

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Trent Geoffrey Reisenleiter
Nature of application:	For a special licence to permit sale for off premises consumption of Tasmanian wine, subject to conditions
Premises: name	Augusta Foodstore
Premises: address	116 Augusta Road, Lenah Valley.
Name of decision:	Augusta Foodstore
Date & place of hearing:	22 nd June 2006 at Hobart
Date of decision:	24 th July 2006
Members of the Board:	PA Kimber (chairman), L Finney and K Sarten (members)

DECISION

This application was a fairly standard application for a ‘Tasmanian wines’ off licence. We have set out the relevant provisions in recent decisions (see for example: *Fresh Fruit Market Salamanca*, *Mill Providore*, *Spreyton Fruit Market*).

Under regulation 4(2), the Board is to grant a special licence (Tasmanian wines) if the principal activity of the premises is the provision of hospitality or tourist goods or services and the selling of wine will not be detrimental to that activity.

The Applicant provided photographs of his premises, and made written submissions and attended the hearing to substantiate his evidence and to be available for examination. He submitted a number of letters of support from residents in the area of the premises, indicating enjoyment from the quality of the Applicant’s premises and services for hospitality and tourist goods, and support for sale of Tasmanian wine from the premises. Issues such as quality, convenience, safety, and appropriate presentation of quality Tasmanian produce were cited.

From the photographs it was clear that the premises are of a high standard, and the presentation of goods is first class.

The Commissioner’s Inspector Mr Anderson inspected the premises and provided a report. In it he states that he found the premises to be quite comparable with the better of the licensed gourmet food outlets. He said the intention was that the provision of liquor would be limited to one refrigerator and a small amount of shelf space (4m x 2m x 1.5m). This obviously addressed the issue of principal activity, and that it is unlikely the sale of liquor will adversely impact on that principal activity.

The goods provided are premium fruit and vegetables, gourmet grocery lines, delicatessen, health foods and standard grocery items (the latter being about 25% of turnover).

We determine that the premises is not a supermarket within the meaning of the Liquor Licensing Act, and so there is no impediment under s25A to the consideration and grant of a licence.

At face value, there was no reason to decline to grant the licence.

Ms Melinda Holland attended the hearing and objected to the grant of the licence. Here quite legitimate concerns related to the exacerbation of noise from delivery trucks to the premises during early hours of the morning. She noted that the premises is in a residential area (albeit in the shopping zone adjacent thereto) and had concerns that the special licence sought might be extended so that other types of liquor would be sold and extended opening hours might apply, to the detriment of the residential amenity. Ms Holland stated that the Hobart City Council officers had advised her that deliveries should not be before 7 a.m. any week day, and later during the weekend.

The Board is sympathetic to Ms Holland's concerns. What is apparent is that when she has expressed herself to the Applicant about concerns in regard to noise, one way or another some action has been taken to consult, to ameliorate, and to accommodate the concerns.

We do not believe the limited addition of a special liquor licence for sale of Tasmanian wines in the context of the existing business has the capacity to cause any measurable exacerbation to noise from delivery trucks, nor for the extension of opening hours, nor for extension of the licence (which would in fact have to be by new application for a different licence) into some more intensive licence: for example an on-licence or off-licence.

Concerns expressed about sale to young people were vague and unsubstantiated with any concrete evidence. We consider that the nature of the licence, the type of liquor available, the vendors natural desire to prevent stock being stolen, and the lack of any likelihood that young people will try to buy the wine from the vendor, indicate that this is not a licence, if granted, which is going to cause exacerbation of harm associated with consumption of liquor by making liquor available to young people.

All of the Applicant's staff who take part in the sale of liquor will be obliged to undertake the responsible service of alcohol course.

The Applicant stated he intends to be open between 7.30 a.m. and 8 p.m. any day, and no longer. He was content a condition be placed on the licence that he may only sell liquor during those hours.

The Applicant asserted that the benefit to his business from having the licence would be a 'greater share of the wallet' rather than more customers and more visitors/people driving to the premises or trucks delivering to the premises. We believe that is the likely eventuality.

The Applicant gave evidence of action he had taken to ensure deliveries are after 7 a.m. and to mitigate the noise occurring when deliveries are made. It is clear that any resident will continue to have remedies with assistance of the local council for unreasonable nuisance from noise.

We conclude that the evidence is not such as indicates that the grant of the licence would contribute to that nuisance, and is such that it is in the best interests of the community for the licence to be granted.

Ms Holland called Mr J Wong of North Hobart, a well known bottle shop proprietor, to give evidence. Mr Wong's submission was that bottle shops should sell liquor and stores should sell food. He felt it was not appropriate for other premises to take over 'our' income.

This submission does not have any merit. The legislation permits the grant of a liquor licence for sale of Tasmanian wine in the context of existing stores who must have a predominant purpose of not selling liquor. The provision is intended to assist the Tasmanian wine industry to get its produce to the market where it is likely to be bought. It is intended to contribute to the safe delivery of liquor to the community, and to contribute to provision of quality product in quality surroundings.

There is nothing in the Liquor Licensing Act which indicates that existing bottle shop businesses are to have their income protected from competition from other types of business which have, as an adjunct to another principal activity, the sale of Tasmanian wine.

Mr Wong also said he was concerned that the licence would encourage young people to drink more. He gave no evidence in support of that contention. The mere fact of the prospective grant of a licence, without more, is rarely sufficient to raise a concern that underage people will have illegal access to liquor. The submission is rejected.

CONCLUSION

The licence application is an appropriate one to be granted. It meets the criteria of the Act and regulation, and is in the public interest that the licence be granted. The concerns of noise are not directly related to sale of liquor, and such noise as there is may be controlled by HCC assistance, or nuisance action. The licence should be granted subject to conditions limiting the hours during which the business can sell liquor, limiting the area from which liquor may be displayed and presented to the public in the store, and subject to conditions as to the type of liquor to be sold (viz Tasmanian wine, spirits and liqueurs, and Tasmanian made and brewed beer produced from Tasmanian owned breweries).

This last component is only a small component of the Applicant's intended use of the licence; as it is principally Tasmanian wine which is of interest to the buying public and to him as a purveyor. The Board has permitted the specific terms of the Tasmanian wines special licence type to be extrapolated to other Tasmanian made liquor where the purpose and benefit is to the same effect.

PA Kimber; Chairman.

L Finney; Member.

K Sarten; Member