

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Denis Behrakis of Salamanca Fresh – Davey Street, 186-190 & 194 Davey Street, Hobart, Tasmania.

Type of Application: special licence (section 11 *Liquor Licensing Act 1990*).

The application was first heard in Hobart on 16 February 2012.

The Board determined to adjourn the hearing pending the completion of building works on the premises at Davey Street. Following an inspection of the premises by the Board on 14 February 2013, the application was heard 21 March 2013.

Decision: 15 April 2013

Background

The application was first heard in Hobart on 16 February 2012. Appearing were the applicant, Mr Denis Behrakis, Professor Ian Duncan representing the applicant and Mr Brett McGrath for the applicant; objector, Mr Frank Morgan (Proprietor, Globe Hotel, Davey Street, Hobart, premises in close proximity to Salamanca Fresh – Davey Street); and observer, Mr Matt Osborne.

Following completion and inspection of the building works, and with a new Chair of the Liquor Licensing Board, the application was heard anew on 21 March 2013 at which were present Mr Denis Behrakis, the applicant, accompanied by Ms Deborah Bollard, Marketing Manager for Salamanca Fresh – Davey Street; and Mr Frank Morgan, Proprietor, Globe Hotel (objector).

The applicant's submission

As well as appearing, the applicant made two written submissions dated 22 November 2011 and 10 February 2012.

The applicant seeks a special licence to sell, as an adjunct to the provision of hospitality, tourist goods or services, Tasmanian wines, spirits and liqueurs and Tasmanian brewed beer produced from Tasmanian owned breweries for consumption off the premises.

The applicant's business at Salamanca Fresh – Davey Street mainly provides a range of local fresh products including fruit and vegetables, meat, cheese, specialty delicatessen products as well as cooked ready-made meals. Neither meat nor chicken is available in bulk or frozen form. Standard grocery lines are available although only providing limited (usually single) choice within the line. Cigarettes are not available.

The hours of operation are between 7 am and 8 pm, 7 days a week.

The applicant submits that he has had strong enquiry for this product from his customers who would find it convenient to be able to buy Tasmanian wine as a complement to their other purchases. Additionally, he submits that many of his female customers have indicated that to purchase wine in this way is “easier, more convenient, comfortable and safer” than visiting the local bottle shop.

In his written submission of 10 February 2012, the applicant clearly states that the principal activity to be carried out at Salamanca Fresh – Davey Street is *not* the provision of hospitality or tourist goods or services. However, the applicant submits that the provision of hospitality or tourist goods or services (50 per cent being Tasmanian made) is a significant and substantial and a vitally important component of Salamanca Fresh – Davey Street. He submits that he is the largest supplier of Tasmanian specialty products in Tasmania.

The strong promotion of quality Tasmanian produce would be complemented by the sale of Tasmanian wine and be a boon to both local residents and visiting tourists for whose benefit he has displayed various tourism brochures at the front of the store. This tourist clientele, it is submitted, would benefit from being able to access speciality Tasmanian hospitality products in the last store before the Southern Outlet.

The applicant submits that, on the basis of these arguments, 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*).

The objector’s submission

Mr Frank Morgan made objections in writing (10 January 2012) and appeared in person at the hearing in Hobart on 21 March 2013.

Mr Morgan’s objection relies heavily on Regulation 4(2) of the *Liquor Licensing Act 1990* where he submits that the applicant cannot demonstrate that his business has a significant tourism and hospitality focus.

The objection is supported by reliance on a previous decision of the Liquor Licensing Board relating to the denial of an application for a special licence for the “Fresco” grocery shops (“Fresco Decision” 1 August 2011).

The objector argues that there is no evidence provided by the applicant to demonstrate that Salamanca Fresh – Davey Street is not just another corner store or neighbourhood store/mini supermarket. He claims that the presence of the cash registers at the front, the aisle set-out and the manner of service all create the impression of a standard corner store.

The objector stated that he did not believe that the premises were a supermarket.

The objector also submitted that the store is not in a tourism precinct (located as it is in inner suburban South Hobart) and that, despite attempts by the applicant (the provision of

tourism brochures and a tourism information sign) to convince otherwise, there is no evidence to suggest a significant tourism and hospitality focus.

