

Licensing Board of Tasmania

In the Matter of the Liquor and Accommodation Act 1990
(as amended to October 2003)

and in the matter of an application for a special licence
by **Warren Squibb** for “**Spreyton Fruit Market**”
Mersey Main Rd, Spreyton.

DECISION

The Board heard this matter at Launceston on the 30th September 2003.

THE LAW

This is an application under s9 of the Act, as recently amended. Relevant provisions include:

Liquor not to be sold except as authorized

5. A person shall not sell liquor except as authorized by –
- (a) a liquor licence; or
 - (b) a liquor permit; or
 - (c) a general liquor exemption.

Types of liquor licences and permits

6. The Commissioner may grant –
- (a) the following liquor licences:
 - (i) a general licence;
 - (ii) an on-licence;
 - (iii) an off-licence;
 - (iv) a club licence;
 - (v) a special licence;

Special licence

11. A special licence authorizes the sale of liquor –
- (a) between times; and
 - (b) on premises; and
 - (c) subject to compliance with any condition – specified in the licence.

23A. [Section 23A Inserted by No. 9 of 2002, s. 11, Applied:15 Sep 2003] (1) A person may make a written representation to the Commissioner in respect of an application for a liquor licence.

Requirements for licence

24A. [Section 24A Inserted by No. 40 of 2003, s. 8, Applied:15 Sep 2003] (1) In considering an application for a licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community.

Hearings by Board

213. (1) [Section 213 Subsection (1) substituted by No. 9 of 2002, s. 23, Applied:15 Sep 2003] The Board is to –

- (a) fix a time and place for a hearing in respect of an application or appeal; and
- (b) inform the Commissioner, the applicant or appellant and any person who made a representation in respect of the application or appeal accordingly; and
- (c) provide the applicant or appellant with a copy of any representation.

(2) At a hearing the Board –

- (a) shall decide the procedure to be followed; and
- (b) shall give the applicant or appellant, as the case may be, the opportunity to be heard; and
- (c) may receive evidence orally or in writing; and
- (d) may take evidence on oath or affirmation; and
- (e) is not bound by rules of evidence but may inform itself in such manner as it thinks most appropriate; and
- (f) shall observe the rules of natural justice in so far as they are applicable.

New regulations (Liquor and Accommodation Regulations 2003 (S.R. 2003, No. 96)) were promulgated at the same time the recent Act changes were made, and the specific regulation which impacts on applications for an special licence state:

Special licence

4. (1) The Board is to direct the Commissioner to grant a special licence if satisfied that –

- (a) the principal activity to be carried on at the premises specified in the licence will not involve the retail sale of liquor or, if the principal activity to be carried on at the premises will involve the retail sale of liquor, the premises form part of or are associated with a vineyard or winery and the sale of liquor will be restricted to Tasmanian wine; and
- (b) in the case of premises at which meals are to be served, liquor will be sold only for consumption on or adjacent to the premises as an accompaniment to those meals.

(2) The Board is to direct the Commissioner to grant a special licence to sell Tasmanian wine if satisfied that –

- (a) the principal activity to be carried on at the premises specified in the licence is the provision of hospitality or tourist goods or services; and
- (b) selling the wine is not likely to have a detrimental effect on that activity.

Before these changes, the considerations to be taken into account on such an application as the present one, were set out in the Act and in Guidelines. The Guidelines set out the policy the Board would take into account generally in determining whether or not to grant a licence. The fundamental Act provision was to the effect that the Board must make a decision which would best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State. That provision is repealed.

The present position is, with regard to the present application:

- 1 The Applicant must have a licence to sell liquor as proposed.
- 2 The Commissioner, on direction of the Board, may grant the special licence.
- 3 The Act defines a special licence as one authorising sale of liquor between specified times, identified premises, and subject to compliance with any condition specified in the licence.
- 4 People may make written representations to the Commissioner in respect of an application (which has been done) and the Commissioner must refer those representations to the Board.
- 5 The Board must consider the application, and must make a decision which, in the Board's opinion, is *in the best interests of the community*.
- 6 In considering an application for an special licence, the Board is to direct the Commissioner to grant the licence if satisfied as to the matters set out in regulation 4. That is, the Board must be satisfied that the principal activity to be carried on at the premises will not be the retail sale of liquor. Also, if the licence relates to sale of Tasmanian wine, the Board is to grant the licence if satisfied that the principal activity to be carried on at the premises involves the provision of hospitality or tourist goods or services (and the selling of wine will not be likely to have a detrimental impact on that activity).
- 7 The Board hears the application (s213) and directs the Commissioner to grant the licence, or to refuse the application (s214).

There is no guidance in the Act or regulations as to the criteria to be taken into account by the Board in attempting to make a decision which is in the best interests of the community (s24A).

The Board is bound by the principles of natural justice in its administrative decision-making. We are therefore bound to take into account relevant matters.

It has been suggested that regulation 4 is prescriptive: if the criteria set out there and in the Act are satisfied, then the Board must issue the licence. But s24A appears to give to the Board a wide discretion. How does the Board decide to refuse a special licence that meets the criteria in the regulation, when the regulation directs that it 'is to be directed to be granted?'

We conclude that whilst s24A provides a wide discretion whether or not to direct the grant of a licence, if the criteria set out in reg 4 are met, which is a matter to be determined by the Board on the factual material relevant to the hearing, then the Board is to direct the issue of the licence. If we are wrong about that, then the Board simply has discretion to exercise in each case to determine whether or not the direction to grant the licence is in the best interests of the community.

That would appear to be a change effected by the new provisions and regulations (September 2003), placing greater emphasis on granting the licence than not. That would also be consistent with the Board's experience with hearings for special licences over the last 10 or so years. It would also be consistent with the framework surrounding the alterations to the Act effected in September 2003: it was at the

conclusion of a National Competition Policy review of the Act, where anti-competitive provisions were required to be justified or removed.

