consumption of alcohol.

8. Again, you, via your role with the LLB, are trying to control planning issues. You can't control any planning issues in any Council jurisdiction. Concentrate on what it is you should be concentrating on.

9. You are rejecting the application based upon planning issues. You make not one reference to the core criteria for which you are responsible for making judgements on. It is extraordinary, re-read you email to me, you do not mention the word "alcohol" once.

10. Your last point is simply hilarious. You are saying that even if the Council approve the development that you still want to see the expert reports etc. Are you suggesting you may even override the Council's decision based upon your expert review of the planning issues?

You have seriously erred in this decision. I invite you to make a decision based on the impact or otherwise that a licensed premises that serves alcohol under the RSA laws will have on the 2,000 plus Hadspen residents. I invite you to ignore landscaping and traffic issues because it is not your role. I invite you not to pass the buck and make a decision.

Mr Aird, your LLB Board thinks it should make decisions based on town planning issues and appears un-interested in the actual issues it is meant to consider.

Mr Green and Mr Hidding, the LLB is trying to usurp the town planning roles of local government. Read Mr Kimber's last paragraph again, he wants to review the planning submission and expert reports that I submit to Council. For what purpose - does the LLB authority on planning override local government now?

Mr Shelton, the LLB is trying to usurp the town planning role of your Council.

The LLB will not dictate to me the order in which I apply for various government licences. Make a decision. Yes, No, or Yes with Condition precedent that planning approval is granted.

Sincerely,

Jason Bresnehan

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-----Original Message-----

From: Anne.Watson@treasury.tas.gov.au [mailto:Anne.Watson@treasury.tas.gov.au]
Sent: Tuesday, 25 May 2010 2:01 PM
To: jason@bresnehan.com
Cc: Damien.Jarvis@treasury.tas.gov.au; Leon.Atkinson-MacEwen@treasury.tas.gov.au;
Jane.Scott@treasury.tas.gov.au; David.Thomas@treasury.tas.gov.au;
Melanie.Zwart@treasury.tas.gov.au
Subject: Fw: Liquor Licensing: Hadspen

Dear Mr Bresnehan

I refer to your recent general licence application at Hadspen, heard by the Licensing Board in Launceston on 20 May 2010 and provide the following advice from the Licensing Board to enable further progress of the application: -

1. The applicant chose not to bring planning approval to the board.
2. Much of the concern by neighbours was about adverse impact on their amenity.
3. Planning controls are best placed to protect against adverse impact on residential amenity adjacent to or nearby to commercial development.
4. The applicant was not well prepared to answer the criticisms of the neighbours about such things as intrusion by lighting, ingress and egress, landscaping, containing sound within the premises.
5. His response was simplistic, asserting that the premises would substantially be used as 'a café'. That doesn't answer the objections, because his licence application is for a general licence.
6. The premises are in a commercial zone and on his assertion, we are to assume that the intended use is approved, however, we have no actual approval from the planning authority nor any independent advice that such will be the case.
7. As it remains possible that the licence will be granted, in deciding which is the cart and which is the horse (ie whether he should come to us already with his planning approval) we can say that, by reference to the legislation, it is not an absolute requirement that planning approval be in hand, but that it is the Board's preference to know with certainty the result of consideration of the planning perspective.
8. We can fix planning issues where the planning process has failed, and we can also rely on the planning process to protect a lot of amenity issues when it works properly.
9. In this instance, without more evidence demonstrating that the planning perspectives have been dealt with, and without the information showing how the issues which were raised at the hearing will be dealt with, with certainty (eg, lighting, traffic, containing noise) we may be inclined to reject the application.
10. So, we invite the applicant to get his planning approval and supply that (the application, information supplied to the planning

authority, submissions, evidence, and expert reports, and the decision) to us and to each objector, and then we will consider the application further.

Regards
Phillip Kimber
Chairman - Licensing Board

Please forward a copy of your planning approval to me when to hand to enable the finalisation process of your liquor licence application.

Regards

Anne Watson
Executive Officer
Liquor and Gaming Branch
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