

# Licensing Board of Tasmania

Decision

Application by Marietta Papoutsakis “Fresco” 644 Sandy Bay Rd, Sandy Bay and 346 Elizabeth St, North Hobart.

Application for a Tasmanian Wines Off Premises Special Licence.

Application heard at Hobart 20<sup>th</sup> June 2011. Decision: 21<sup>st</sup> July 2011.

## Decision

The Applicant makes application for this licence for each of two premises under her control – one at Sandy Bay and the other at Elizabeth St, North Hobart.

The premises were each inspected by the Board.

The Applicant’s business in each case is a family owned and run matter. They provide a wide range of fresh produce, bakery items, butchery items, and extensive line of delicatessen style food products. The Applicant stated that she had received numerous enquiries from customers for Tasmanian wine.

The businesses are open 7 days a week, 9am to 7pm.

The Sandy Bay premises are 350m<sup>2</sup> and the Applicant would display the liquor on existing shelving and in fridges behind the delicatessen counter.

The Applicant points out the positive features as being:

- Whilst shopping for other products, shoppers can purchase wine.
- Public exposure of special Tasmanian product: Fresco is a highly popular grocery retail shop.

- Benefit to shoppers of being able to buy local products in convenient locations.
- Success in the enterprise will lead to direct job creation or security.

The Applicant and her son George gave evidence. They did not call other evidence although the Applicant did file a submission from Planner A Goodsell (the effect of which is summarised in the description above).

The Licensing Board of Tasmania is called upon to determine this Application for ‘Tasmanian Wines’ Special Licence: for sale of Tasmanian wines from premises predominantly used for other purposes, such wine to be sold for off premises consumption only. In short, called the “*Tas Wines Off Premises Special Licence*”.

This licence category is well known in the State. It was originally woven into the special licence category by the Licensing Board, in its discretion, to assist in the development of the Tasmanian wine industry, and to assist in having what was considered a high quality product available more broadly than the usual hotel or bottle shop premises. As such, and falling in the special licence category, the principal purpose of the business from which the liquor was to be sold had to be other than the sale of wine, and the premises and business had to be other than ‘any retail enterprise’. That is, where the applicant demonstrated that their business and premises had a particular tourism and hospitality focus, then the discretion would be exercised to grant the limited licence.

The licence is available where the Applicant demonstrates a significant tourist and hospitality basis to their business. It is not available for every retail business to have as a collateral component to their other principal activity.

For example: it is not available for ordinary restaurants (see *Hong Kong Restaurant 1999*).

The licence is most usually granted in conjunction with retail shops providing hospitality and tourist goods or services to tourists and locals.

See regulation 4(2):

#### **4. Special licence**

*(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.*

In *Davies Grand Central Station 2 – 2001*, the Board dealt with the general propositions regarding this licence category. Although that decision was made under the previously applicable Guideline regulatory regime, the principles remain relevant under the current legislative and regulation process, and in regard to the Board's application of its discretion to decision making.

The following points can be stated:

1. Generally liquor for off premises sale is to be sold under the Off Licence category of licence, which requires (s 24A(2)) that the sale of liquor is the principal activity of the business.
2. The Tas wines special licence category is an exception to the Off Licence category.
3. The special licence category in this type of case is applicable to the specialist delicatessen – see *Lipscombe Larder 2000* – decision of the Board.

4. Previous decisions are not precedent for “*every corner shop to have a take away liquor licence for Tasmanian wine. It is a determination that [the enterprise] is somewhat unique or distinctive as a provider of hospitality or tourism goods and services, which is not replicated in the ordinary corner shop or convenience store situation. Most such shops would not reach the same quality position of provision of such goods and services...*” [Lipscombe Larder 2000 decision].
5. Hospitality is the act of being hospitable: the Board will look favourably on an application where sale of Tasmanian wine will be as an adjunct to provision of hospitality goods or services. ‘Hospitable’ means welcome and entertainment to strangers, guests and visitors.
6. Tourist specific information and goods if provided will support the grant of such a licence.
7. This special licence category is generally considered to be designed to permit sale from ‘somewhat specialised shops’ rather than every corner or neighbourhood store – see *Battery Point Gourmet Food and Wine Emporium* – decision 2001.
8. The principal criteria for Board consideration is that under s24A(1) it must make a decision which in its opinion is in the best interests of the community.

