

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	<b>Kate Emma Hill</b>
Nature of application:	For special licence
Premises: name	30 Marieville Esplanade, Sandy Bay
Premises: address	30 Marieville Esplanade, Sandy Bay
Name of decision:	<b>Vino Van Diemen</b>
Date & place of hearing:	Hobart, 27 <sup>th</sup> November 2008.
Date of decision:	13 <sup>th</sup> February 2009.
Members of the Board:	PA Kimber (chairman and D Logie (member)

## **DECISION**

We direct the Commissioner to grant the licence for sale of liquor from the premises for consumption off the premises, subject to the conditions set out below.

### **Application: consideration**

This application is in the nature of a small number of such applications to the Board and the most recent of which was approved: see “*What About Wine?*” 9<sup>th</sup> September 2008.

[http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/What-About-Wine.pdf/\\$file/What-About-Wine.pdf](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/What-About-Wine.pdf/$file/What-About-Wine.pdf)

As expressed in the reasons for that matter, the Board concludes that small home office businesses conducted from residential premises has a community benefit. These are fleshed out in the “*What About Wine*” decision.

The Applicant has a Council planning permit for the intended use of the premises.

At the hearing, we took account of the letters submitted in regard to the application and opposing it, and heard evidence from the Applicant supporting her application, and from Mrs Moony in opposition.

Effectively the application is to use the premises as an administrative office, however as Mrs Moony opposed the application, the Applicant concluded that she was not able to use the premises for storage and sale of any liquor. That is not the case, and at the hearing, and consistent with the original application, advertising and signposting, the

hearing progressed on the basis that some limited authority to store and sell liquor from the premises was sought.

The objections were generally expressed as concern at the prospect of adverse impact on the local community of the grant of the licence, and consequent commercial activity in a residential area.

That is substantially answered by the fact that the planning scheme permits such activities, and the Applicant has sought and obtained a permit from the planning authority.

The question remains as to whether the sale of the specific product: viz liquor, means there are any additional considerations to weigh in the balance as to community benefit. As indicated in the *What About Wine* decision, there are balancing issues, and the Board's view is that the best interests of the community are served by permitting the sale of liquor in the manner intended. That is particularly so in this instance given the extremely limited adverse impact (if any) on residential amenity, and the benefit to home owners in being able to conduct minor business activities as an adjunct to the predominant purpose of living in their homes.

The home office concept has been alive and well for a considerable time.

It is clear in this instance that there is no justifiable objection on the basis of adverse impact to the community from this home business.

Draft conditions were prepared and circulated to the objectors and the Applicant. The Applicant indicated she was content with the limitations. The objectors responded, and their responses have been taken into account.

Mr M Foster indicated that he was very confused, and thought the conditions did not make any sense. They are drafted in such a manner that there is a prohibition on receipt and dispatch of liquor at the premises, subject to specific terms which permit that receipt and dispatch in limited circumstances.

The purpose of the conditions is to ensure that the extent of business activity is limited, to protect the residential amenity of the local community. With respect to Mr Foster, the prohibition on receipt and dispatch on site, subject to the specific and limited authority to so receipt and dispatch is a common device in drafting permits and licences.

Mr Foster's additional concern was that the condition which effectively authorised limited receipt and dispatch would be 'practically impossible to monitor and enforce'. We do not agree. There can be a reasonable assumption that the Applicant will obey the licence conditions, amongst other reasons, because the continuation of her licence will depend on that. Secondly, the maintenance of a log book of receipts and dispatches, will enable the Commissioner, if thought fit, to enquire, and ascertain that the condition has been honoured. Additionally, if the condition is not honoured, then it should be self evident from a heightened activity in receipt and dispatch from the premises, from casual observance. If that proves annoying, then complaint will result in investigation, and may result in licence cancellation. Of course, it would be naïve to assume that all people obey licence conditions all the time; however, in this instance and based on the evidence from the Applicant at the hearing and in her application papers, we have confidence of her ability and intent to obey the terms. She may, of course, seek a variation to the conditions if they prove unduly restrictive, which would be considered against the same criteria as a new licence application.

