

In the matter of the Liquor and Accommodation Act 1990

And in the matter of an application by **Mr Gabriel Haros** for a special licence to permit on premises sale and consumption of liquor as an adjunct to meals, to permit sale of Tasmanian wines on premises for tastings, to permit sale on premises for the off-premises consumption of Tasmanian wines in gift packs, and for sale for off premises consumption as an adjunct to food for functions catered for by the licensees and paid for by the contracting party.

In the matter of premises at Kiosks 1 and 2 Centrepoint, 70 Murray St, Hobart.

Decision: **Say Cheese Centrepoint.**

Heard before the **Licensing Board** at Launceston on Wednesday the 4<sup>th</sup> November 2004

Date of decision: 4<sup>th</sup> December 2004.

This application is for a special licence (a licence subject to conditions) to presently enable the applicant to sell liquor in the terms of the heading (above).

The special licence category is a separate category which permits adhesion of conditions to a licence grant, unlike the other licence categories of general, on, club and off licences.

The category is affected by regulation 4:

*Special licence*

4. (1) *The Board is to direct the Commissioner to grant a special licence if satisfied that –*

*(a) the principal activity to be carried on at the premises specified in the licence will not involve the retail sale of liquor or, if the principal activity to be carried on at the premises will involve the retail sale of liquor, the premises form part of or are associated with a vineyard or winery and the sale of liquor will be restricted to Tasmanian wine; and*

*(b) in the case of premises at which meals are to be served, liquor will be sold only for consumption on or adjacent to the premises as an accompaniment to those meals.*

(2) *The Board is to direct the Commissioner to grant a special licence to sell Tasmanian wine if satisfied that –*

*(a) the principal activity to be carried on at the premises specified in the licence is the provision of hospitality or tourist goods or services; and*

*(b) selling the wine is not likely to have a detrimental effect on that activity.*

The Board expressed difficulty in reaching a conclusion as to the meaning of reg. 4(1)(a). In *Mill Providore & Gallery 2*, 24<sup>th</sup> August 2004, the Board determined that the intention was that this part of the regulation meant:

*The Board is to direct the Commissioner to grant a special licence if satisfied that –*

*(a) (i) the principal activity to be carried on at the premises specified in the licence will not involve the retail sale of liquor or,*

*(ii) if the principal activity to be carried on at the premises will involve the retail sale of liquor, the premises form part of or are associated with a vineyard or winery;*

*and in either case the sale of liquor will be restricted to Tasmanian wine;*

That decision was commented upon further in *Marti Zucco August 2004*.

The Board also considered whether such authority as there is in reg 4 is intended to cover the field. Refer to s 11 of the Act:

### **Special licence**

11. A special licence authorizes the sale of liquor –

(a) between times; and

(b) on premises; and

(c) subject to compliance with any condition –

specified in the licence.

Also; the principal guidance as to the Board's duty in considering applications is set out in s24A:

### **Requirements for licence**

**24A. (1)** In considering an application for a licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community.

**(2)** In considering an application for an off-licence, the Board must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on-licence for a restaurant, the Board must be satisfied that the premises are, or are intended to be, used as a restaurant.

We concluded in *The Mill* (above) that regulation 4 is not intended to remove the ability of the Board to direct the grant of a special licence for premises under s11 except where the application meets the criteria in that regulation. It appears to be cast in mandatory terms in the event that the criteria set out are met. But it does not displace the broad discretion remaining under s11 of the Act.

We therefore conclude we are empowered by the Act to direct the grant of the application.

## EVIDENCE

The applicant put forward evidence to the following effect:

- The principal business will be a restaurant;
- Sale of liquor is expected to be 70% Tasmanian wine for off premises consumption, sold in small (one or two bottle) gift packs, and 30% of liquor sold will be for on premises consumption;
- Food in accordance with the menu will be available at all times that liquor is offered for sale;
- The premises are part of a shopping centre, and 6 seats will be exclusive to the business whilst another 6 and 12 tables adjacent will be non-exclusive (patrons of other food businesses adjacent and patrons of the shopping centre may use the tables and chairs without buying food from Say Cheese);
- The applicant says he or his staff will be able to monitor liquor consumption in the intended licensed areas, and he or his staff will have sufficient power in accordance with the terms of their lease/licence to manage patrons;
- The applicant says he operates a well known business in Salamanca Square under the same name, and has extensive experience in successful management of hospitality/food/liquor businesses, and anticipates no difficulties in the sale and consumption of liquor associated with the licence.

