

In the Matter of the Liquor and Accommodation Act 1990

In the matter of an application by
Charlotte Peterswald-Auld for a special licence
permitting sale of Tasmanian Wines.

In the matter of premises 54 Colville St, Battery Point,
“Battery Point Gourmet Food and Wine Emporium”

Decision of the Licensing Board.

This application was filed with the Commissioner in September 2001 and came on for hearing in Hobart on the 18th October 2001.

The application had three significant issues. First, many residing in the neighbourhood were strongly against the application. Second, there was no evidence of anyone within the neighbourhood being in favour of the application (apart from the applicant), and third the application was portrayed by objectors as being one that would enable sale of liquor from a ‘corner’ shop, and hence the application did not meet the criteria for a Tasmanian Wines Special licence in the Guidelines.

A hurdle for the applicant was that the premises had been in recent times a neighbourhood retail shop, and although her evidence was that she was intending to differentiate her business from the standard neighbourhood shop, in the absence of an existing business which demonstrated that, the strong impression with which the Board was left was that this was to be a neighbourhood shop, albeit with an intention on the part of the applicant to have, perhaps, a higher level of quality than that which might be thought generally to prevail.

Section 216 of the Act requires the Board to make decisions which encourage and facilitate social and economic development by encouraging the hospitality industry. Whilst the grant of this application would meet the “economic” component of this section of the Act, on the evidence, it would not meet the “social” component. There was no evidence of ‘need’ on the part of the neighbourhood, and there was significant evidence of objection from ordinary people residing in the area desired to be serviced by the Applicant.

The Board had the impression that a large component of the objection came from people concerned or worried that the licence would be more of a commercial component than it is apparently intended to be (or could be under the Special licence category). Implicit in the objections were concerns that a licensed café might arise, or that a bottle shop would be installed, and that anti-social behaviour would be encouraged from the ready availability of liquor in an almost totally residential area.

Much of the objection was from neighbours quite close to the premises, who appeared to be against the concept of having a shop on the site in any event. Hence, they were

objection to anything; shop, deli, bread and milk vending, and as liquor was proposed, also the sale of liquor.

The Applicant has a right to run a shop on the site, due to existing use considerations and Council authority. But it appears that the Council authority is for a shop genuinely to serve the neighbourhood.

The Liquor Guideline, 7.5, states:

5.7 Tasmanian & Local Wines

As a general rule the Board will direct the grant of a Tasmanian & Local Wines Licence if it is satisfied that the liquor to be sold by the licensee will be:

- 5.7.1 Tasmanian and Local Wine only,
- 5.7.2 (except for tastings) sold only for consumption off the premises, and
- 5.7.3 sold only as an adjunct to the primary purpose of the licensee to be carried on at the licensed premises which primary purpose relates to the provision of hospitality and tourist services or the sale of hospitality or tourist goods on the licensed premises.
- 5.7.4 subject to conditions to ensure that such provision will not detrimentally impact on the operation of the premises for their primary purpose.

The issue is whether the sale of liquor would be as an adjunct to a primary purpose of the licensee at the premises relating to the provision of hospitality and tourist services or the sale of hospitality or tourist goods. The dichotomy here is between the evident purpose of this guideline to permit sale of liquor from somewhat 'specialist' shops; rather than every corner or neighbourhood store.

We consider that the Act and Guidelines are not intended to permit the Board to licence every corner store for sale of Tasmanian Wines. See the decisions in *Davies Grand Central (2 decisions)* and *Lipscombe Larder*. Also see *The Hong Kong Diner*, and *Rao's on Bruny* for analogous situations.

These decisions elucidate the relevant structure of the Act, the powers, and limitation of the Board.

It may be that the present premises will become a specialist shop serving tourists or providing hospitality services or goods, which will differentiate it from the ordinary corner store. But in this, we understand that the Applicant suffers some planning limitations, as the Council apparently require them to predominantly serve the local community.

Now, the Lipscombe Larder is perhaps an example of a shop serving the local community, but also providing specialist services and goods, and meeting the needs of tourists and providing hospitality goods within the meaning and intent of the Guideline.

The Applicant might intend to do the same, or something different but which will bring her operations within the intent of the Guideline.

Against the community opposition, without significant community support, without a proven history of providing services or goods that meet the intent of the Guideline, the Board is unable to grant the licence.

As pointed out by some of the objectors, to do so would provide a precedent for grant of such a licence to most corner shops in Tasmania. That has the capacity to disrupt that component of the liquor industry relating to sale of liquor for off premises consumption, and is not something the Board can do unilaterally. A demonstrably worthy case can be exempted from the application of the Guideline by employing s17(6), but there is not sufficient evidence to indicate we should do that in this instance.

The Applicant attempted to meet the objections by saying that the area is indeed a tourist area, that there are people within it who require tourist goods and services (for example, those staying in accommodation establishments in Battery Point.

On balance we would be inclined to accept that; it does tend to differentiate the present Applicant's premises from most corner shops in Tasmania.

One might criticise the policy behind the Guideline, but that is the law. To change the position may have economic benefits to corner shops, but detriment to existing style licensed bottle shop establishments.

The macro economic considerations are presently in the political and National Competition Policy Review arena; and outside the authority of the Board.

If, however, the circumstances of the presentation of the premises and the service provided to the hospitality and tourism sector can be demonstrated at a higher level, after some period of operation, a further application would have to be considered on the merits and on the evidence at the time.

The Board directs the Commissioner to refuse the application.

Dated: 4th November 2001.

P Kimber;
Presiding Member

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W Morris
Member

L Finney
Member