

**Application by Mark James Maumill for a special licence for the premises  
The Fires on Augusta at 98 Augusta Road, Lenah Valley**

**Decision: Licence granted with conditions**

**Date: 10 December 2018**

**The application**

The applicant, Mr Mark Maumill, seeks a special licence (restaurant) authorising the sale of liquor for consumption on the premises to persons having a meal, and to diners seated within an outdoor enclosure to the front of the premises at 98 Augusta Road, Lenah Valley.

In support of his application the applicant provided:

- an application form;
- a submission addressing various requirements of the Act;
- photographs of the interior and exterior of the premises;
- plans of the premises;
- extracts from a 2015 report for the Hobart City Council (HCC) entitled 'A plan for Hobart's local retail precincts';
- a planning permit issued by the HCC on 9 July 2018 in relation to the premises, for the purpose of change of use to food services, partial demolition, alterations and signage, subject to conditions and restrictions;
- numerous written representations to the HCC in support of granting the above planning permit; and
- a number of written representations in support of an earlier liquor licence application for the premises from a different applicant (on behalf of the same business group), which was withdrawn in September 2018.

On 22 November 2018 the applicant provided:

- extracts from 'A plan for Hobart's local retail precincts', with comments regarding parking in the local area highlighted in support of the view that parking is adequate;
- confirmation of the completion of the redevelopment of the local shopping precinct; and
- a copy of his HCC permit allowing outdoor dining at the premises, including the placement of tables, chairs, screens and other approved structures.

The premises will operate as a restaurant, coffee house, takeaway and ice creamery, from 7am to 9.30pm seven days a week. It will offer seating for 66 customers indoors and for 16 outdoors, with key menu items being full plated breakfast, pancakes, crepes, ice creams and pizzas.

The applicant supported his application in the following terms:

- "The restaurant will be [sic] family friendly casual dining experience in a semi sophisticated, boutique restaurant environment."
- "The business, where possible and affordable, will be using Tasmanian products."
- "We know that our customers in the Augusta Road area are looking for more venues that they can walk too [sic], to enjoy both a meal and alcoholic refreshment. The restaurant is in an area that has a large number of people who choose to walk, in lieu

of drive. The locals want the ability to truly enjoy their “genuine main street” in lieu of driving to North Hobart or Salamanca.”

- “There are few if any alternative areas for a new Restaurant/Café to be approved/built in Lenah Valley to meet the current community demand in Lenah Valley.”
- “The restaurant will employ approximately 17 to 20 staff. The Special Restaurant liquor licence will require us to employ more staff...”
- “Lenah Valley is a family, middle class suburb and is the site of the biggest residential development in Hobart since the 1990’s. The Lenah Valley brickworks residential development has seen 500 blocks of land now been [sic] developed for new residential housing....Without these 500 new houses been [sic] built [in] the Lenah Valley area residents are already calling for and want new restaurants/cafés in Lenah Valley.”
- In reference to the HCC’s plan for local retail precincts, that it “...clearly demonstrates and supports the need for a new restaurant with a liquor licence at 98 Augusta Road.”
- With regard to the Responsible Service of Alcohol, “The Restaurant Manager will ensure that the policies and procedures are being adhered to, and to ensure that the manager is running a compliant operation...Water will be freely offered and supplied to all customers.”

In summary, Mr Maumill has submitted that the liquor licence sought will meet the demand of a growing number of customers in the area, including locals who are likely to frequent the premises on foot, and will offer an alternative to the only other café/restaurant in the precinct that is authorised to sell liquor. He also submitted that when renovations are completed, the premises will enhance the work already undertaken by the HCC to revitalise this section of Augusta Road. The applicant indicated that the grant of the liquor licence will require the business to employ an additional 2.5 full-time staff.

### **Site visit**

The premises that is the subject of the application was inspected on 9 November 2018 and was under substantial renovation to convert it from the newsagency and the bakery that previously operated at the site.

The main restaurant area is located on the eastern side through the Augusta Road entrance. It will contain dining tables, a lounge area with a gas heater to the rear and a benched service area at which customers may also be seated. On the western side is the takeaway area, ice creamery and kitchen, which incorporates a substantial gas/wood fired pizza oven that is visible to customers. A dining table for larger parties is also planned for this area. Bi-fold doors have been installed on the west side of the premises, allowing entry to a small dining area abutting the adjacent shared driveway. Bi-fold windows and doors have been installed across the front of the premises on Augusta Road.

A wall divides the main restaurant and takeaway areas, and purchase points will exist on both sides of it. The applicant indicated his intention that alcoholic drinks would only be available from the main restaurant area, that table service will not be offered for ordering drinks and that customers will be required to attend a purchase point to order them.