Section 24A states:

**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.*

The provisions in the Act which enable the grant of a licence including the off licence and special licence categories are set within the following overall provisions for grant of categories of licence:

#### **6. Types of liquor licences and permits**

*The Commissioner may grant –*

**(a)** *the following liquor licences:*

**(i)** *a general licence;*

**(ii)** *an on-licence;*

**(iii)** *an off-licence;*

**(iv)** *a club licence;*

**(v)** *a special licence;*

AND:

#### **7. General licence**

*A general licence authorizes –*

**(a)** *the sale of liquor between 5 a.m. and midnight on any day on the premises specified in the licence for consumption on or off those premises; and*

**(b)** *the sale of liquor at any time to a resident of the premises specified in the licence and any premises of which those premises form a part.*

#### **8. On-licence**

*An on-licence authorizes –*

**(a)** *the sale of liquor between 5 a.m. and midnight on any day on the premises specified in the licence for consumption on those premises; and*

**(b)** *the sale of liquor at any time to –*

**(i)** *a resident of the premises specified in the licence for consumption on those premises; or*

**(ii)** *a resident of any premises of which the premises specified in the licence form a part for consumption on those premises.*

#### **9. Off-licence**

*An off-licence authorizes the sale of liquor between 5 a.m. and midnight, on any day on the premises specified in the licence, for consumption off those premises.*

#### **10. Club licence**

*A club licence –*

*(a) authorises the sale of liquor between 5a.m. and midnight on any day on the premises of the club specified in the licence to prescribed persons for consumption on or off those premises; and*

*(b) is subject to any conditions relating to record-keeping of membership and visitors to the club as specified in the licence.*

#### **11. Special licence**

*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.*

The ‘hurdle’ to gaining the licence in the *Battery Point* matter (above) was the perception that the premises had been simply a neighbourhood retail shop.

The present applications must overcome the perception which they give from the material presented that they are

- Simply a neighbourhood retail shop;
- A corner store
- A supermarket
- A convenience store
- Not offering any specialist goods or services as a significant component of their business

The *Lipscombe Larder* enterprise remains an example of premises which were not only ‘a corner or neighbourhood store’ but also providing specialist goods and services and doing

so in a manner which met the needs of tourists and in providing hospitality goods, within the meaning and intent of the regulation 4(2).

In addition the manner of service can be relevant. An arrangement typical of supermarkets, or corner stores, where a range of food (including pre-packaged and fresh produce, or in refrigerators) is displayed in aisles, and customers select the goods, and go to an array of cash registers in the front, without an evident component of attention and service (ie predominantly self service) does not indicate that the type of specialist service is available which the Board considers is necessary for this licence category.

Finally, the position of the enterprise may be relevant. Situated in a tourism zone or place where tourists frequent may well assist an applicant. Likewise, being in an ordinary retail shopping area might be a factor against the grant of a licence. (See for example *Dunalley Fish Market 2003* decision).

As in the *Battery Point* application, without evidence of significant community support, without a proven history of providing services or goods that meet the intent of the regulation, the Board is not willing to direct the grant of the licence. The alternative is that effectively every corner store, neighbourhood shop or retail business providing any such goods and services which might fall in the hospitality or tourist category would be entitled to a *Tas Wines Off Premises Special Licence*. That is not the intent of the legislature in enacting regulation 4, in the context of the licensing regime evident from the licence categories in the Act.

See further the *Battery Point* decision.

For other relevant decisions:

*Augusta Foodstore 2006*

*Fresh Fruit Market Salamanca 2005*

*Mill Provedore Gallery*

*Spreyton Fruit Market 2003* (as to consumer demand evidence).

**This Application**

On the basis of the evidence provided and our inspection of the premises in each instance, we are not persuaded that these applications fit within the licence category. The premises and enterprises run within them fit more closely into the 'corner shop' or 'neighbourhood shop' variety rather than the specialised enterprise contemplated by the discussion above regarding this licence category.

The bulk nature of much of the stock provided and displayed, the self serve, the arrangements for payment (cash registers at the front of the premises, with customers lining up for payment), and the method of display of goods, signage and shop style fit more into the category of neighbourhood shop.

The Applicant's evidence in support was not persuasive that the discretion which the Board is obliged to exercise makes it in the best interests of the Community that premises such as those under consideration should generally be licensed for sale of Tasmanian wines for off premises consumption.

**Direction**

We direct the Commissioner to refuse the applications.

Dated: 1<sup>st</sup> August 2011.

P Kimber (Chairman); K Sarten (Member); D Logie (Member).