

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Ann Louise Brakey
Nature of application:	For a special licence
Premises: name	Delish Fine Foods
Premises: address	Shop 3, 37 – 39 Main Rd, Wivenhoe
Name of decision:	Delish Fine Foods II
Date & place of hearing:	22 August 2007 at Campbell Town
Date of decision:	1 November 2007
Members of the Board:	PA Kimber (chairman) and K Sarten (member)

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DECISION

A year ago we heard an application from the present Applicant Ann Brakey for a special licence to sell Tasmanian wine in conjunction with their tourist food delicatessen near Burnie in North West Tasmania.

The Applicant indicated at that time that she wished the Board to consider granting the capacity to sell specific other wine and beer product, and the Board encouraged the Applicant to establish her business and to then demonstrate to the Board the nature of it as a tourism attraction, and any special characteristics which might indicate a more extensive licence would be appropriate.

The concern the Board had was that whilst there is a special licence category for Tasmanian wines for off sales, and an off licence category (requiring sale of liquor to be the principal purpose), to extend the special licence category to other than Tasmanian wines required some protection to avoid the subversion of the licence category system.

The apparent purpose of the legislature is to avoid the proliferation of outlets in the nature of retail premises of all or many types being able to sell a broad range of liquor for off premises consumption. The assumption is that the legislature in this regard considers proliferation of such premises would risk increasing harm associated with consumption of liquor, or that it would change the nature of liquor retailing to the detriment of stability in the market place.

Application

The Applicant has established her business in the manner indicated in her original application (October 2006 decision) and the Board inspected the premises. The business is a dedicated delicatessen and retailer of fine Tasmanian produce.

The applicant seeks extension to the special licence to permit sale of liquor to diners (there can be no objection to that, in the context, sale of liquor to in house diners is beneficial to the community) and also sale of French and Italian wine, and German and Belgium beer for consumption off the premises.

For reasons akin to those expressed in our decision published today in *Wursthaus II* we accept that the grant of the licence as applied for will not cause an increase in harm associated with consumption of liquor, will positively benefit the tourism and hospitality industry and tourists and the general public, and as such will be in the best interests of the community.

We do not see that the grant of the variation/licence will cause a subversion of the licence categorisation system, or result in proliferation of outlets which would lead to an increase in consumption in a manner detrimental to the community.

The Applicant and her business partner have a specific and dedicated predominant component of their business which mixes well with the desired extension. The deli has been established in a traditional European manner, and they have expertise in the additional product they seek to retail.

The hours of operation are 9am to 6pm Monday to Friday, 9am to 3pm Saturday and 10am to 2pm Sunday. A condition on the licence to limit sale to between 9am and 6pm seven days a week will protect the integrity of the grant to enable sale in true conjunction with the deli operation, rather than the change enabling the Applicant to change or add to the business a de facto off licence component.

Current licence conditions are to continue.

In addition, a condition will be imposed limiting the display area and the mix of liquor product so that the total display area of liquor remains a minor component of the overall display area, and that Tasmanian wine remains the majority by area of liquor being displayed.

Law

The law relevant to this application is as per the *Wursthaus II* decision published today.

Consideration of facts

There is no objection to the application, and the quality standard and presentation, experience and obvious intentions of the Applicant make this an appropriate matter for grant of the variation.

Decision

We direct the Commissioner to grant the licence as applied for, subject to existing conditions and those express above.

PA Kimber: Chairman.

K Sarten: Member