An area for outdoor dining will be constructed on the footpath at the front of the premises. It will be positioned towards the road-side of the footpath, allowing for pedestrian access immediately in front of the premises, but also between the dining area and the road.

The premises will operate a modern security system and camera surveillance, and will contain secure storage areas. Sound proofing materials were being installed, and new bathroom facilities were being constructed at the rear of the building.

The HCC has required that five car parking spaces and six bicycle parking spaces are to be provided on the site. The car spaces will be for staff and will be located to the rear of the premises. Customer car parking is not available on the site and it is expected that customers who drive will park their vehicles on the streets in the local area.

Parking on Augusta Road between Giblin and Murchison streets is restricted. Fifteen minute parking is offered on the same side of the road as the premises, as well as disability parking and a few two hours spaces further along from the hairdresser. Parking on the opposite side of the road had not yet been signed, pending the completion of the HCC's streetscape construction work. Short-term drop off parking is available outside of the medical centre. Bus stops are located on both sides of the road.

## **Representations**

Sixteen written representations were received, all within the statutory period. Ten of these were in support of the application and six objected to it.

The representations in support fall into the following broad categories.

- Six provided support in general terms, on the basis that there is a need for more licensed restaurants in the precinct and/or that it would benefit the area. One was a local business owner, two indicated that they lived in Lenah Valley and two indicated that they lived in surrounding suburbs.
- One was a short statement of support.
- Three provide character references for the applicant.

In addition, Mr Maumill provided letters and statements of support for the restaurant from numerous individuals. These had been submitted to the HCC in support of the planning permit application made by the business group earlier this year. He also provided letters from individuals who had written in support of an earlier liquor licence application for the restaurant from a different applicant (on behalf of the same business group) in November 2017, which was recently withdrawn. While I have reviewed these letters and statements from the planning permit process, they are not related specifically to the current liquor licence application. I am therefore unable to give them any weight in my consideration of this application.

All of the representors who objected to the grant of the liquor licence lived in the local area. Their general concern was that the premises will be detrimental to the local residential amenity and to the wellbeing of residents, which will be exacerbated by the sale of alcohol. Key aspects are summarised below.

- Introducing another premises offering liquor sales is not in keeping with the residential nature of the Lenah Valley area and the shopping precinct. The business will have long opening hours and is likely to be able to sell alcohol until 9.30pm seven days a week. This will intrude on the lives of local residents and will negatively impact the amenity of the area.
- Alcohol may be purchased from other locations in Lenah Valley or its surrounding suburbs, such as North Hobart, which is a more appropriate area for the sale of liquor, already offers many licensed premises and caters for late night socialising.

- With more alcohol being sold in Lenah Valley, there is potential for an increase in dangerous incidents related to alcohol consumption. The effect on safety in the area is of considerable concern.
- Noise emanating from the premises, such as from customers and the stereo system, will create a nuisance for residents. The bi-fold doors and windows when open will cause the level of noise leaving the premises to rise.
- The premises has no parking for its customers and parking along the main road is already restricted. Customers from the premises will only add to the parking problems and the traffic congestion in the immediate local area. They will park on the residential streets and will create noise and disturbance, such as by having loud conversations, slamming vehicle doors and turning their vehicles on the street.
- The sale of alcohol at the premises may lead to negative health consequence for residents due to stress, safety fears and sleep deprivation. Many residents are elderly or have families with young children.
- Local residents have continually communicated their concerns to the local authorities regarding the negative impact that the premises may have on the amenity of the residential area and these concerns have not been heard. The local residents are the people who will have to live with non-compliance from the premises.
- Restricting the sale of liquor to between 5pm and 8pm on Friday and Saturday only, may provide some protection for the neighbourhood from undue noise and disturbance from the premises.
- If this liquor licence is granted, an extension to the opening hours and an increase in seating capacity may then be sought in order to increase profits. The business may even change into a bar that will be open late into the evening, where the sale of alcohol will be the priority.

### **Applicant's response to representations**

Mr Maumill was given the opportunity to provide a written response to the representations. His response included:

- a letter;
- extracts from HCC documentation relating to the Council's consideration of the planning permit for the premises;
- photos of the area outside of the premises, including an aerial photo;
- graphically designed impressions of the premises when renovated;
- resubmitted extracts from the 2015 document prepared for the HCC entitled 'A plan for Hobart's local retail precincts'; and
- resubmitted written representations to the HCC in support of the Council granting the planning permit.

He stated that "The objections considered and investigated by Council, are similar, if not identical to the representations raised with you as part of the liquor licence process. Indeed the main principle [sic] objectors are the same people."

