

# Licensing Board of Tasmania: Decision

## Application

Applicant: Mr John Dickens, Dickens Ciderhouse, 22 Montpelier Retreat, Battery Point, Hobart

Type of Application: General Licence (Section 7 *Liquor Licensing Act* 1990).

Decision: 24 September 2013

## Background

Appearing before the Board were the applicant, Mr John Dickens, Dickens Ciderhouse; and objectors, a number of residents of Salamanca Square, Battery Point. Two residents (Mr George White and Ms Sylvia Peterson) submitted written objections and a further submission was prepared by Mr Nigel Burridge (Strata Title Manager) and Professor Ian Duncan (Legal Counsel) on behalf of the owners of Salamanca Square, Battery Point, Strata Corporation 129225.

Fourteen objectors/observers were present at the hearing. Of these, the following made verbal submissions:

- Mr Tom Edgerton
- Ms Sylvia Peterson
- Mr George White
- Ms Kate Acland
- Mr Tony Hope (Chairman of the Body Corporate)
- Mr Gary Crawford
- Mr Nigel Burridge (Strata Title Manager)
- Ms Jill Tilbury

Professor Duncan sought leave from the Board to appear on behalf of his clients, the Owners of Salamanca Square Battery Point, the objectors. Section 213(6) of the *Liquor Licensing Act* 1990 states that:

A person is not entitled to be represented at a hearing unless the Board is satisfied that injustice could otherwise result.

The applicant had no issues with Professor Duncan representing his clients and the Board gave leave for him to appear on their behalf.

Before proceedings began, Board member, Ms Ann Cunningham, declared a perceived conflict of interest in that her husband has recently inherited an ownership interest in the building that would house Dickens Ciderhouse and be leased to the applicant. Ms Cunningham indicated that the building had been leased in the past and would presumably be so in the future irrespective of the success of this application. She advised the

parties that she would take no part in the hearing if either felt she could not discharge her responsibilities on the Board appropriately.

Neither party expressed concern with Ms Cunningham's participation and she remained as a member of the Board for the hearing.

The applicant seeks a general licence to sell liquor from a proposed outlet, currently vacant, on Montpelier Retreat, Battery Point. This is a street that leads up from Salamanca Place. It contains two licensed premises – Wursthau Kitchen (special) and Monty's on Montpelier (special). There are numerous licensed premises in the vicinity of the proposed outlet.

The building is a warehouse type construction made of better brick and concrete. Its capacity is 60-65 occupants and it would be open between 5.00 p.m. and midnight, 4 days/week, although the applicant may consider opening at noon depending on future market take-up. It would sell Dickens Cider and other ciders, beer, wine and whiskey. All products offered would be Tasmanian. Additionally, (only) Dickens Cider would be available for purchase and consumption off the premises.

The applicant runs a similar smaller cider house in Launceston which has operated for the last year.

### **The applicant's submission**

The applicant submits that it is in the best interests of the community to have a liquor licence granted for these premises (Section 24A(1) *Liquor Licensing Act 1990*).

He bases this on the following arguments:

- Dickens Ciderhouse would fill a gap in the market by providing something new to the hospitality scene in Hobart in an attractive premises for patrons to gather, sample the ciders on offer and purchase ciders and other liquor;
- it would form part of a tourist "cider trail" being established around Tasmania to capitalise on an increasingly popular Tasmanian beverage and promote Tasmanian produce; and
- the capital investment (\$80,000 to modify and fit out the currently vacant premises), the employment of 8-12 people and on-going trade activity would contribute to the local economy.

Dickens Ciderhouse is designed to operate as an offsite cellar door for Dickens Cider, a Tasmanian owned and operated company which produces a range of ciders made from Tasmanian apples, pears and cherries.

The applicant has operated the business since 2008 and in July 2012 opened the Launceston Ciderhouse to provide an attractive bar type environment for patrons, both tourists and local people, to enjoy the cider experience.

