

Licensing Board of Tasmania	Decision
Legislation	Liquor Licensing Act 1990
Applicant	Jimmy Tsiakis
Nature of Application	Off Licence
Premises: Name	Salamanca Cellars
Premises: Location	16 Montpelier Retreat
Name of Decision	Salamanca Cellars
Date & place of hearing	23 April 2009
Date of Decision	23 June 2009
Members of the Board	K B Sarten (Acting Chairperson) D Logie(Member)

## **DECISION**

Mr J Tsiakis applied for an off licence for premises 16 Montpelier Retreat. After the hearing the Board directed that the Commissioner refuse to grant the licence. These are the reasons for the decision to give that direction.

## **APPLICATION**

Mr Jimmy Tsiakis applies for an off-licence for vacant premises located in the Salamanca/Sullivans Cove precinct, at 16 Montpelier Retreat, Battery Point.

### **Appearing at the hearing for the applicant:**

Jimmy Tsiakis – Applicant

Ian Duncan – Counsel for the Applicant

### **Appearing at the hearing as, or for, objectors:**

Peter Trioli – The Wursthau Kitchen

Paul Jubb – Custom’s House Hotel

David Quin – Waterfront Business Community. Appearing on behalf of Phil Capon, President Waterfront Business Community

Robert Loney – appearing on behalf of the Salamanca Body Corporate

Steven Old – appearing on behalf of Australian Hotels Association (Tas Branch) (AHA), accompanied by J. Gillon

Written submissions were received from those objectors together with objections from Timothy Goddard, Jo Matthews and David Morgan – Grape Bar Bottleshop, Phil Capon – Ball & Chain Grill.

## **Application summary**

The premises are to be situated in Montpelier Retreat in vacant shop premises at the entrance to the underground car park servicing the Salamanca apartments, local businesses and the public.

The proposed operating hours are 9am-9pm Monday to Saturday and 9am – 7pm Sunday. The current planning permit allows the use of the premises as a shop, which is not distinguished from a bottleshop, with approved operating hours of 8.30am – 6.00pm , seven days per week.

The Applicant is an experienced bottleshop operator and currently has the liquor licence for Lindisfarne Cellars. The application is for a dedicated off licence bottleshop with approximately 3,000 lines and an investment of \$300,000 to establish the business.

The application is based upon the Applicant's identification of a business opportunity to provide a one stop dedicated bottleshop with a larger range of liquor than is presently available in any other single licensed premises. There would be no drive-through facility. The Applicant's identified target market is predominantly the tourist market, alongside local support.

Nearby premises with an unrestricted off-licence and/or bottleshop facility include Knopwoods Retreat, Irish Murphy's Hotel, Salamanca Food Fair (incorporating Grape Wine Bar), Salamanca Inn, St Ives Hotel, Customs House Hotel, and the Telegraph Hotel. Nearby premises with a special licence allowing restricted off licence sales (for example, only Tasmanian wines) include, The Wursthau Kitchen, Salamanca Fresh Fruit, Norman and Dann, Say Cheese, and The Tassal Shop.

The Applicant gave evidence by his original written submission (dated 24 March 2009), a further written submission tendered at the hearing (dated 21 April 2009) in response to objections, and appeared at the hearing to give oral evidence and response to the objections.

## **The Law**

The *Liquor Licensing Act 1990* (Tas) prohibits the sale of liquor without a licence, and permits the grant of an off licence, s 9. Section 24A states that in considering an application for a licence, the Board must make a decision which, in the opinion of the Board, is *in the best interests of the community* (emphasis added). In addition, s 24A (2) states that '[i]n considering an application for an off-licence, the Board must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor'.

## **Consideration of evidence**

On the facts presented to the Board in this application the board members were satisfied that if granted the licence the Applicant would operate the business professionally. There were no doubts as to the significant capital investment and the employment which would be

created. All staff would be accredited with Responsible Serving of Alcohol training. The Applicant stated his target market to be predominantly the tourist market, however also expected support from the local community. Single bottle, or small numbers rather than bulk sales were anticipated.

The Applicant stated his intention was to commence the operation with the same mix of products as his Lindisfarne operation, although distinguished that the proposed business would not be branded as part of the Duncan's group. The Board were also satisfied of the Applicant's intention to apply for extended hours of operation beyond those in the current planning permit, and consistent with the application (ie to 9pm most days, and 7pm Sundays).

The Applicant submitted that the Board had stated in previous decisions such as the *Liquor Stax Riverside* decision that the mere opening of another premises does not provide evidence of an exacerbation of harm. However, in that decision the Board also noted the importance of considering each application on 'its merits based on the evidence, regarding the community, presented and informed by our own understanding of the locality from that evidence'. It is the *particular facts and circumstances relating to the actual application* before the board which will have significant bearing on whether an application is successful or rejected.

The Applicant identified that all current off-licence businesses in the locality, with the exception of Grape, offer a range of liquor as part of a mix of products for sale. He submitted that the proposed business would add to the choice available, both in terms of being a dedicated bottleshop premises, and by way of the range on offer. The range would extend to products not readily available for off-consumption in the precinct, including ready-to-drink products and a full range of beers. The Board was not satisfied in the response to the objections and the sensitive nature of the area that the Applicant had given sufficient consideration to the proposed product mix as part of addressing this. Simply, it does not appear to follow that a product line which is appropriate for one community is necessarily appropriate for another. However, the decision did not turn on this.