With regard to concerns that the premises is not in keeping with the nature of the area, Mr Maumill reiterated advice that he had provided previously: that the premises is consistent with the HCC's plan for this Lenah Valley precinct; and that there is growing demand and a high level of support for the restaurant from other local residents and from people in surrounding suburbs. He contended that the restaurant has already benefited the area by employing some local residents in completing the renovation, with other residents expressing

an interest to gain employment there in the future. He also contended that it will further enhance the Augusta Road public amenities.

In relation to noise, traffic and parking concerns, the applicant indicated that the process undertaken by the HCC leading up to it issuing a planning permit for the premises, was extensive and included engaging experts to assess these impacts. He pointed out that the planning permit contains conditions to ensure that noise generated by the business does not cause environmental harm, as well as conditions in relation to on site vehicle parking and bicycle parking.

Mr Maumill suggested that based on assessments completed as part of the Council process, a greater level of noise is likely from the traffic on the busy main road and from the successful service station. He indicated that the service station is located across the road from the premises and between the premises and the local objectors' residences. He also indicated that this business trades later than 9.30pm seven days a week.

One representation had stated that "No other restaurant business in the immediate area operates 7 days a week or to these hours." In response, the applicant pointed out that a café/restaurant (which is authorised to sell liquor) is located next door to the premises and operates from 7am to 3pm three days a week, and from 7am to 9pm four days a week. He also pointed out that a pizza store/takeaway, also located in the precinct, is open until later in the evenings.

Mr Maumill indicated that many people walk from their homes to use the facilities in the precinct. In the event that his application for a liquor licence is not granted, he stated that "A BYO venue will significantly effect and disadvantage these locals who choose to walk", as they would either have to drive or catch a bus to purchase alcohol from another location, or not have an alcoholic drink with their meal.

In relation to safety, Mr Maumill offered that the demographic of the Lenah Valley area is such that the level of crime is low. According to the research and inquiries undertaken by the business group to which he belongs, the local authorities do not "...consider Augusta Road/Lenah Valley an area of concern about street violence nor an area subject to people abusing alcohol, such as the CBD and Salamanca wharf area."

He argued that undue social disturbance is unlikely, based on the experience of the licensed café/restaurant that currently operates in the precinct. He also stated that "I have sufficient skill, knowledge, management experience and motivation to ensure no breaches of liquor licensing laws will occur."

Given concerns that, if licensed, the premises may change from a restaurant to a bar, the applicant reiterated an explanation that he said he had previously provided to an objector. He stated that "...we are and always have been wanting to open a Restaurant", that Responsible Service of Alcohol policies will be in place for staff and that there would be serious consequences for himself, as the future licensee, for a breach of the liquor licensing legislation.

### **Meetings with local representors**

On 9 November 2018, meetings were held with four local residents at their homes. They had all provided written representations objecting to the grant of the licence.

Residents reiterated the concerns they raised in their representations in the terms summarised below.

- Lenah Valley is a quiet, residential and family-oriented area. It needs “the basics”, not another pizza shop and one that sells alcohol, which would be better suited to North Hobart. Alcohol is already available from other licensed premises in the precinct. Support for the restaurant was mainly garnered from people who live further away.
- Anticipated noise from the premises is of concern, particularly given the: opening hours; bi-fold doors and windows that have been installed; and if the premises is rented out for parties. Conversations underway at the existing café/restaurant can, at times, be heard clearly at a nearby residence situated across the main road. The service station does not create a lot of noise generally, although vehicle brake noise can be disturbing.
- Parking on streets close to the premises creates noise and annoyance for residents and affects their quality of life. In one case, a resident works irregular hours and their sleep is already disturbed by noise on the street. In another case, a resident has had to relocate their bedroom to minimise noise from the street. In a further case, it is difficult for a resident to park outside of their own home, given new parking restrictions. This will be made worse due to the premises. Bus services are limited after 8.30pm and people who are planning to have an alcoholic drink are unlikely to be riding their bikes to the premises.
- Traffic congestion on the main road is already concerning, particularly as there are many entries and exits from surrounding businesses.
- Lines and taps are being installed to serve alcohol as part of the renovation (ie rather than using bottles), which suggests that the sale of alcohol is a business priority. Concern remains that if this liquor licence is granted that there will be a future attempt by the business owners to change the premises into a bar.
- Concern also remains about the recourse that local residents will have if the liquor licence is granted and the business does not comply with the legislative requirements.

### **Considerations**

The primary matters to be considered for a liquor licence application of this type (special licence - restaurant) are to be found in sections 22 and 24A of the *Liquor Licensing Act 1990* (the Act).