The applicant submits that cider is becoming an increasingly popular beverage. Dickens Ciderhouse in Hobart would add to the vision of a “cider trail” being established by the Tasmanian Cider Producers Association of which the applicant is president. The applicant submits that the focus will be on local history and produce and the business would have an educative component with events scheduled throughout the year where winemakers and distillers whose products would be stocked by the cider house would be invited to conduct tasting evenings to promote their products. This would provide a broader entertainment experience for visiting tourists and local people.

The applicant submits that the primary target market is tourists and as such Dickens Ciderhouse would offer free tastings of its full cider range as well as “send home” sales of bottle stock. Only Dickens Cider would be sold for consumption off the premises and the applicant does not expect that this will be a big component of sales revenue. Only cider will be available on tap, not beer. It is hoped to enhance the tourism experience with memorabilia, artefacts and pictures decorating the space. The applicant does not expect visitors to spend more than an hour or two in the facility.

Bottled beer from small Tasmanian breweries would be available in 330ml bottles only along with Tasmanian whiskies and red and white Tasmanian wines. Dickens Cider would be sold at \$8 per glass or bottle and, to encourage sale of the Dickens product, this would be the cheapest liquor available. As such, the applicant claims that Dickens Ciderhouse would not be a “cheap drinking hall” but quite an up market establishment catering for a more mature client group.

Food would initially be sourced from the Wursthaus Kitchen, a speciality provedore located in the same street, and would include pre-packaged tasting plates of local meats and cheeses as well as gourmet pies from a speciality local producer. The applicant also indicated that coffee would be available for patrons; this would be the only commodity – food or beverage - on sale that is not Tasmanian grown or produced.

Dickens Ciderhouse would be located in an industrial type warehouse with a metal roller door at the front. This would open to a glass foyer during opening hours. The fit-out would be rustic in nature reflecting a traditional apple shed; converted apple crates and corrugated iron would be features. The capital expenditure is estimated at \$80,000 and would provide employment for some tradespeople on site.

The applicant submits that 8-12 new jobs would be created with 2-3 staff on duty at any one time, including at least one of the three directors and shareholders of Dickens Cider Pty Ltd.

The applicant was sympathetic to a range of difficulties that residents of the Salamanca Square complex describe experiencing living as they do in an entertainment precinct. He submitted information on a range of strategies designed to ameliorate these concerns should the application succeed.

The floor, ceiling and walls are all of a concrete finish with the walls being approximately 200mm thick. There may be some live entertainment but the applicant claims this will be of an acoustic, background type rather than louder forms of amplified music or live bands.

The applicant is obliged by Hobart City Council to address any potential noise issues as part of the change of use application for the premises lodged with the Council. He is undertaking sound attenuation to address the level of noise reverberation. The Council has directed that an acoustic engineer must prepare a report for its consideration and approval will not be granted until it is satisfied that noise issues have been addressed satisfactorily.

To mitigate the situation of smokers congregating at the base of the Salamanca Square driveway, the applicant has gained the permission of the building owner to install and manage wall ash trays on the building wall to the south of the entrance (away from the driveway) and would encourage smokers to use them.

The applicant intends to employ security personnel at least three nights/week (Thursday, Friday and Saturday) whose hours it is anticipated would be from 8.00 p.m. until closing. He intends that these officers would serve a number of purposes – secure the front of the premises from unsavoury behaviour, guide people to smoking ashtrays further up Montpelier Retreat and assist the manager in moving people on from 11.30 p.m., the last time to purchase drink until closing at midnight.

The applicant is required to provide additional lighting over the doorway of his establishment which he submits would improve the safety and amenity of the street after dark.

He contends that his establishment might in fact add to the amenity of the residents by providing better lighting for a dark street and the employment of the security personnel whose presence may provide some deterrent to undesirable behaviours that residents describe occurring now.

In summary, the applicant submits that Dickens Ciderhouse would have a positive environmental and community impact. It would present as an intimate meeting place where tourists might enjoy an enlightening history lesson while sampling Tasmanian traditional cider; local residents might meet friends to catch up and share a cider. The unique nature of the establishment – a cider house which produces its own cider – is claimed to serve a niche market and be a boon to both the Hobart entertainment scene and the tourist experience.

### **The objectors' submissions**

Salamanca Square Battery Point comprises 62 residential apartments which are next door to the premises that is the subject of this application. The residents of Salamanca Square are collectively objecting to this application. Their written submission was supported by eight verbal submissions.