The Applicant presented data on tourism visitor numbers to Salamanca in support of his proposition that he was not reliant on local support. Such data is informative on the one hand, and on the other without more is not in itself evidence which supports that the application is in the best interests of the community. It remains and has been acknowledged by the Board in previous decisions that the Salamanca precinct is a tourism and hospitality precinct. The connection between this and a variety of restaurants, wine bars, specialty shops and food providers is relatively clear. The connection with a stand alone bottleshop is not so clear to the Board, and was not elaborated on by the Applicant.<sup>1</sup>

The submission included the statement that women prefer to shop from stand alone bottleshops. This appeared to be directed towards any over the counter offers from the local general licensed hotel premises, however the relevance of this submission in relation to other premises in the locality was not made clear to the Board. It is noted all restaurants in the precinct are licensed.

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<sup>1</sup> Refer, Board decision: Rapport on the Pier II, Nov 2007, page 2

It was accepted by the Board that sound responsible serving of alcohol practices would be employed. It was submitted that the premises would be internally easier to 'control and police' than other mixed premises, and that the business will close at 9pm, as the Applicant put it: 'prior to when Salamanca 'kicks off' at 11pm. It is accepted that this submission is directed to the proposition that the Applicant's hours of operation will not coincide with when Salamanca 'kicks off'. The submission went primarily to the internal operations with the Applicant stating that what happened off his premises was not his concern.

The Applicant is correct in his statement that he might not be held responsible once the purchase is completed and the patron leaves the premises. The very nature of an off licence dictates that alcohol will be consumed off the premises. However, such a statement, in view of the existing problems identified in the area does not persuade the Board that the application is in the best interests of the community. No evidence was tendered to support the time when 'issues' start to occur in the precinct.

The Applicant acknowledged that concerns exist in the locality in regard to the adverse impact of liquor consumption, however stated that he failed to see how this would be exacerbated by the proposed premises. Put another way, the Applicant said that if there is an existing problem why should it be a surprise if this continues following the addition of another off-licensed premise? This submission raises many more concerns than it answers and, in short, did not assist the Board to find that this application would be in the best interests of the community.

The alcohol related problems and the anti-social behaviour that stem from these, which currently occur in the Salamanca precinct are well known. Robert Loney, on behalf of the Salamanca Body Corporate, part of the local resident community, gave evidence to this effect. Concerns were expressed regarding the potential of the business intended to be conducted from the premises contributing to aggravate such problems. No persuasive evidence was tendered to the contrary.

Mr Quinn, representing the Waterfront Business Community group also gave evidence of the current problems and some of the strategies being employed to minimise the harm, including moving of taxi ranks and the installation of security cameras. Mr Quinn stated that the application ran counter to the current strategic plan for the area in the desired mix of business activities. Further, the proposal was contrary to the aspects of that plan designed to address the alcohol related anti-social behaviours and under-age drinking.

Mr Old, on behalf of the AHA, also highlighted the current ban on drinking in open areas after 10pm, and talked of the current negotiations underway to achieve a liquor accord among existing operators to minimise the existing harm occurring. Mr Old highlighted the increase in open space likely with the development of Parliament Square and the potential exacerbation of the current problems being experienced that may come with this.

Mr Old also referred to the concerns expressed to him by the Hobart City Council and the Tasmania Police. The Board would have welcomed information and evidence from the Police on this and other issues, however notwithstanding that Police Officers have in other applications attended and given evidence, and that this application was well advertised, signposted and brought to the attention of the Tasmania Police, no submissions were made about this sensitive area. The Board, as an independent authority, has received direct

submissions from Tasmania Police in the past and would expect to do so in the future, particularly where the issue raised appears to have been identified as a current strategic priority.<sup>2</sup> The Board remain similarly uninformed directly regarding the basis of Hobart City Council's reported concerns. Without adequate written or actual representations the Board has not included these for consideration.

## **Decision**

As noted in previous applications in the Sullivans Cove precinct, the particular attributes of that locality require more careful and detailed consideration of the market alongside the potential implications for the local and broader community in that context.<sup>3</sup> The evidence as presented did not address the business in context of that community.

The Applicant's submissions, evidence and response to objections did not persuade or give the Board confidence that the application met the requirements of the *Liquor Licensing Act 1990*, s24A. The Board does not consider the Applicant met the onus to demonstrate that the application is in the best interests of the community.

We direct the Commissioner to refuse the application.

K B Sarten  
(Acting Chairperson)

D Logie  
(Member)

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<sup>2</sup> Refer to Crime Prevention & Community Safety Council, 2008-2009 Strategic Priorities, <[http://www.police.tas.gov.au/community/cp\\_and\\_csc/cp\\_and\\_csc\\_strategies](http://www.police.tas.gov.au/community/cp_and_csc/cp_and_csc_strategies)>

<sup>3</sup> Refer, Rapport on the Pier, July 2007