Licensing Board of Tasmania

In the matter of an application for
General Licences by **Michael Kent**
on behalf of Woolworths (Victoria)
Pty Ltd.

In the matter of premises currently licensed
as off licensed premises, at **Claremont,**
Rosny, and Campbell Street (Southern
Tasmania).

DECISION

HEARING

These applications were lodged with the Commissioner for Licensing in December 1998. They lay dormant for some time, and were then heard by the Licensing Board at Hobart on the 19th October 1999.

The Commissioner held 3 separate files of documents relating to the applications, including the application documents, the supporting documentation, letters or other documents in support of the applications, and letters and other documents objecting to the applications (or making representations generally opposing the grant of the licences as applied for).

The applicant lodged amended plans and further submissions on the 11th October 1999.

The Board takes account of all the documentation lodged.

The applications were heard together. It was agreed by the applicant and the objectors that much of the material of each application was relevant to the

general principles to be considered in regard to the question of the grant of all applications.

The hearing was over two days, and evidence was taken from the applicant's representative, Mr. Glenn Travers, and various witnesses on behalf of the applicant, and from Ms Denita Harris on behalf of the Australian Hotels Association (Tasmania Branch) and various hoteliers or people interested financially or otherwise in hotels in the vicinity of the premises. Mr Nigel Amos, a resident of Claremont attended and gave evidence, apparently without affiliation to any hotel or industry participant or the applicant.

THE APPLICATIONS

Each application was along the same lines, although the particular premise in each case was different. Where that becomes relevant, we will note the differences.

The existing premises hold "off licences". This enables sale of liquor to the public in quantities of no less than 9 litres for each sale. It is no secret that this presents an impediment to holders of such licences in their marketing and sales strategy; they cannot sell in single bottle amounts (or less than a number of bottles or containers totaling 9 litres in volume; generally no less than 12 x 750 ml bottles, or the equivalent of one case of beer).

The 9 litre minimum is a statutory matter. If sale of liquor for off premises consumption is to be approved, it must be by this type of licence, or by a general licence or a special licence. A general licence would permit sales of any quantities of liquor (that is, from one bottle/container upwards), and a special licence can be framed to enable such sales.

One might have thought that the purpose of these applications was to try to get to the position where single bottle sales could be made; but that was not the way the advocates for the licence grant put the application.

The applications were put forward on the basis that the applicant wished to get to a position where he could sell liquor for consumption on the premises, as he perceived a need in the market for sale of single glasses of wine in a small section of these warehouse type facilities.

They said that they would have 20 different wines available for consumption on the premises each fortnight (rotating the wines available), and that they would aid the education of customers in wine at a point/time where they could best use the information; that is, to enable them to sample (at a price) a glass of wine, then to buy the bottle, or a number of bottles.

The applicant called a number of witnesses who stated, in varying ways and manner, that if they were able to buy wine by the glass on the premises, they would find that a convenience, and useful. Their evidence supported the applicant's case.

THE OBJECTIONS

The AHA noted the differences between that which the applicant holds, and that which he seeks as being:

1. The ability to sell alcohol for consumption on the premises;
2. The removal of the 9 litre minimum limit for the sale of alcohol for consumption off premises; and
3. Substantial change in trading hours – extension beyond the 6pm closure to midnight (Monday to Saturday) and to enable all day Sunday trading.

In the AHA's review of the legislation (page 4 et seq) of their written submission, they note that during the last 25 years there have been a number of submissions to Government to remove the 9 litre minimum quantity for wholesale and off licences, but that such submissions have consistently been rejected or ignored. (to the same effect).

The AHA says that the applicant simply seeks to circumvent the legislative framework, and does so by casting the applications as general licences, to facilitate the sale of liquor to people on the premises, whereas really the intent is to enable sale of single bottles (or, at least, in quantities of less than 9 litres) and to extend the hours of trading.

We find it unnecessary to determine whether that is the true intent of the applicant. The Board will decide the matter on the basis of the evidence provided, and consideration of s216[1] of the Act and the Guidelines. That is, we will determine whether the warrant, which would be granted with the general licence, is indeed appropriate (in that context) given the overall operations of the applicant in the premises, and the market he seeks to serve.

