

Licensing Board of Tasmania

In the matter of the restaurant “Trimboli’s”
1 Pendrigh Place, St Helens.
Applicant: Ms Kawajit Kaur.

In the matter of the Liquor Licensing Act 1990
And an application for a special licence.

Dated: 23 December 2005.

Decision

This application was heard at Launceston on the 27th October 2005. The Board refused the licence application, and indicated we would provide written reasons in due course.

The application related to premises in St Helens, run predominantly as a “pizza restaurant”, and the Applicant sought authority for the sale of liquor

- for consumption off the premises in conjunction with the service of home delivery meals, and;
- for consumption on the premises as an adjunct to a meal.

The Applicant Kawajit Kaur gave evidence. Here evidence was that she wished to have an ability to sell limited range of wine and beer for home delivery as an adjunct to prepared and cooked food delivery from the existing restaurant. She said that she had a lot of enquiries for that purpose, mainly from holiday makers who did not wish to drive to town after drinks and as St Helens is a holiday destination, she felt this would be a good service to the public.

Ms Kaur stated that the principal business would continue to be the restaurant, and that home delivery would be the minority of the business activity.

The menu was submitted which evidenced a comprehensive pizza and pasta style restaurant. We were advised that 60-70% of deliveries would be pizza and the balance other items from the menu. Ms Kaur gave evidence that the division of services at present is as follows:

Service	Summer	Winter	
Dine in	50%	33%	
Take-away	20%	33%	Of these services, 90% is pizza.
Delivery	30%	33%	

The Commissioner for Licensing's officer Mr W Krushka inspected the premises and provided a written report. He noted that the premises currently enjoys a 'restaurant licence' which has been in place since September 2003. He noted that conditions similar to those included in the grant of licence in *Marti Zucco's Italian Restaurant No. 1* (25th August 2004) were proposed.

The application was signposted and advertised. No party sought to appear to oppose the application.

The Board's obligation is set out in s24A of the Act, to make a decision which is considered to be in the best interests of the community. The relevant statutory framework is set out in the *Marti Zucco Italian Restaurant No. 1* decision.

In addition we are aware that a limited and similar service is operated in Launceston from what is known as "The Pizza Pub" where premises with a general licence (entitling sale of liquor for both on-premises and off-premises consumption) delivers both pizza and liquor.

The Board considered that there are positives in the application: a further service to the public, a service not generally offered.

On the other hand, there is no recognised category of licence either in the Act or regulations or under the previous Guidelines (up to September 2003) for home delivery of liquor.

In a standard application the burden of proving a case for grant may be somewhat less on the Applicant than in a novel application.

There is the possibility of contribution to harm associated with consumption of liquor in our community. The Applicants specific evidence was to the effect that the public demand she sought to cater for related to people who had consumed alcohol and therefore did not wish to drive (presumably because they were over the legal limit for driving). There are pros and cons in this regard, from the public interest perspective: delivery of liquor reduces the prospect of people driving whilst over 0.05% blood/alcohol. On the other hand, it would be meeting a demand principally enunciated as catering for people who have 'consumed alcohol, run out, and want some delivered with a pizza'. This might be seen as not being in the community interest.

In addition the likelihood that the predominant food delivered would be cooked pizza, rather than more comprehensive meals, tends to paint a picture of this being a delivery of budget meals with liquor in circumstances which might promote the consumption of liquor in circumstances currently not readily available, and not likely to be generally considered to be in the best interests of the community.

In our opinion, the Applicant failed to provide sufficient evidence that the grant of the application would be in the best interests of the community. Indeed, the limited material presented was to the contrary.

Whilst one general licensed premises is employing its licence in such a manner, and one special licence has been granted to a restaurant in somewhat similar circumstances, we feel there are sufficient differentiating factors to indicate that, on balance, the licence should not be extended in this fashion in this instance:

- The motivation seems to be to provide liquor with budget food (pizza) to those unable to drive due to prior consumption;
- If a licence is appropriate in this instance, it would presumably be appropriate in the instance of any delivery or take-away food establishment. That is not perceived to be in the public interest.
- Delivery of liquor in conjunction with budget meals (predominantly pizza) is perceived to be likely to exacerbate the harm associated with consumption of liquor.
- The present application is not on all fours with the previous application granted, where that application was on the footing that full service restaurant meals would be the predominant food being delivered, and that the majority of food service from the establishment was in house dining.

DECISION

In conclusion, for the reasons given above, we direct the Commissioner to refuse the application under s214(1)(a)(ii) of the Liquor Licensing Act 1990.

PA Kimber, Presiding Member.

K Sarten, Member

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