Mrs Moony raised a number of issues on receipt of the draft intended conditions, and our determination and consideration on those points is as follows:

- 1 Inability to comprehend the interplay between planning permit conditions, planning restrictions, and Licensing Board requirements: The Board concludes that it is not warranted in the present application that a minor amount of receipt and dispatch from the premises should be prohibited, when it is not prohibited under the planning restrictions, and is not warranted in an endeavour to protect the community interest. There is, in our mind, no exacerbation of harm associated with the consumption of liquor likely to arise from the licence being granted. That the Council has given a permit to use the premises for a home office is one layer of regulation. As is clear from the

Liquor Licensing Act, whilst a permit may be needed from Council, if the product to be sold is liquor, a licence is also needed from the Commissioner, and the Board has the power to direct the grant of that licence, on conditions.

- 2 That Mrs Hill gave assurances that she would not store wine on the premises: we do not know of any assurances to that effect. Mrs Hill's application was for a special licence for an authority to sell liquor from her home as the licensed premises, principally by internet sales. In support of her application she sought to acquiesce in a raft of restrictive conditions prohibiting marketing from the site, signage, and offered to agree to store all wine off her premises. During the hearing, under questioning, Mrs Hill stated that she offered not to store, receive or dispatch any wine from the premises as she thought that was what would be required in order to be granted the licence. The Board stated at the hearing with Mrs Moony present, that we do not consider it necessary to have an absolute prohibition on sale, receipt, storage and dispatch from the premises. The question then posed was as to what reasonable limits are appropriate: there could be none: for example, just accepting the Council planning permit and planning scheme limitations as sufficient protection. At the other end of the scale, there could be an absolute prohibition: perhaps an oxymoron in the context of an application for a licence to enable a home occupation business to be conducted. The Board however was/is minded to allow some degree of receipt, storage and dispatch.
- 3 Mrs Moony advised that a Commissioner's representative informed her that the licence would not give Mrs Hill authority to keep or sell liquor from her home. Enquires indicate that is not accepted as having occurred, and in any event the Board has a continuing obligation to make a decision in the best interests of the community.
- 4 Mrs Moony says that the continuing use of the house must be predominantly as a residential home. We agree, and confirm that it is not acceptable for the commercial use to be extended. Our expectation is that the commercial use will be hardly noticeable to the neighbours or passersby. It is likely to be no more intrusive than an ordinary residential use by a home owner coming and going in their domestic motor vehicle to go to and from home/work. The

concerns expressed in terms of ‘fears’ are unrealistic and exaggerated. In the context of suitable use by property owners of their residential homes, some limited degree of home office activity including some limited storage, dispatch, sale and delivery of a minor amount of stock is appropriate. The Planning Scheme would limit that to 20% of floor area. We add the further restriction as per condition 5 below, for safety.

- 5 Mrs Moony referred to the need for ‘vigilantes’ to protect the community amenity, and to ensure that the licence conditions are adhered to. A vigilante is a person who ignores due process of law and enacts their own form of justice in response to a perception of insufficient response. We don’t think that is a realistic issue nor a likely response in the circumstances.
- 6 Finally we note that there are a limited number of such home office, predominantly internet sales based liquor licences in Tasmania – but no more than a handful. In most instances the neighbours have not expressed any concern nor raised objection at hearings. We have not had any information indicating that such licences, once operating, have lead to the reality of a diminution of residential amenity in the neighbourhood or locality of the licensed premises.

## **Decision**

As stated above, we direct the Commissioner to grant a special licence to the Applicant for the premises, subject to the following conditions:

- 1 The sale of liquor is limited to Tasmanian Wine.
- 2 Subject to condition 5, no dispatch or storage or delivery of liquor is to be made from the premises (ie, no cellar door or shopfront activity).
- 3 No signage of the business is to be displayed at the premises which is visible to the public.
- 4 Subject to condition 5, no liquor for sale is to be stored at the premises.
- 5 Notwithstanding conditions 2 and 4, the licensee may store up to ten by one dozen cases of wine for sale and dispatch on the premises at any one time and may receive and dispatch that liquor at the rate of no greater than four cases in any rolling seven day period. The Licensee is to maintain and

keep for inspection by the Commissioner a receipt and sales list of liquor received at and dispatched from the premises.

PA Kimber: Chairman.      D Logie: Member