

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Donald Roy McQuestin
Nature of application:	For an off licence
Premises: name	Liquor Stax Riverside
Premises: address	Shop 2, Riverside Shopping Centre, Riverside 7250
Name of decision:	Liquor Stax Riverside 2008
Date & place of hearing:	Thursday 17 April 2008 at Launceston
Date of decision:	22 April 2008
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

DECISION

For the reasons set out below we direct the Commissioner to grant the licence.

Application

Mr McQuestin has applied for an off-licence for premises in a relatively small shopping centre at Riverside near Launceston.

The West Tamar Council have permitted the use of the premises as an off-licence in accordance with planning principles.

S. 23A of the Liquor Licensing Act permits a person to make written representation to the Commissioner in respect of an application for a liquor licence within 14 days after the later of publication of notice of the application in the newspaper, or by being placed in a prominent position on the premises.

Consideration of facts

Representations opposing the grant were received from the following within that 14 day period: Ms N Midson, Ms L Grant, Ms L Franklin, Mrs D Russell, Mr C O'Keefe, Ms L Shellard, Ms V Sales, Minister N Shellard, Mrs A Watson, Ms V Walkden, Ms H Kirkman and Mrs B Knight.

Two representations indicating objection were received after the submission closing date, they being from Mrs J Prenter and H Walker. We have reviewed those submissions and they do not advance any additional or alternative reasons for objection over and above that which had been put forward by valid representation.

The material lodged in support of the application was the written submission in support lodged by the applicant including photographs of the area and site, and other attachments to the application.

A number of members of the public attended the hearing in support or objecting to the application.

Minister Shellard, Victoria Sales (Counsel) on behalf of the Australian Hotels Association (Tasmania Branch) and Mrs Ann Watson appeared to advance their submissions in opposition and gave evidence and were available for cross examination.

The Applicant appeared with Ian Duncan (Counsel).

Robert Jones Tim Bond, Des Brown, Kate Brown and Emma White appeared at the hearing in support of the application. Mr Bond, Mr Brown and Mrs White referred to their letters of submission.

These letters, however were received after the closing date and the writers were therefore not parties to the application.

This raises a matter of procedure and evidence. The provisions of the Liquor Licensing Act (s. 23A) enable people to make representations to the Commissioner to be forwarded to the Board for consideration, but within a set time limit. Those received after that time limit do not entitle those putative representors to participate in the hearing as a matter of course.

Hearings are public unless the Board determines otherwise and the Board may (pursuant to s. 213 of the Act) decide the procedure to be followed, give the Applicant the opportunity to be heard, receive evidence orally or in writing, is not bound by the rules of evidence but may inform itself in such manner as it thinks most appropriate, and is to observe the rules of natural justice in so far as they are applicable.

Normally the Board does what it can to take account of submissions for and against an application in the course of "informing itself in such manner as it thinks most appropriate". Care must be exercised to avoid being procedurally unfair to the applicant in the event objections are lodged late, or to a representor, properly so constituted, by them having lodged a representation within time, so that the material to be relied upon is available to be taken into account.

All written material received, whether within time or out of time, was tabled at the hearing and people present were given the opportunity to review it and consider whether they had sufficient time to take it into account, or whether an application for adjournment was desired. No person requested an adjournment and the application proceeded.

Mr McQuestin gave evidence. He relied on the written material he had lodged.

In summary that evidence is to the following effect:

The Applicant has a long connection with the Riverside Community and area. The premises are currently vacant and plans for change of use have been passed by Council. There are no issues specifically raised with regard to

amenity in the neighbourhood relevant to traffic flow. The intended hours would be 9.00 am to 9.00 pm Monday to Saturday and 9.00 am to 7.00 pm on Sunday.

All staff would be accredited with Responsible Service of Alcohol training and usual strategies to minimise the risk of adverse impact from the sale of liquor from a responsible service of alcohol point of view would be employed.

The risk of “secondary service” was something which, to some degree, could not be controlled by the operator.