#### **Section 22**

Section 22 of the Act sets out the criteria that a person must meet in order to be qualified to be granted a liquor licence. I am satisfied that the applicant is qualified in accordance with section 22.

#### **Section 24A**

Section 24A of the Act states at (1) that:

“In considering an application for a liquor licence, the Commissioner or the Commission must make a decision which, in the opinion of the Commissioner or the Commission, is in the best interests of the community.”

The term “best interests of the community” has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*).

Regulation 4 provides:

#### **4. Best interests of the community**

For the purposes of the definition of *best interests of the community* in section 3 of the Act, the following interests are prescribed:

- (a) the general costs and benefits to the community of the supply, or proposed supply, of liquor;
- (b) whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –
  - (i) reside or work; or
  - (ii) attend schools or other facilities frequented by children; or
  - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
  - (iv) attend places of worship;
- (c) possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor.

The context for consideration of best interests of the community is provided by the Object of the Act which is defined at section 2A in the following terms:

- I) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –
  - (a) minimise harm arising from the misuse of liquor by –
    - (i) ensuring that the supply of liquor is carried out in a way that is in the best interests of the community and does not, as far as practicable, detract from public amenity; and
    - (ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and
    - (iii) encouraging a culture of responsible consumption of liquor; and
  - (b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the best interests of the community.

The term “community” in this context refers to the whole Tasmanian community rather than to any specific smaller group.

#### **Relevant matters**

In determining the best interests of the community in respect of this application, I have weighted the information provided to me, taking into account the:

- application, submission and subsequent information provided by the applicant;
- issues raised in written representations;
- applicant’s response to the written representations;
- inspection of the premises that I undertook on 9 November 2018 and the information provided to me by the applicant while I undertook the inspection; and
- meetings held on 9 November 2018 with local residents and the information that they provided to me at the meetings.

In the context of the Act, the relevant concerns of those opposed to the granting of a licence relate to the effect of a licence on the amenity of the area, and that the proposed supply might cause undue annoyance, disturbance or inconvenience to people who reside in the area.

In considering these concerns I have taken into account:

- the residential nature of the area surrounding the premises;
- that the applicant intends to trade as a restaurant regardless of the granting of the licence, with the applicant saying that the restaurant would be BYO in the event that a licence is not granted;
- the neighbouring café with an existing special licence authorising the sale of liquor between 7am and midnight to a person having a meal on the premises and its impact;
- the extent to which the sale of liquor at the applicant's premises might cause reduction in amenity, or undue annoyance, disturbance or inconvenience to people who reside in the area over and above anything that might result from a restaurant trading without a liquor licence; and
- whether concerns can be addressed through conditioning of the licence.

Residents' concerns about parking are primarily a matter for council and I have not been provided with any evidence that the sale and consumption of alcohol (with meals) at the premises will cause further impact on parking in excess of that which would occur from the operation of the premises as a restaurant.

I also note concerns that the restaurant may change into a bar in the future, however the applicant could not do this without either a variation to his licence conditions or an entirely new licence, either of which would require a further application to me.

I note concerns about an increase risk to safety in the area due to alcohol consumption on the premises, I am satisfied that the risk is low. The type of liquor licence sought has a low-level of risk attributed to it in terms of the potential harm that may be caused from the sale and consumption of liquor. The closing time for the premises also supports this conclusion, as it has been limited by the HCC to 9.30pm, seven days a week.

On weighing the evidence provided, I am satisfied that it is in the best interests of the community to grant the liquor licence that has been applied for with appropriate conditions to mitigate the risk of any undue impact on nearby residents.

Requiring that liquor only be sold to a person having a meal reduces the risk of harms, and restricting the hours of operation is appropriate given the residential nature of the area around the premises. With respect to the hours I have taken guidance from the HCC's decision on hours best suited to the nature of the area. Concerns about excessive noise can also be managed through restricting the types of entertainment that can be provided and ensuring that complaints can be acted upon quickly.

## **Decision**

The special licence (restaurant) is granted with the following conditions:

1. Sale of liquor is authorised between the hours of 7:00am and 9:30pm on any day.
2. Liquor may be sold for consumption on the premises to a person having a meal.

3. Liquor may be sold for consumption off the premises to diners seated within the outdoor enclosure to the front of the premises only, provided that the area is authorised by an Occupation Licence issued by the Hobart City Council relating to the premises.
4. Live music is not permitted without the prior approval of the Commissioner, applied for no later than seven (7) days prior to any event.
5. Music volume must be decreased or the playing of music ceased when directed by an officer authorised under the Act, a police officer or an authorised council officer.

A handwritten signature in black ink, appearing to read 'JC Root', with a horizontal line extending to the right from the end of the signature.

JC Root

Commissioner for Licensing

10 December 2018