

Licensing Board of Tasmania	Decision
Legislation	<i>Liquor Licensing Act 1990</i>
Applicant	Amit Sehwat
Nature of Application	Special
Premises: Name	Dine in Delivery
Premises: Location	196 Macquarie, Hobart
Name of Decision	Dine in Delivery
Date & Place of Hearing	21 February 2011, Hobart
Date of Decision	12 April 2011
Members of the Board	P A Kimber (Chairman), K Sarten & D Logie (Members)

Decision

Mr Amit Sehwat has applied to the Commissioner for Licensing for the grant of a special licence under the Liquor Licensing Act 1990, and the Licensing Board has held a hearing to determine whether to direct the grant of the licence.

The Board is obliged to consider the application under s 24A of the Act:

24A. Requirements for licence

(1) In considering an application for a liquor 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.

In the Applicant's initial documentation supporting his application he stated the following relevant material:

- Description of intended business: the customer telephones "Dine in Delivery" after getting information from a website or business booklet, and places an order for food and liquor. The price of the liquor is included in the menu at a price slightly higher than bottle shop prices. The place of business will be 196 Macquarie Street, Hobart.
- On receipt of the order, the Applicant will inform relevant 'bottle shop' premises and restaurants with which he has contractual alliances to make up the order of (respectively) liquor and food.
- The Applicant's delivery personnel (either employees or contractors) will collect the order and deliver it to the customer.
- The customer will be charged at the time of placing the order or at the time of delivery if paying in cash. At time of delivery a signed declaration of being 18 years plus will be obtained after (if appropriate) citing identification proof.
- Time from order to delivery will be approximately 1 hour.

- The applicant will not store liquor and will not sell liquor over the counter. He will buy liquor from licensed bottle shops. He has a 'responsible service of alcohol' certificate.

The Applicant cites these advantages:

- Less drinking and driving as consumers can order liquor for delivery.
- Luxury service that is affordable.
- Irrespective of inclement weather, consumers can acquire liquor delivered to the place of accommodation, thus providing convenience.
- Traffic reduction.
- Convenient option for tourists
- Improvement to hospitality service in Hobart

The initial hearing of the application was considered insufficiently supported to enable the Board to grant the licence, and at the Applicant's request the Board adjourned the hearing allowing the Applicant the opportunity to provide further evidence.

At the re-convened hearing in March 2011, further material was presented:

- 1 A letter from Rajinder Paul stating he likes the idea of the intended service. He suggests the Commissioner and Board should "think outside the box" and "visualize how this is going to help the society as a whole".

Mr Paul's letter adds nothing to the evidence.

- 2 A letter from Nevin Hurst stating that for people like him, who are past their youth, and where nature has and is taking its toll, the service will be of great benefit. He says that going out to get liquor is quite a burden, and this service will provide a service to those in society who are currently reliant on the goodwill of family and friends. Mr Hurst noted similar services are available elsewhere in Australia. He considers it will help improve issues like drunk and rash driving.
- 3 Euan Hills says in a letter to the Board that he knows the Applicant due to association with him as owner of Saffron Restaurant. He says the concept has merit. He explains that sometimes he is operating his gallery solo and needs a bottle of wine or similar to celebrate a sale with one of his customers. He says he understands the needs of many ageing apartment dwellers in the Sullivans Cove vicinity who find getting alcohol supplies difficult or tedious and that Mr Sehwat's model is good.
- 4 Jonathan Mathys wrote a letter of support saying that if the service were in his area he would use it. His letter adds nothing.
- 5 Other letters indicate that the writers would use the service if it were available.

At the reconvened hearing the Applicant put forward evidence from members of the executive of the Australia Federation of Totally and Permanently Incapacitated Ex Servicemen and Women (Tasmania Branch) Inc ('TPI'). This evidence was to the effect of full support and commendation for the project, and that the association notes there are 1500 totally and permanently incapacitated ex servicemen and women in Tasmania. Although they could not be certain of the number of members in Hobart, they nonetheless stated they believed them to be significant. They explained the difficulties in access to services which most people take for granted. They noted that services similar to that proposed by Mr Sehwat are available interstate. They stated that to not grant the licence would be discriminatory against incapacitated and / or elderly members of the community.