Based on his experience as Proprietor of the (adjacent) Globe Hotel, the objector refutes the argument of the applicant that women in particular require a non-bottle shop type environment to feel safe when buying alcohol.

Based on these arguments, the objector submits that the applicant has not demonstrated that the grant of this licence is in the best interests of the community (section 24A(1)).

Considerations by the Liquor Licensing Board

The Liquor Licensing Board of Tasmania is called upon to determine this application for a special licence (section 11) authorizing the sale of liquor as an adjunct to the provision of hospitality, tourist goods or services and in accordance with the following condition: that only Tasmanian wines, spirits and liqueurs and Tasmanian made brewed beer produced from Tasmanian owned breweries may be sold for consumption off the premises.

It is important to be clear that the Board did not consider that the application *required* a direction for the grant of a special licence under regulation 4(2) of the *Liquor Licensing Act 1990* which states that:

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 out on the premises specified in the licence is the provision of hospitality or tourist goods or services; (regulation 4(2)(a)) (Emphasis added).

The applicant's written submission of 10 February 2012 clearly states that the *principal* activity to be carried out at Salamanca Fresh – Davey Street is *not* the provision of hospitality or tourist goods or services.

The Board was therefore not required to determine the application under regulation 4(2)(a).

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 (section 24(A)(1)).

The Board did not give weight to the arguments around female safety and comfort in seeking to purchase liquor from other than a bottle shop. Bottle shops are not gender specific and not viewed by the Board as particularly disquieting places for women. If, in fact, this is the case for any women, then liquor is available from other non-bottle shops outlets

within the Hobart region (such as The Salad Bowl, Lipscombe Larder, Hill Street Grocer, Salamanca Fresh Fruit Market).

Much has been written in previous decisions of the Liquor Licensing Board over many years about the granting of a licence to sell Tasmanian wine, liqueur and Tasmanian brewed beer (*inter alia* Lipscombe Larder 2000, The Salad Bowl 2002, Fresh Fruit Market Salamanca 2005, Fresco 2011).

The Board confirms and re-iterates the considerations of previous decisions in relation to the sale of Tasmanian wines, liqueurs and brewed beer in premises that demonstrate a distinct speciality focus on Tasmanian hospitality and tourism products and services.

The Board agrees that it is not in the best interests of the community for every retail outlet to be granted a liquor licence “as a collateral component to their other principal activity” (“Fresco Decision” 2011). To be granted a licence an applicant must demonstrate that the premises are not just “any other” retail grocery store or standard corner store and that special conditions exist that place it in the best interests of the community to be granted a special licence.

The Board is not convinced by the applicant’s arguments associated with the provision of tourism brochures as a sign of a particular tourist focus. They are displayed in the store and no doubt are picked up by some customers – tourists or not – but they do not, on their own, make a business tourist specific or “special” in any way.

Similarly the argument that Salamanca Fresh – Davey Street is of significant importance to tourists as the last retail outlet before the Southern Outlet is hard to make. The store is set back from the road and is not in a tourist precinct of any sort. While sign-posted, most tourists would be unaware of its existence as the last outpost before they drive off to enjoy the southern attractions of Tasmania.

These arguments hold little weight for the Board in relation to the store having a particular tourism and hospitality focus that might distinguish it from other standard corner grocery stores.

However, the Board does acknowledge that Salamanca Fresh – Davey Street does offer, as a significant and substantial component of its business, products that are distinctly Tasmanian, many of them fresh, such as the meat, delicatessen small goods, gourmet cheeses and fruit and vegetables. As such, it does have a distinct speciality focus on Tasmanian produce and hospitality and tourism products and services which distinguishes it from the standard corner/grocery store.

Additionally, with ready-made hot meals available for sale, a level of convenience exists for members of the community (customers) to purchase liquor as an accompaniment to their meals.

As a result, the Board is of the view that the granting of a special licence for Salamanca Fresh – Davey Street is in the best interests of the community.

Decision

The Board directs the grant of a special licence to Mr Denis Behrakis authorising the sale of Tasmanian wines, spirits and liqueurs and Tasmanian made beer brewed from Tasmanian owned breweries liquor as an adjunct the provisions of hospitality, tourist goods and services at Salamanca Fresh – Davey Street.

Jenny Cranston
(Chair)

Kerry Sarten
(Member)

David Logie
(Member)