The applicant would seek to pursue quality and diversity in product and referred to his existing operations at the TRC as evidence of style and range.

He conceded that there is a nearby business serving liquor for off-premises consumption being the Riverside Hotel, which has been brought within the Woolworths/BWS umbrella and consequently the Applicant’s intended new business would contribute to diversity by being different from Woolworths outlets and would have some economic benefits to Tasmania, being a local and independent business.

He asserted that the West Tamar Council area is a growing area, and under discussion conceded that the evidence on that point is general.

He said the new business would employ two full-time staff, three part-time and two casuals. Two vacant shops would be roped in for continuing use and would have flow-on benefits (multiplier effects) in custom to other businesses in the area.

The premises would have easy accessibility and would contribute by enabling one stop shopping, would therefore be efficient to the customers and these were attributes sought by the public.

In response to the objections Mr McQuestin stated:

- That the range at the Riverside Hotel Bottle Shop had decreased since Woolworths involvement.
- That the proximity to schools did not indicate there was any greater likelihood of illegal consumption arising from his intended outlet as strict avoidance of underage sales would be pursued. He noted that his TRC outlet in Launceston was adjacent to Launceston College and he was not aware of there having been any evidence of adverse impact in this regard from those premises, and that the schools nearby the intended new outlet were a primary and high school and the risks should be considered less likely to occur (with a senior secondary college).
- He advised that no one was entitled to drink in the vicinity or area or public areas surrounding the centre. He referred to the Board decisions in BSW Kingston and Channel Court Wine Cellars as

indicating these issues having been raised and addressed by the Board and that there was no subsequent evidence indicating that supply of liquor to underage people arose in those premises relevant to proximity to schools.

- The applicant noted the increased concern about social “cultural” activity in relation to binge drinking and submitted that the addition of the premises he proposed as an off-premises outlet was not likely to increase availability of liquor in a demonstrably risky area such as would increase the harm to people on the community caused by consumption of alcohol. He referred to previous decisions of the Board relating to the evidence considered relevant to the opening of new premises and a link to increased consumption and submitted that there was no evidence in the present matter of that risk eventuating.
- In response to concerns at visibility of product designed for youth, the Applicant stated he would limit the sale of “ready to drink” spirit style mixed bottled/canned drinks to those with an alcohol content of less than 7% and that he was responsive to community concerns raised and such drinks that appealed to the teenage market would be in a section of the refrigerator not readily visible from outside the store (bearing in mind that unless accompanied by an adult, the normal classification of off-licence premises is as under-age persons prohibited from admission).
- He indicated that the premises would only advertise on the external of the premises the fact of the nature of the business and not, to any significant degree, as to particular products being sold, and that he had no intention of deliberately marketing youth orientated liquor by externally visible signage.
- He noted that of the licensed premises in the vicinity, only Riverside Hotel was a commercial premises with off-sales component and that other premises mentioned by objectors were clubs with limited capacity to sell to the public and with, in any event, quite limited off-sales in fact.

In regard to Mr McQuestin’s position as having been President of the Australian Hotels Association (Tas Branch) in the past he noted that in that capacity he was obliged to represent the members and had asked Government to review licensing laws and that he had found that the Government, Premier and Treasurer responsible for liquor licensing had been un-responsive to his submissions and had intimated to him over a number of years that they were content with the manner in which the licensing system works. He stated that as President of the AHA he represented the industry whilst as a director of the TRC Group, employing 100 people, he had a duty to care for the profitability of that entity and for continued employment for employees. He stated that he had (whilst in the AHA) reached a point where Woolworths were obtaining licences in shopping centres, which he challenged unsuccessfully (refer BWS Kingston and Supreme Court cases arising). He stated that when he observed the BWS Prospect application hearing he

considered it would have a likely adverse impact on his TRC business. He was put in a position of being obliged to look after the interests of the company and consequently to pursue market share, and consequently applied for the Mowbray and now the Riverside licences.

The intended premises is approximately 93 m² and retail sales area would occupy 73 m² and the store room, office and cool room would occupy 20 m². The estimated cost of fit out is \$150,000.00 comprising walk in cool room, fixtures and fittings, counter display etc.