Mr B Walker from the Tas Hospitality Association ('THA') advanced concerns that the grant would not be in the best interests of the community. He expressed these concerns in a letter of 3rd December 2010, and appeared at the hearing to advance the situation. The Applicant responded to the criticisms, and we set out that rejoinder:

Hours of operation: condition on licence 9am to midnight, 7 days a week is proposed.

Activities and products: basic and limited range of beer, wines and spirits. The only service offered will be the home delivery of restaurant food and/or alcohol. *The Applicant proposes that the licence permit 'home based customers to order alcohol only (without food) if they wish.*

Evidence of community demand: states evidence of strong demand in other markets reflected in a number of businesses providing the service. Support evidenced by letters submitted and evidence given at the hearing (see above).

Contribution to exacerbating the harm associated with consumption of liquor: material presented from both sides was inconclusive, general and could not easily be related to the impact the grant of this licence may have.

Number and type of patrons: inner city radius of approx 10km, potential extension to greater Hobart area, and ultimately possibly other cities and towns. Suggests 21,000 residences in the initial target area with 45,000 residents, of which 70% are over 18 years of age. Out of that, the Applicant expects 1% (or about 300) to be weekly customers and 2% to use the service at least monthly.

RSA: all staff and drivers will be required to have completed the RSA course.

Details of partner/hotel/bottle shop liaison: not yet finalised and may change over time: expectation is purchase from large retail outlets but possibly a wholesale supplier.

Concern at likely inducement to fail to adhere to age restrictions: the Applicant responds that the drivers will be paid an hourly award rate with no incentives for volume or faster delivery. Consequently there is no incentive for delivery to minors.

At the reconvened hearing the Board permitted representation for the THA and the Applicant. Professor I Duncan LL.B. represented the applicant.

In submissions Mr B Walker for the THA stated that the level of evidence did not overcome the burden on the Applicant to demonstrate that the service was in the best interests of the community. At its highest it demonstrated that some people thought it would be convenient and 'nice'. He said the risks of adverse impact were not addressed. He admitted that there may be some merit in the TPI and elderly being able to gain the benefit of the service of home delivery, but submitted that the case was not made out that there was genuinely a need for the service to meet lack of access, and that with risks of home delivery to youth or intoxicated people, and lack of usual supervision in licensed premises, that the licence should not be granted. He expressed that he was 'fearful' of party goers requesting late delivery to enable inappropriate continuation of drinking, and that the Applicant would have no control over the level of intoxication at point of supply.

Mr Walker also expressed his significant concern that the part of the business requiring sale and delivery of linked meals was not intended to be a requirement, but just something which may or may not happen in any particular case.

At the conclusion of evidence and submissions the Board requested information demonstrating the nature of equivalent services interstate. The Applicant delivered copies of extracts from webpages shortly after the hearing.

Information delivered included:

- Advice from Liquor Licensing Victoria ('LLV') that home delivery of liquor in Victoria requires an individual to hold a renewable limited licence. A list of conditions which might be appropriate was provided.
- LLV also provided a list of enforceable undertakings obtained from various licence holders: notably large enterprises (Liquorland and Woolworths).

We note that the first LLV document indicates it relates to home delivery WITH MEALS for those who already hold an on premises or restaurant and café licence.

The second document relates to home delivery (alcohol only) where orders are taken over phone, internet, mail, email etc). This evidences, at least, that there is power and intention from time to time for LLV to issue such a licence.

