

In the matter of the Liquor and Accommodation Act 1990

In the matter of an application for a special licence to permit  
Sale of liquor in association with the activities of a hair-  
Dressing salon.

In the matter of an application by **Cathryn Cooley** in  
Regard to premises “**Bladerunner City**” at shop 9, Tatler Arcade,  
Launceston.

**Decision.**

This application was heard at Launceston on the 11<sup>th</sup> February 2003. The Applicant appeared, was permitted representation, and gave evidence and called evidence. A number of parties appeared to oppose the application and some gave evidence and made submissions in opposition.

The evidence provided was not in any significant part contested, but rather the heart of the matter was the submission by those in opposition that the nature of the Applicant’s business and the intended provision of liquor in conjunction with that, was not an appropriate circumstance for the grant of a liquor licence.

The Australian Hotels Association (Tas Branch) was represented by Mr S Brown, and the Applicant by Mr A Bain. Mr Bain summarised the application in the following manner:

- The Applicant’s principal business is and would continue to be the provision of retail hair dressing services;
- The Applicant currently provides some liquor to her patrons without charge, as is apparently the custom in a number of hair-dressing salons, at certain times, and in association with certain customers (eg end of the day, Friday evenings, wedding or other special occasion services);

- The application is supported by a number of people and/or owners and representatives of businesses (who gave evidence or whose material was submitted);
- In having a licence, a better service could be provided in the provision of better quality wine, notably Tasmanian wines and other bottled wine, in lieu of the current provision (usually cask wine) which had to be at lower budget because it could not legally be charged for;
- Provision of food, prepared off-premises and brought to the premises when required, would add to the overall quality and variety of the services and experience, and assist to make the Applicant's business unique, and versatile;
- Support was provided from evidence given to the effect that the service, with liquor as an adjunct, would help economic activity by increasing the length of visitors' stay in Launceston, provide a better and more varied service;
- The provision of liquor in association with the Applicant's business and premises was approved from a local government perspective by the Launceston City Council and other regulatory authorities.

The Respondents, the AHA and a number of hotel operators, stated that the application did not meet the criteria in s216 of the Act nor the established guidelines, nor was it appropriate for the Board to employ s17 (7) to go outside the guidelines on the basis of any public interest to do so. Further, they said, to grant the licence would take liquor licensing outside the present scope of having liquor sold in conjunction with the hospitality industry, to become a product which, using special licence provisions, would mean that liquor could be licensed to be sold as an adjunct to any service, to the detriment of the orderly development of the hospitality industry (s216).

There was also evidence in letter form and given verbally at the hearing from hotel operators to the effect that there is already enough liquor outlets in Launceston, and a new licence should not be granted. That submission in itself is, in the Board's view, advanced from a trade protectionist perspective, not from a public interest perspective, and it lacked evidentiary basis and support. The guidelines, so far as making the provision of liquor from other premises a relevant criterion ("the need"

criterion) is intended to protect the broader public interest in availability of tourist, hospitality and liquor services, not the financial interests of the existing licensee.

The AHA concern also included the ‘precedent’ value of a decision, if positive to the Applicant. They expressed concern at wide-spread sale and availability of alcohol into outlets that traditionally have not had such authority. They say, to allow sale of alcohol from non-traditional outlets would have a detrimental affect on the increasing levels of alcohol abuse within our society.

The Board does not agree with all the underlying assumptions in that submission. However, the evidence on those points was not extensive, and it really proposes quite significant issues on availability theory. Suffice to say, in the present context, a decision does not have to be made on that overall basis of concern about precedent value, but rather on the limited grounds relevant to the particular case.

The special licence category in the guidelines is intended to be flexible and allow the Board to authorise sale of liquor from novel and innovative business opportunities.