The premises would have two entrances, one from outside the Centre and one from within the Centre. Car parking would be provided in the adjacent shopping centre car park. The car park had been designed and approved from a planning perspective with a view to the existing premises being an operating shop and contributing in customer flow to use of the car park.

The Applicant stated that the intention was to provide a modern clean and safe environment adequate for display and retail sale of packaged liquor.

The Riverside Shopping Centre contains a Woolworths Supermarket, chemist, florist, bakery, hairdresser, bank and Chinese takeaway. The bottleshop would be located in a vacant tenancy within the complex.

The population of the Riverside/Trevallyn and Legana area is over 12,000 people. Development statistics in the area provided by West Tamar Council for 2007 indicate 57 new houses and units. There was evidence of some urban renewal.

The nearest licensed premises which offer bottle shop/takeaway facilities would be Riverside Hotel just over a kilometre away and then approximately 5 kilometres to the TRC Hotel. The next nearest would be Legana Tavern, BWS Legana, Irish Murphys and other Hotels located in the Launceston CBD.

Objectors

We have taken account of all material lodged by objectors. It is similar again to the material lodged in recent off-licence applications.

None of the material is expressly specific to the area, premises and demographic nature of the community in the vicinity to indicate any specific risky nature of the community in the locality and we conclude that it is not an especially sensitive area in that regard (see BWS Bridgewater decision). Assertions by a number of objectors that the locality is already well served are not considered to be strong considerations against the grant of a licence. The Board has indicated in a number of decisions in the past that it is not an express criterion in the Act or a criterion strongly taken into account except in considering whether or not the public will be better or less well served by the addition of new premises selling liquor. That is, considerations of the number of licensed premises in the area, unless the evidence tends to show that the addition of the new premises is likely to exacerbate the harm associated with

consumption of liquor, are only really relevant considerations if the net impact of adding a new licence is likely to be a diminution of services. That is not the case here.

Concern was expressed by some objectors that students being dropped off for school in the shopping complex car park, or walking through the Centre would be adversely impacted by the marketing paraphernalia, advertising and signage etc of the licensed premises, which would, somehow, create risks associated with them as underage people either to encourage consumption or to encourage them to a view that liquor was a “normal” product rather than a risky product.

We do not see much strength in that argument. The mere presence of a shop within a shopping centre or even within ribbon-strip shopping arrangements or as an adjunct to a hotel which advertises, markets or has signage indicating availability of alcohol is not, in our opinion, likely in itself to exacerbate the harm associated with consumption of liquor nor, especially taking account of the signage proposals indicated/limited by the Applicant, likely to have any significant adverse impact on children moving through the vicinity.

There is no evidence presented to us indicating the proximity to schools in this instance is going to cause greater access to alcohol by underage persons or otherwise adversely impact on the community.

Some concern was expressed regarding traffic. We dealt at length with traffic submissions in the recent BWS Prospect and BWS Sorell applications and conclusions in those matters remain appropriate to this application. That is, to a substantial degree it is a matter for the planning authority, and unless it is quite clearly evident that some danger will arise, we are inclined to accept that the planning authority’s review is adequate and that objectors to liquor licensing applications should, rather, focus on aspects relating to consumption of liquor rather than the amenity to those people seeking to park in car parks either for access to the liquor business or for other businesses in the locality.

In this particular instance there is nothing which demonstrates parking is likely to be of any significance as a reason for rejecting the application.

Some objections were placed simply on the basis that the area is frequented by young families and school children who congregate within the shopping centre for purchase of other products or in some sort of social recreational manner. We do not see that, as an objection in itself, indicates how the presence of an off-licence premises in this locality at this site will contribute to the harm associated with consumption of liquor.

Reverend M Shellard from the Presbyterian Church lodged a submission and attended to give evidence and make submissions. His general propositions are accepted by the Board as genuine issues of concern regarding the adverse impact of consumption of liquor per se and the harm to our community from inappropriate consumption levels and practices. However, none of the evidence indicated that in this community of Riverside that the

opening of these intended premises would exacerbate the harm associated with consumption of liquor.

