

Decision of the Licensing Board of Tasmania

In the matter of an application by Mr **John Spiro Fiotakis** for authority to sell Tasmanian wines for off-premises consumption from premises known as Lipscombe Larder at Lipscombe St, Sandy Bay, Tas

In the matter of the Liquor and Accommodation Act 1980

DECISION

The Board's view is that a licence should issue.

The applicant was represented by Mrs Marilyn Lovatt. Mr Daniel Leesong and Ms Susan Butterworth appeared for the Australian Hotels Association (Tasmanian Branch). Mr Ian Duncan attended as an observer.

There were substantial documentary submissions and evidence tendered on both sides and the Board heard evidence from the applicant, and submissions from the objectors. The evidence is substantially accepted subject to any comment set out below.

- S25A of the Act: the premises is not a supermarket. A supermarket is not defined in the Act. The Macquarie Dictionary 3rd Edition 1997, which was put together taking account of Australian experience, and circumstances, and which must be assumed to have relied on the understanding at the time (1995) when the definition-less "supermarket" word was put into the Act, says that a supermarket is *a large, usually self service retail store or market selling food and other domestic goods*.
- Lipscombe Larder ((LL) is not "large".
- Whilst LL sells food and other domestic goods, it is also a delicatessen, and a patisserie, and does not fit within the ordinary understanding of what a supermarket is.
- Going to the discussion surrounding the parliamentary debates is acceptable, but not paramount. What the members said is relevant but not determinative. The Board disagrees with any indication to be obtained from Hansard discussions that LL is a supermarket.
- Ultimately, consideration of what is a supermarket is a matter of fact, based on a word of either precise meaning (in which case LL is not a supermarket) or imprecise meaning (in which case LL deserves the benefit of the doubt - employing s216 and the positive obligation on the board to make a decision which best promotes social and economic growth: that is, let the business open up).
- As to the general discretion, and the guidelines: That the shop operated with a permit to the same effect as the licence applied for, and did not cause

disruption to the hospitality industry, for a number of years, is indicative, and evidence, that the licence grant would not be contrary to s216.

- Further as to the general discretion: this decision is not a precedent for every corner shop to have a take away liquor licence for Tasmanian wine. It is a determination that LL is somewhat unique or distinctive as a provider of hospitality and tourist goods and services, which is not replicated in the ordinary corner shop or convenience store situation. Most such shops would not reach the same quality position of provision of such goods and services, such that the guideline would be satisfied.
- The applicant did not assist himself in two respects with regard to the evidence provided.
- First, he tried to persuade the Board that there was a 'need' because people asked him for wine. They did that because he refused or failed to remove wine from display, even though he had no right to sell it. That enticed the public to enquire of him as to sale/purchase. He purported to not understand that this was an unfair enticement to comment and complaint. That was his fault that he had disgruntled customers, and all evidence regarding 'need' based on customer requests has been disregarded on that account.
- Second; he mixed and merged his evidence as to the ambit and scope of the business. There was not a clear distinction between the % or level of business associated with the delicatessen, the level associated with external activities (wholesale or catering), the mixed or convenience shop, and other activities. That would have been easy to do, but it was merged such that the Board was not given a clear breakdown of what related to the delicatessen and the convenience store.
- Nevertheless, the Board accepts that the convenience store is only a part of the overall retail activities, but significantly more of a part than the applicant tried to lead the Board to believe - that was pursued by trying to give a perception of a merging of the retail and wholesale and catering elements of the enterprise together.
- The "petition". Really, the petition is close to worthless. It is really incumbent on applicants to bring clear evidence, capable of being tested before the board as to "need". The social development to be promoted by a licence grant is not always evidenced by an applicant's statement of perception. The applicant's subjectivity will sometimes mean that their evidence about community or social benefit will be so obviously coloured as to lack probative value or weight. To then rely on a 'petition' which has not been proved as to the method of presentation, nor other criteria for execution, is to leave a serious gap in the evidence.
- In the particular case, the Board was able to accept that there is an appropriate level of need which justifies being serviced by the particular limited form of licence for which the applicant has made application. To sell Tasmanian wine has its own redeeming features; benefit to local producers, promotion of a quality product in an appropriate setting, benefit to consumers who might otherwise have further to travel to obtain similar product (or indeed, find difficulty obtaining such product);

- On balance, the Board finds this application meets the criteria of the guidelines, and s216, and is not contrary to the public interest, and not to be likely to have any adverse effect on the interests of the community (locally or generally).

We direct the grant of a special licence to authorize the sale of Tasmanian wines for consumption off the premises, in association with and as an adjunct to the primary purpose of the licensee running the Lipscombe Larder as a delicatessen, patisserie etc and thereby providing hospitality and tourist goods on the premises.

Terms:

The sale of liquor is authorized at any time on any day as an adjunct to the provision of a delicatessen and patisserie, specialising in Tasmanian produce and products and subject to the following condition:

1. Tasmanian wines, ciders and liqueurs may be sold for consumption off the premises.

Dated: 15th December 2000

PA Kimber; chairman

WF Morris, member

L Finney, member.

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