All of the objectors' submissions are claiming that the grant of this licence would not be in the best interests of the community (Section 24A (1)).

A number of common themes emerged through the submissions to support this view. The main ones are:

- the unsuitable nature of the proposed outlet and its location adjacent to the Salamanca Square apartments and the adverse impact this will have on the residential amenity and safety of residents;
- the adverse impact on pedestrian and vehicular traffic safety in Montpelier Retreat;
- a community already well served by an abundant supply of licensed premises in the Salamanca/Sullivan's Cove precinct; and
- the undesirable creep of licensed premises up from the "floor" of Sullivan's Cove to surrounding residential side streets.

The Board's attention was drawn to two reports which accompanied the written submission: a report prepared by Mr Kevin Midson, Director of Midson Traffic Pty Ltd and an Architectural Acoustics Noise Control report by Mr Pearu Terts, consulting engineer.

Residents submit that the noise levels would be such to affect not only their sleep but overall wellbeing with subsequent impacts on their health. This is already a problem for some who described sleep deprivation caused by the noise of music from existing licensed premises and people laughing and talking loudly as they move up and down Montpelier Retreat. Others claim to have incurred great expense in installing double glazing and acoustic glass on windows and they believe that the problem will be exacerbated by the proposed establishment.

Additionally, it is submitted that noise from trucks and forklift beepers delivering stock to other outlets in Montpelier Retreat is already a problem which would be exacerbated by the existence of the proposed cider house. The reverberation of weights being dropped in the (24 hour) gymnasium next door to the proposed premise is also a problem.

Alongside concern about noise levels related to music and general social interaction is concern about the behaviours of inebriated patrons departing the proposed premises, particularly around midnight.

Residents described a range of anti-social behaviours, already occurring, from intoxicated people lingering on Salamanca Square property: smoking and dropping cigarette ends, vandalism, ringing/knocking on doors, urinating in the garden, broken bottles and glass, fornication, and violent behaviours.

Apart from the general unpleasantness of this, residents submit they are afraid to walk down their own path at night and describe a general sense of not feeling safe. They submit they are being denied the right to "fearless enjoyment" of their own homes.

Objectors describe Montpelier Retreat as a "tiny road" and busy thoroughfare at all times presenting a hazard to inebriated people walking out on to the road without paying due care to on-coming traffic. This could include themselves should they be driving at relevant times. The street is poorly lit with narrow footpaths. The driveway access to the Salamanca Square

complex is one metre from the roller door opening of the proposed premises, with poor sightlines, and residents submit that this situation is a clear danger to pedestrians.

Residents understand that Salamanca/Sullivan's Cove is an entertainment and tourist precinct with 27 licensed premises in the precinct, all accessible by a short walk. They see this as a saturation of licences in the area. It is submitted that Jack Green and James Squires Bounty, two licensed premises in the precinct, specialise in ciders so Dickens Ciderhouse would not add anything unique to the public entertainment experience, as claimed by the applicant.

Objection was raised about the increased footprint of the precinct with the creep of licensed premises up the feeder streets, such as Montpelier Retreat, spreading the negative impacts of alcohol use and abuse more directly into residential suburban areas.

Professor Duncan summed up the objections as articulated by the residents, reminding the Board of the best interests of the community test. While the interests of his clients, the residents of Salamanca Square Battery Point, are significant, the broader community also has an interest in the "unchecked" proliferation of licences that undermines the fabric of Salamanca Place and its historic buildings, shifting it from an artisanal focus to one promoting a culture of drinking.

### **Considerations by the Liquor Licensing Board**

The Liquor Licensing Board of Tasmania is called upon to determine this application for a General Licence (Section 7) authorizing the sale of liquor for consumption on or off the premises.

The principal test for the granting of any licence is if it is the best interests of the community to do so.

In considering an application for a liquor 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 (24(A) (1)).

The Board has a broad remit to interpret "community". As stated in previous decisions (Rokeby Liquor 2013; BWS Deloraine 2011), it is not just the local community whose interests must be served but also those of "society" in general – the broader Tasmanian populace, including visitors to the State. This is what must be weighed – the interests of the resident community of Salamanca Square against the interests of this broader group.