Mrs Watson expressed her concerns as genuine concern for the protection of her children and hence the community in which her children thrive and grow to maturity. She was concerned that their walking access through the car park and shopping centre, in front of the bottle shop, would expose them to the marketing aspects regarding liquor and that she wished them to be protected from that if possible. We think this concern was adequately answered by one of the other witnesses, Ms White, who said that because something is there and available, we have a choice regarding exposure and we have a moral obligation of educating our children ourselves and that there is no reason to fear an increase in youth related problems in Riverside as it is not a problem area.

The report "Predicting Alcohol Related Harms from Licensed Outlet Density: A Feasibility Study" funded by the National Drug Law Enforcement Research Fund; Chikritzhs, Catalano and Pascal, National Drug Research Institute, Curtin University, Perth WA 2008 was referred to.

We have read and considered the feasibility study.

Whilst we do not doubt that an increase in outlet density via the addition of a liquor outlet in a particular area can increase alcohol related violence and harm, it remains that our duty is to consider 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.

The feasibility study asserts in its conclusions that it has demonstrated the utility of using systematically recorded data to model relationships between licensed outlet density and alcohol related harm. We do not doubt that and accept that as a statement for the purposes of this hearing.

The reality is that in this matter there is no relevant data to indicate that the outlet density increase caused by the addition of the Applicant's premises would increase alcohol related harm.

The conclusions also note that

"There is no doubt that some communities will be more susceptible to experiencing the negative effects of changes to outlet density than others. Not all communities are the same and not all licensed premises are equal. It is highly likely that decisions about location and number of licensed premises can be guided to good effect by sensitive and reliable analytical models which bear out the variable nature of communities in licensed premises".

Finally, the report notes "ultimately however, it should be left to individual communities and their representatives to determine the optimal balance between the apparent benefits brought by physical availability of alcohol and the subsequent costs to public health, safety and amenity."

That duty in regard to the present application falls on this Board on the basis of the evidence produced.

Those present and who submitted letters in representation in support confirmed those aspects which are quite obvious: that there would be an element of convenience, choice, diversity, quality by provision of a new outlet, that empty premises would be made economically viable and contribute to employment and that it offers an alternative environment for acquisition of liquor supplies rather than having to attend a hotel bottle shop. Some noted the benefit of having locally owned businesses rather than national retail stores as a factor in diversity and quality.

Consideration of Facts

Taking account of all the evidence and weighing it appropriately and doing the best we can to take account of expressions of concern by a number of members of the community, we conclude that this application meets the criteria of the Liquor Licensing Act.

The Board is mindful of real and not exaggerated risks where they are apparent from local knowledge or suggested from either the absence or presence of evidence in a hearing. As stated in the BWS Prospect Vale decision, rejecting applications merely because they will cause the establishment of a further licensed premises is not the strategy of the Liquor Licensing Act, nor apparently what the community in general seeks. It is apparent to the Board that a significant but not necessarily vocal segment of the community wish to have the new facilities, convenient access (including those nearby to shopping centres) and a competitive environment. Where there is little or no persuasive evidence of exacerbation to harm associated with consumption of liquor in the community, the Board must take these views into account as positive aspects to applications.

The following factors are factors in favour of the grant of the licence.

- The applicant will sell the liquor in safe and quality premises and surrounds.
- Diversity will be enhanced in the locality by the addition of these premises.
- The population demographics and nature of the community in the locality are not such that, on the evidence, it is to be considered a particularly vulnerable place where liquor restrictions should be imposed.
- There are no particular indicators that the grant of the licence would increase the risk of harm through misuse or abuse of alcohol.

- The business would be likely to have flow on beneficial economic effects and employment, improvement to services, access to services and in the use of otherwise vacant premises.

Decision

As stated above, we direct the Commissioner to grant the licence.

PA Kimber: Chairman.

K Sarten: Member

D Logie: Member