Our experience is that in almost every instance for special licences, it has been appropriate to issue the licence, in the best interests of the community.

Liquor is either not the primary activity, but a sensible and appropriate adjunct to an accepted beneficial social, cultural or recreational activity, or if liquor sale is the principal activity, it is so because the premises to be licensed are premises where grapes for wine are grown, or where wine is made (the cellar door). The third category of special licence referred to in the regulations is a mixture: a promotion of local industry (Tasmanian wine) by permitting it to be sold in conjunction with another and principal activity, which is aligned with provision of goods and services for hospitable or tourist purposes.

We do not consider the categories of special licence are closed by the extent of the regulations. The regulations simply specify when the Board is to grant a special licence in certain circumstances. Neither Act nor regs state, “and in no other circumstances”.

Many such licences have been issued over the last 10 years, and we are not aware of any community harm that has arisen associated with such licences or premises to which such licences are attached.

We take into account the written material submitted by the Applicant and by those people who made representations. We take into account the evidence advanced at the hearing and the submissions made by the Applicant and those people who made representations.

We summarise that material and our findings on any material question of fact:

THE APPLICATION

The Applicant is partner in a family business at “The Big Apple” at Spreyton. It operates 7 days a week, and provides a wide range of produce for the consumer, including fruit and vegetables, bakery, butchers shop, café and convenience store. It trades 7am to 6pm Monday to Friday, and 8am to 5.30pm on the weekends.

Mr Squibb says he has recognised a consumer lead demand for Tasmanian wine. He says he has many customers, daily, from the TT Line ships, driving through on their way to Cradle Mountain and/or the West Coast. They alight early in the morning, and on the way, stop to get some provisions at Mr Squibb’s shop. They have, he says, asked whether they can get some wine. He says there is rarely a time of the day when there is not at least one car with interstate number plates in his car park.

The Applicant’s stated intention is to continue the shop as is, but with the adjunct of a small area for sale of Tasmanian wines, to meet this consumer demand.

OBJECTIONS/REPRESENTATIONS

The Australian Hotels Association (Tasmanian Branch) object to this application being granted.

They say there are a number of licensed outlets in the vicinity, including licences clubs and hotels, and that there is no need for the service proposed to be offered.

The Applicant responded to that by stating that the hotels referred to are some distance away in Latrobe, and are not on the route that the people in the particular market he seeks to satisfy travel.

He said he offers something different and not provided:

- Personal all day service to tourists;
- A one stop shop – convenience for tourists and locals, with a wide range of goods used in hospitality and tourism;
- Good, safe and convenient location and parking;
- Take away for adults: no issue of harm associated with consumption of what will likely be small quantities of premium priced local wine;
- A good outlet for the marketing of the product, for the benefit of the local wine makers/vineyards;
- A stabilising effect on employment.

The AHA also raised concerns about children procuring liquor from the premises if licensed. We can say that the Board does not accept there is any real likelihood of there being sale of liquor from the premises to minors, nor any real likelihood of theft by children of wine bottles from the premises.

The AHA representative questioned the Applicant about the level or degree of Tasmanian produce being sold from the premises. The response was to indicate a number of lines of Tasmanian produce, and also brochures on local tourism attractions.

Mention was made of the number of club licence premises in the vicinity. The Board is concerned that club licences should be seen as places, the principal activity of which is to cater of members of the club for their principal social, cultural or recreational activity. Liquor is only an adjunct to the social side of the provision of club services. Club licensed premises should not readily consider themselves as likely objectors to a proposed new licence, except in their pursuit of matters relevant to the community interest.

If a club objects because of perceived adverse impact to their “business” or profitability, then it would appear that the club is placing too much emphasis on sale of liquor.

The same submissions were made by the AHA in this matter as were made in general in the matter dealt with on the 1st October 2003, “Prospect Wines”. The submissions in the material regarding outlet density and resultant harm are answered in the same way (see decision today in the matter of “Prospect Wines”). In addition, there is the

impetus for grant of a special licence subject to conditions, when the Board takes account of regulation 4 (see above discussion).

Assertions that other hotels in Latrobe stock Tasmanian wines is not an answer or bulwark to the reasonable desire of the Applicant to serve a need he perceives in the market. There is no evidence that grant of this application will reduce the overall service to the community, and there is no evidence that the grant would cause an increase in alcohol related harm.

CONCLUSIONS

This application meets the criteria set out in regulation 4(2). It meets the criteria in the Act. The regulations state that the Board is to grant a licence to sell Tasmanian wine if satisfied that the principal activity to be carried on at the premises specified in the licence is the provision of hospitality or tourist goods or services, and selling the wine is not likely to have a detrimental effect on that activity.

We have no doubt that is the case, and that with appropriate conditions on the licence, that position can be protected.

In addition, in deciding whether or not to direct the grant of this licence, the Board concludes that it would be in the best interests of the community to direct the grant. It will benefit the business of the Applicant, it will benefit employment stability, it will not cause disruption in industry so that other people are disadvantaged, it will provide goods that people wish to buy in a convenient location to them, in conjunction with another useful service to the community (provision of hospitality and tourist goods).

We direct the grant of this special licence subject to conditions:

- Hours of provision of liquor for sale are limited to the present stated opening hours of the Applicant's business.
- The portion of the premises to be available for public display and sale of liquor is to be limited as decided by the Commissioner to assist in ensuring there is not detrimental impact on the principal activities on the premises.
- Liquor is to be sold only for consumption off the premises.

Dated: 15th October 2003.

Phillip Kimber, Chairman. William Morris, Member. Louise Finney, Member.