The conditions specified are:

Restrictions on sales

The licensee must not use the premises to provide for:

- Personal shopping for liquor
- Browsing liquor stocks or stores
- The display of liquor for sale
- The collection of liquor by customers
- The storage of liquor for delivery (omitted if liquor is to be stored on premises)

Delivery of liquor

- Liquor must be delivered to a person aged 18 or over. The licensee must ensure that delivery arrangements include requiring evidence of age where appropriate.
- Liquor must not be delivered and left at unoccupied premises on the same day the order is received.
- Liquor may only be delivered during the following hours:
 - 9am and 11pm on any day other than Sunday, Good Friday, Anzac Day or Christmas Day
 - Between 10am and 11pm on Sunday
 - Between 12 noon and 11pm on Anzac Day
 - No deliveries on Christmas Day or Good Friday

Information required to be displayed on website/s: the following notice must be prominently displayed on the licensee's website/s: [detail omitted – but to be resolved if licence is granted, to reflect LLV terms, including licence number, licensee's full name, and age declaration by purchaser]

Orders for liquor:

Orders for the supply of liquor may be taken at any time of any day. Internet orders may only be taken through the following website/s [enter web-site address here].

The enforceable undertaking documents obtained by the Board indicate commitments by licensees holding a packaged liquor licence specifying premises and the licensee's name, trading name, and allied website. It notes delivery to persons under 18, investigation, alleged offence, admissions, and an undertaking designed to protect against re-offence. Notably it relates to ensuring all drivers are RSA trained, retention and provision of proof of age, the licensee to secure undertakings from contractors who deliver, amendment to IT support systems, implementation of a formal process to ensure requests for proof of age, RSA complaints or refusals of deliveries are endorsed on the driver's run sheet, and reported to the licensee.

The implication to the Board of this material is that LLV do have capacity to issue such licences (as does this present Tasmanian Board) and that they have had trouble with such licences, and have

required remedial enforceable undertakings to supplement the licence terms to protect the public interest.

The Applicant also provided information regarding a 'similar business' called Gourmet to Go Room Service, in Melbourne. This apparently has the limited renewable licence referred to above. He advises that the service can and does supply liquor only orders for home delivery to customers as well as food only order, and combination of both.

Regarding a second such apparent licensee details of which were provided the question about whether they can sell liquor only was not asked and the answer not provided.

Regarding a third such apparent licensee, such information was not apparently asked for and the answer not provided.

Consideration of the licence application

A considerable amount of liquor is delivered to homes and businesses consequent on email, website and mail order, or phone contact. The risks attendant from a liquor consumption perspective associated with this method of commercial sale are ameliorated by licence conditions. We are all familiar with the terms of such contracts for sale, the method of delivery, and the conduct on behalf of the licensee to protect against sale to under-age persons or other breach of the Liquor Licensing Act 1990.

What is different about this application? In fact, it is that the applicant wishes to offer to make his service available at the same time as he offers also to provide home delivery of food in the form of cooked restaurant cooked meals. The name "Dine-In-Delivery" places a greater emphasis on the service of providing food than of one providing liquor. In this sense the Board views that the sale of liquor will mainly occur as an adjunct to the sale of food. Therefore, although the Applicant has requested a licence that allows the sale of liquor without food, the Board does not view this as the primary focus of the business.

On balance and considering the risk exacerbating harm associated with the consumption of liquor, the Board is satisfied, on the material presented, that the grant of a licence with conditions similar to those applicable to the LLV licences, as referred to above, meets the criteria of the Act and consequently the Board directs the Commissioner to grant the licence on those terms.

In addition, the licence is to be granted on the condition that all marketing and contract material is to be presented to the public only in conjunction with simultaneous presentation of the linked offering of restaurant meals, in the manner outlined in the application documents.

A subsidiary component of the Application is the application for a special licence authorising the sale of liquor to other licence holders (commonly called a 'wholesale' licence). Consistently with previous decisions we do not perceive there is any adverse impact likely relevant to that component, as it only enables substitution by retailers as to their direct suppliers. We direct the grant of this component as part of the terms of licence.

Dated

PA Kimber (Chairman)

K Sarten (Member)

D Logie (Member).