

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Peter Trioli
Nature of application:	For a special licence
Premises: name	Wursthaus
Premises: address	1 Montpellier Retreat, Battery Point
Name of decision:	Wusthaus II
Date & place of hearing:	22 nd August 2007 at Campbell Town
Date of decision:	1 November 2007.
Members of the Board:	PA Kimber (chairman) and K Sarten

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DECISION

The Board heard this unopposed application and advised the Applicant that the direction to grant the licence as applied for would be made. This written decision confirms that decision and specifies the terms of the conditions applicable to the licence.

Application

The Applicant's business has had a Tasmanian Wines special licence (permitting sale of Tasmanian wine for consumption off the premises) for many years. It may be that it was one of the first premises granted such a licence. It is a notable and quite unique butchery/delicatessen in the hub of the world-renowned Salamanca Place tourist district. The business draws clientele from around the world, and has a dedicated return client list.

The Applicant seeks the ability to broaden the nature of liquor to be sold to include some international wine. He sees this as being integral to the international nature of his clientele, the businesses' strength and dedication (to the exclusion of other services) in Tasmanian specialty food, the continuation of cooking classes, the European influence in his business and indeed personal nature (he being of Italian origin).

The Board's concern was that the application not be used to subvert the licence categories and specifically to avoid the apparent intent of the Act and Regulations to have off licence liquor sold from dedicated (i.e. to the exclusion of other services) business, subject to the special licence category to give preference to Tasmanian wine in conjunction with the sale or provision of tourism or hospitality goods and services.

In considering the evidence and the unique nature of the premises and business, we accept that this is not an attempt to avoid that licence categorisation, but is a genuine example of an appropriate matter for the Board to use the special licence category, employing conditions attached to the licence, to enable a business which contributes to the social fabric and tourist and hospitality industry. This will give capacity for the Applicant to meet demand without being likely to contribute to the harm associated with consumption of liquor.

The hallmarks which set this apart from some other similar applications, and which indicate it is appropriate in the best interests of the community for the licence to be granted are:

- The premises are particular, small, dedicated to only butcher/delicatessen items and customer food education in conjunction with that;
- The sale of liquor is a small part of the business and is not likely to be extended subsequent to the licence grant. Only 5% of display space is used for liquor (and that limitation will continue as a condition of the licence);
- Tasmanian liquor will remain the majority of liquor displayed (a condition);
- The hours of operation are predominantly during 'office' hours – 8am to 6pm, with no intent to trade later in the evening or certainly not 24 hours;
- The business does not carry general cookery or shopping lines;
- The business is a manufacturing business as well, and hence is markedly different from most similar business – they are selling their own produced Tasmanian butchery and smallgoods items;
- The sale of European wines is to be in conjunction with the continuing wine education business and cooking lesson component of the business (a condition);
- The Applicant and his business partner Nicole Frith-Trioli have evidenced expert knowledge in European wines, and wish to employ that capability in conjunction with their business – they have been frustrated in being unable to do so;
- The range of Tasmanian produce, the predominant nature of that in their business, and the manufacturing and wholesale component sets their business apart from others, the monthly cooking school, tend to justify the liberal nature of this grant of licence;
- The scope of type of wine intended to be provided is set out in the licence application, and is not so extensive and open as to evidence an intention to circumvent the licence category nature of the Act. It could not be said there is any prospect of a de facto off licence being established;
- The established nature of the business gives confidence that the situation will continue and that the variation will not result in such a change that the preference for Tasmanian wines will be violated;

Law

In the circumstances, we consider it is in the best interests of the community (s24A of the Liquor Licensing Act) for the licence to be varied/issued.

S24A(2) prohibits the Board directing the grant of an off licence if the principal activity to be carried on at the premises will not be sale of liquor. The purpose of this provision is to prevent liquor becoming readily available in all manner and variety of retail premises. That is a government policy, and must be accepted by the Board. It is not something which prevents the special licence category from being employed to good use in enabling business with some other predominant purpose being able to sell liquor. See the previous special licence categories in the Guidelines which operated

until recent years. Those categories and reasonable extensions of them and remain appropriate in the Board's determination.

We direct the licence be granted under s11.

Decision

We direct the grant of the licence subject to the existing terms, but varied to permit sale of European wine, on the conditions set out above including time limitation between 8am and 7pm on any day.

PA Kimber; Chairman.

K Sarten; Member