We agree with the AHA submission that it is apparent the applicant's intention is to continue to focus on off premises sales, and that the on premises component will be a limited pursuit. This is clear from the relative size of the area intended to be dedicated to on premises consumption compared with the area dedicated to off premises sales. One might debate our conclusion, but that is our conclusion on the basis of the evidence, and consideration of the market.

We note the submission by the AHA that the applicant does not intend to provide any other significant services along with the sale of alcohol. That is,

[1] Section 216 reads:

216 (1) When considering an application for a licence or permit the Commissioner or the Board shall make a decision which, in the opinion of the Commissioner or the Board, will 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.

(2) While, in coming to that decision, the Commissioner or the Board may have regard to any legitimate interests and concerns of any section of the community the Commissioner or the Board shall have greater regard for the legitimate interests and concerns of the community as a whole.

there will be no accommodation, no entertainment, and no (or only very limited) sale of food. Although all of these accompaniments may be useful, they are not actual requirements of a general licence, but they are factors the Board may take into account in considering an application in the context of s216 of the Act.

In this instance, the absence of provision of other services, and notably, the absence of provision of food in the context of providing liquor on premises, does not enhance the application.

The AHA particularly made note of the numerous premises, in the vicinity of each of the premises the subject of the applications, which provide liquor for consumption on the premises. We conclude that in each instance there is a ready supply of other licensed premises in the locality of each of the subject premises, such that there is (from the public's perspective) no need for further premises providing liquor for consumption on premises. This is not an absolute determination; it is relative to the nature and quality of the intended premises and the overall nature and level of service intended to be provided therefrom. In that context then, the question of need for such premises is considered by the board to militate against the grant of these applications.

It is not necessary for us to recite the numerous licensed premises in the relevant localities, suffice to say that the maps (with licensed premises highlighted) presented at the hearing are clear.

S 216 of the Act directs our attention to the hospitality industry, and whether the grant of the licences applied for would contribute to the orderly development of the hospitality industry. In these instances, taking those criteria into account, we feel it is not demonstrated that the provision of general licenses in replacement for the off licences, will be contributing to the orderly development of the hospitality industry. We state that in the context of the Act as it is constructed. There are particular licence types, and although

the types are not closed (due to the special licence category being available for novel applications) these applications for general licences are felt not to contribute to meeting the s216 criteria.

The AHA rightly submits that the premises, as general licensed premises, would be of a relatively low standard. Although the décor may be worked on, the reality is that in each instance, the most significant component of the business to be conducted will be the off sales component. The premises are each effectively a warehouse. On sales consumption will be conducted in such premises, without the provision of other hospitality services (eg entertainment, accommodation, and the provision of substantial meals). Again, these issues militate against granting the applications.

The applicant brought evidence from people local to the area of the premises in each application. No doubt these witnesses honestly and accurately indicated that they would enjoy the ability to buy and taste a full glass of wine (not simply a free taste as one might otherwise be able to obtain) from the premises. However, the Board can not be satisfied, from these witnesses and other evidence of support in the same vein, that there is sufficient level of unsatisfied need in each vicinity which would be satisfied by the applicant's proposal – such as to make the grant of the applications appropriate.

CONCLUSION

In conclusion, in taking account of the interests and concerns of the community, in the context of the meaning and intent of s216 of the Act, and the licence structure in the early sections of the Act, the Board has:

- Taken account of representations made in the course of the hearing (in this regard, on balance, the evidence does not convince us that the grant would be a proper exercise of the Board's obligations under s216);

- Taken regard to the extent to which businesses carried on under licences and permits in the area to which each application relates are satisfying the need intended to be satisfied by the applicant (in this regard, we feel there is adequate service provided by such other businesses, such that the grant of the application(s) is not appropriate in the Board's discretion);
- Determined whether the grant(s) are likely to have an adverse effect on the interests of the community as a whole and also the interests of the community in the area (in this regard we do not feel the grant would have such adverse effect that this criterion is critical to the application).

The applications are refused.

Dated: **22nd December 1999**

PA Kimber, Presiding Member

WF Morris, Member

L Finney, Member