Firstly the Board considers whether the case is made by the applicant regarding the proposed establishment being in the best interests of the community.

Montpelier Retreat is a somewhat dismal street containing a grocery shop warehouse, a takeaway chicken shop, a pharmacy, concrete block buildings containing some offices, a gymnasium and undercover parking on one side; on the other, the Wilderness Society shop, a speciality provedore and a huge open car park. Further up there is an office block, an old house containing a licensed restaurant, another car park and some residential terraces.

There is little doubt in the minds of the Board that Dickens Ciderhouse, as described, would make a positive contribution to this section of the Salamanca precinct. The cellar door and apple shed environment sound attractive and, given the current appetite of tourists for all things Tasmanian, we can see the proposed establishment attracting tourists and locals alike. While selling cider may not be unique, Dickens Ciderhouse selling the cider it produces itself from one of Tasmania's natural assets – its fruit – seems an attractive proposition and one that would appeal to visitors.

The employment effect, while not large, is considered sufficient to be viewed positively.

However, the Board does acknowledge the depth of feeling against the application.

Like the applicant, the Board has some sympathy for the residents of Salamanca Square. We acknowledge their genuinely felt descriptions of the negative impacts of living where they do and the fears they have expressed that the grant of a licence to Dickens Ciderhouse could exacerbate an already quite stressful living situation for some.

However, the Board is of the view that the submissions made in this regard tend to be assertions, albeit genuinely felt, rather than being supported by evidence. Additionally, many of the issues raised by Professor Duncan, on behalf of the objectors, were planning related and, as such, not relevant to the Board's consideration of what is in the best interest of the community.

Mr Terts' report related to existing noise levels and described some potential for sleep disturbance caused by bar patrons. However, the Board considers that there is no evidence that noise levels from the proposed establishment would be increased.

The Board considers that the applicant has made a range of concessions to the objections and we have no reason to doubt that he will follow through with these. The noise attenuation, the employment of security personnel and the additional lighting all go some way, in the minds of the Board, to addressing particular concerns. Only the future will tell whether these strategies might make life better for some of the residents, as the applicant suggests.

Concern was expressed by objectors for the safety of pedestrians and drivers of vehicles in Montpelier Retreat should the application succeed. No evidence has been provided to the Board to suggest that this particular establishment would contribute to increased levels of danger for these groups.

Many of the objections of the residents are premised on the fact that the prospective clientele of Dickens Ciderhouse would be inebriated. Late night anti-social behaviour, rowdy revelry, destruction of property, mindless wandering onto the road, busy or not – all have been described by the objectors as the results of people intoxicated beyond normal limits.

In the Board's view, there is no evidence to support the opinion that the clientele of this particular establishment would behave in this way.

Whether the patrons and the community of Sullivan's Cove are well served by existing licensed premises is hard to assess. This area is undoubtedly a significant entertainment and tourist precinct. The Board is of the view that the proposed Dickens Ciderhouse does offer something different in the way of licensed establishments and as such would increase general community amenity.

The objectors submit that the creep of licensed premises up from the "floor" of Sullivan's Cove to surrounding residential side streets creates an undesirable precedent. The side streets referred to are few in number and not well populated by residential properties. In any case, the Board does not consider the matter of precedence a relevant issue.

The Board totally rejects Professor Duncan's contention that, in the event that it directs the grant of the licence for Dickens Ciderhouse, the Board could be liable in negligence for failing to take account of residents' concerns for their health. He offers no authority for his contention nor was it supported by any evidence.

As stated elsewhere, the concern of the Board is whether the granting of this licence would be in the best interests of the community. Overall, we are of the view that the applicant does make a strong case for this.

Objectors make strong claims that are based on their own personal "community" and somewhat unconvincing submissions in relation to the broader community.

On balance, the Board is satisfied that it would be in the best interests of the community to direct the grant of this licence.

## **Decision**

The Board directs the Commissioner to grant the licence to John Dickens of Dickens Ciderhouse as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)

24 September 2013