

In the matter of the Liquor and Accommodation Act 1990

And in the matter of an application by **Mr KJ Davies** to Vary a special licence to permit the off-premises sale of Tasmanian premium/boutique beer from premises at **Davies Grand Central Station**, Launceston.

Decision: **Davies Grand Central Station No. 3**

Heard before the **Licensing Board** at Launceston on Tuesday the 15th July 2003.
Date of decision: 16th July 2003.

This application comes to be decided taking account of s216 of the Act, s17(7) of the Act, and the Liquor Guidelines: the ‘interests and concerns of the community’, guideline 3 ‘off-licence’, guideline 5 ‘special licences, and guideline 5.7 ‘Special Licence, Tasmanian and Local Wines’, and taking account of the Supreme Court decision affecting the reading of the guidelines: *R v Kimber; ex parte Tsinoglou 42/1997, Crawford J.*

There were no material conclusions by the board contrary to the evidence presented by the applicant. The substance of that evidence is in a booklet entitled “What’s the Difference?” The board was greatly assisted by the well researched and presented submissions and evidence.

The substance of the application is that the applicant already holds a special licence-Tasmanian wines (category 5.7) and notwithstanding that in the original decision (DGCS 1) this board refused the direction of a grant to permit sale of liquor including beer from the premises in circumstances similar to those enunciated in the evidence at this hearing, seeks to be able to sell a limited range of beer.

The beer would be sold in conjunction with the activities of the applicant at the premises, described as gourmet delicatessen. The ambit of the premises use includes a convenience store (not a supermarket – see DGCS 1), a café, a delicatessen, and a petrol service station.

Issues of lack of safety and potential adverse impact on the community through alcohol availability were raised by the AHA representative and others at the hearing. The board determines that there are no issues of such a nature in regard to this application as would militate against the grant of the licence.

A document submitted by the AHA entitled “Social Harm Research Document’ was noted, but the board could take little notice of the material as a purported independent expert report. The authors did not appear to be independent and the material in it seemed to have little conclusive value in regard to the present application.

The board determines, substantially, to refuse the application, save for the component where one particular brand of liquor is concerned, being Hazards Ale.

The reasoning for the refusal is that the application attempted to cast the definition of “Tasmanian premium/boutique beer” as some limited range of liquor and hence for

which employing the special licence category should provide an exception to the already existing off-licence category.

If this had been an off-licence application, we would have been bound to refuse it as guideline 3, in that the premises are not self-contained, in that (in the words of the guideline) the sale of liquor will form part of another retail business.

Whilst there is an excepted specified category of special licence providing for sale of Tasmanian wine in such circumstances, there is no specific category permitting sale of beer – whether generally or by limiting the range to Tasmanian premium/boutique beer.

The board has directed the grant of a special licence for sale of beer for off-premises consumption under the power in guideline 5, expressed as:

*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.***

That decision was “The Oast House” 12th March 1997. The particular nature of the premises in that matter made it uniquely suited to sale of beer; having a hop and brewing museum, and being an historically important (from a cultural heritage perspective) building for drying and roasting hops.

There is no analogy between the *Oast House* decision and this present matter.

Leaving aside the limitation to particular type of beer; this present application would circumvent the licence system structure. It should be an off-licence application. Given that it is not, the board is not prepared to use the special licence category to evade the requirements which would apply to an off-licence application.

We turn to the proposed limitation to ‘Tasmanian premium/boutique beer’. This would permit the sale of other than stock standard beer made by the two significant Tasmanian breweries – Boags and Cascade. Their labels which would fall under the self-defined or acknowledged “premium” category number some 8 or so brands: Boags and Cascade premium, premium light, the seasons range, and some others – with scope for addition of others as new brands are marketed.

We do not accept that this is a sufficiently unique category of liquor to justify a licence in such circumstances which have historically been limited, by analogy, to Tasmanian wines.

The purpose of the Tasmanian wines special licence category is to enhance the tourism and hospitality industry and to enable the showcasing of Tasmanian wines and to facilitate the broader marketing of a product which has, historically, been difficult to market through mainstream outlets.

Those criteria do not all apply to the Cascade and Boags range of premium beer.

They do, however, apply to those relatively unique labels of Tasmanian made, brewed, and owned breweries of which, the only one put forward at this hearing was Hazards Ale.

For that reason we are prepared to accept that the special licence category may be employed to extend the licence presently held by the applicant to enable sale of Hazards Ale, subject to conditions.

Additionally, the reality is that should this licence application have been successful, the board would have been obliged to direct the grant of a range of nationally and internationally marketed beer, produced or labelled under some Tasmanian connection, at each premises heretofore or in the future thought appropriate for the sale of Tasmanian wine. We do not feel that the intention of the interweaving of the off-licence and special licence categories is to permit that.

Conditions are appropriate to ensure the integrity of the business as principally the provider of hospitality and tourist goods and services.

On the basis of the evidence the following conditions are appropriate (incorporating the existing licence terms):

The sale of liquor is authorised on any day subject to the continuation of the provision of hospitality and tourist services and the provision of hospitality and tourist goods, in the manner as presently provided and subject to the following conditions:

- 1 Any liquor may be sold for consumption on the premises to people partaking of a meal;*
- 2 Tasmanian wines, spirits and liqueurs, and Tasmanian made and brewed beer produced from Tasmanian owned breweries as approved by the board from time to time may be sold only for consumption off the premises;*
- 3 Liquor may only be displayed and offered for sale in a location as designated on the plan held by the board;*
- 4 That liquor may only continue to be offered for sale or sold as an adjunct to the continuing provision of hospitality and tourist services.*

Dated: 16th July 2003.

PA Kimber, Presiding Member.

WF Morris, Member. L Finney, Member