## REPRESENTATIONS

The Australian Hotels Association (Tas Branch) attended the hearing on having been advised by the Commissioner of the time and place.

## SUBMISSIONS OPPOSING

The AHA submissions may be summarised:

- There is a danger of consumption of liquor by underage people, as the site is in a shopping centre and many students pass through the centre daily, including Saturdays;
- Underage drinking being a serious problem, the AHA cited a report which they said “found that 80% of the 14-17 year olds surveyed have had an alcoholic drink, which they obtained from persons other than their parents and before their 14<sup>th</sup> birthday”;

- The applicant will not have adequate control of the full extent of the intended area of the licensed premises as patrons can sit on the chairs at tables, whilst not being the applicant's patrons;
- There are community concerns over liquor consumption on premises where there is inadequate power for the licensee to exercise control and to monitor intake;
- Subject to the above, the AHA does not object to the grant of the licence for the purpose intended, per se.

## APPLICANT'S RESPONSE

In response the applicant submitted:

- Liquor would only be provided with meals for on premises consumption, or for off premises consumption of Tasmanian wine in gift packs, or at outside catered contracted functions: that was positive in regard to contributing to harm minimisation and limiting adverse impact of liquor consumption;
- The offered conditions limited liquor type and quantity, further contributing to harm minimisation;
- The principal component was intended and likely to be the of premises consumption and the catering component, and that the on premises consumption was unlikely to be of any significant extent;
- The whole premises are actively monitored by security staff employed by the shopping centre management, for the benefit of the shops (including the applicant's shop);
- That although the AHA had sought to survey proprietors or staff of all other shops in the centre about possible ill-effects of the intended business, that no-one had stepped up to oppose the application;
- Most students would be in uniform or otherwise easy to identify, and the hours of operation were predominantly daylight hours, and these factors substantially limited the prospect of deceitful youthful consumption;
- Whilst respecting the AHA's concerns, he felt the fears were unfounded;
- His experience in other establishments encouraged him to the view that there would not be any under-age difficulty here;
- The addition of the business to the site would improve the centre, encourage other upgrading in the vicinity, and had economic and social benefits;
- The service would benefit tourists and locals alike.

## DECISION

The Board determines that this application must be considered under s24A of the Act, to make a decision which in our opinion is in the best interests of the community.

There are positives in this application: better service to the public, a service not generally offered, and also a likelihood that the impact will not contribute to the harm associated with the sale of liquor.

On the other hand, there are express concerns about the applicant's ability to control the consumption of liquor on site and hence the prospect of minors indirectly obtaining liquor from the applicant's business.

The Board was concerned about the potential difficulty from the applicant's lack of sole occupancy of the full area requested to be licensed, however a similar (but not identical) situation is involved in food courts – the Cat and Fiddle Food Court, Morty's Food Court (Launceston), and others interstate, without any problems having been reported (to the Board's knowledge). No information was brought to the Board by the objector to the effect of demonstrated problems in similar sites.

The citation of a survey by the AHA did not contain sufficient detail to indicate the concerns apparently expressed in the survey were relevant to the proposal under consideration. No indication of linkage to obtaining liquor from café or restaurant premises in food courts, or shopping centres, was suggested.

The absence of any opposition from other operators in the shopping centre, and support from centre management were supportive of the safety of the intended operation.

On balance, the Board believes it unlikely that the proposed business will contribute adversely to the harm associated with the consumption of alcohol by the consumption by underage people, or otherwise.

After consideration the Applicant reduced the area for which the licence is sought the leased area (in which liquor is likely to be served to people at 6 chairs at the serving bar) and 6 tables with chairs directly in front of the premises. The balance area of up to 12 tables outside of the direct line of sight of the serving bar was removed from the application, on the basis that the Applicant may seek to amend the area of the licence at a later date.

Other components of the application were not opposed, and on due consideration the Board believes the grant of the licence, as applied for (as set out above) subject to conditions appropriate, and we direct the Commissioner to grant the licence subject to conditions.

We will settle the terms of the conditions.

Dated: 9th November 2004.

PA Kimber, Chairman.

L Finney, Member.

K Sarten, Member