*See preamble to guideline 5: Special licences are enabled by s11 of the Act. They apply to premises that sell liquor but which do not fall within the framework of specific licence types. A special licence authorises the sale of liquor between times and on premises subject to compliance with any condition specified in the licence. For convenience, the Board has grouped similar types of licensed or proposed licensed facilities under headings within the special licence category. The guideline for grant of a licence within each of these categories is shown separately. **The Board retains the ability to consider any other application for the sale of liquor on premises or with conditions not specifically provided for below.***

The Applicant’s representative, in summing up, agreed the application was novel but drew the analogy to theatres/cinemas and ships. He accepted that s216 gives the Board a discretion, which relates to consideration of social and economic growth. He urged that the discretion should not be considered in the background of restricting competition.

He submitted that the question should be asked and answered: will the grant of the licence result in less service overall to the public? We do not think the answer is that it would. We also do not think that is the only question to ask.

He referred to evidence (not really before us, but to some extent accepted) that many hairdressers provide liquor to patrons. Our view is that this does not mean liquor should thus be licensed to be provided as part of the business conducted.

Mr Bain referred to the definition of “interests and concerns of the community” in the guidelines, and the relevance of need and adverse effect (expressly not meaning adverse business effect). So far as the precedent concern expressed by the AHA, he said that could be answered by distinguishing the present application on the basis of the Applicant’s professionalism.

Mr Brown in summarising for the respondent said that to grant this licence would mean the guidelines would be disregarded, there would be no limit to available premises and businesses from which liquor could be licensed to be sold. He submitted that there would be adverse affect on the interests of the community generally (s216(2)). He said consumption is a matter for the consumer, but the Board is to determine how many (in the sense of numbers of premises) opportunities a member of the public should have to consume.

He submitted that alcohol is treated specially by the legislation because it is not just personal, but it affects the whole community, and the Board should be cautious about extending categories and opportunities. He referred to what he coined ‘the accumulation affect’, and that with many different types of premises (sales, services, hospitality, shops, delis etc) providing service, there may be an accumulation of consumption by the individual adverse to the interests of society due to over consumption.

Mr Brown said evidence of some people sometimes wanting the service intended to be offered was not thereby evidence of ‘need’ for the purposes of the guidelines, such would necessarily be sufficient to mean the Board should grant the licence. We agree; it is relevant but not determinative.

There were other issues raised by the AHA but the principal issues determinative of this application have been set out.

The Board concludes that this licence should not be granted. It is a matter of an accumulation of issues rather than one single issue which leads the Board, in its general discretion under s216, to determine not to direct the grant of the licence.

We have concerns about licensing outside the ordinary scope of hospitality businesses. We have unresolved concerns that to do so will lead to the view that numerous other businesses are appropriate for sale of liquor: all hairdressers, beauticians, podiatrist, health centres, bridal shops, dress shops, furniture shops, electrical stores, car yards, accountants and solicitors, and all places where people are obliged to take time to spend money (compared to quick service shops).

We do not believe the public expect premises in the nature of the applicant's premises, and other such premises as listed in the above paragraph should be authorised to sell liquor. We believe there is a risk that the increased availability from so many different types of premises will have an adverse impact from a harm minimisation point of view. We say 'risk' rather than a certainty, as no doubt there is significantly more evidence that could be brought to bear on that issue.

There are also issues about the sale of liquor from premises where people, as their principal business purpose, provide hospitality services, including sale of liquor. There are then generally controlled areas, and the providers of the service might be termed 'specialists'. Licensees and staff have the sale of liquor as their core business or at least, the provision of hospitality services as their core business.

We have a concern that the grant of this licence would undermine existing licensed premises to the overall detriment of the public. People do not, in our opinion, expect to have liquor for sale to them at hairdressers, and it is not demonstrated to us that it is in the public interest to effect a de facto deregulation of the hospitality industry where provision of liquor is relevant.

In conclusion, whilst the application may, in a one off sense, have no significant impact on the s216 criteria (best aiding social and economic development), the provision of liquor from such a business is not a recognised category of special licence, the Board is not presently of the view that the established licence categories should be extended to such service businesses, and there is insufficient evidence of a public need for the service.

The application is refused.

Dated: 15<sup>th</sup> April 2003.

P A Kimber, Presiding Member.

W F Morris, Member

L Finney, Member