

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Brian Armstrong
Nature of application:	For an off licence
Premises: name	Seasider
Premises: address	4 Turners Beach Road, Turners Beach
Name of decision:	Seasider Turners Beach Off Licence
Date & place of hearing:	Devonport, 17 <sup>th</sup> June 2010.
Date of decision:	17 <sup>th</sup> June 2010.
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

## **DECISION**

### **Application**

The applicant Mr Armstrong lodged application with the Commissioner for an off licence for premises he owns at Turners Beach, currently used as a motor vehicle fuel outlet, general store and take-away food operation.

The Commissioner advised the Board that for the purposes of the Act (Liquor Licensing Act 1990) the Applicant is qualified.

The application was signposted and advertised. A number of written submissions objecting to the grant of the licence were lodged.

A hearing was convened at Devonport on the 17<sup>th</sup> June. The Applicant and his wife Sheree Armstrong appeared and gave evidence.

Local residents David Templeton and Robert Best appeared and gave evidence.

The Tasmanian Hospitality Association appeared by counsel Shaun McElwaine, did not call evidence, but cross examined the Applicant, and made submissions.

The Board took account of the Application submission lodged by Mr Armstrong, the Compliance Inspector (Robert Taylor's) report, the written submission lodged by those who chose to (all in opposition to the grant of the licence), the evidence

presented at the hearing by the Applicant and Mrs Armstrong, and the objectors listed above, and inspected the premises.

## **Law**

Crucial criteria for a grant in the present circumstances are s 24A(1) and (2) of the Act:

- (1) The Board must make a decision which is in the best interests of the community;
- (2) In 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 these criteria in analogous matter before the Board were decided against the applicant in those matters in two matters relating to an application for an off-licence at Latrobe: *Tony Jackson 191 Gilbert St Latrobe 26<sup>th</sup> November 2004* and *Tony Jackson 191 Gilbert St Latrobe 14<sup>th</sup> February 2006*.

Those written decisions are available at the Board's website ([www.treasury.tas.gov.au](http://www.treasury.tas.gov.au)).

## **Objections**

The objectors by written submission or presented at the hearing urged the Board not to direct the grant of the licence because the two above criteria were not proven by the Applicant.

## **Consideration of facts**

Relevant evidence from the Applicant which touched or concerned the submissions of the objectors include the following:

- 1 No evidence of local community desire to have the facility was presented.

- 2 Planning approval has not been applied for or granted (see recent decision  
*Jason Bresnehan Hadspen TBA 28 Main Street, Hadspen, 1<sup>st</sup> June 2010.*)
- 3 Concerns regarding proximity to children’s playground and beach reserve and  
the risk of consumption of liquor (albeit apparently illegally) in an  
inappropriate manner in those areas after purchase from the premises were not  
adequately responded to by the Applicant.
- 4 That the premises would continue or may continue to be used for sale of other  
products: food, cigarettes, fuel etc, and that the principal activity would not be  
sale of liquor (s 24A(2)).
- 5 The presence of the liquor retailing premises in a predominantly residential  
area.
- 6 Insufficient evidence of the likely break up of activities at the premises re sale  
of liquor compared to other retail activities.
- 7 Insufficient clear evidence as to the population make up in the locality, and  
proximity or time-distance of other alternative liquor retailing sites.
- 8 Insufficient evidence that the asserted target customers (“professionals 25-40  
demographic”) had any interest in the provision of the intended service.
- 9 Evidence that the authority to sell liquor was desired to prop up a failing  
business (compare decision *Ferry Road Store 15<sup>th</sup> April 2008*).

## **Decision**

We accept the submissions made in objection to the grant of the application.

There is no sufficient material before the Board to satisfy the relevant criteria in both limbs of s 24A referred to above. There is no sufficient material to support a conclusion that the grant would be in the best interests of the community, or that the principal activity at the premises would be sale of liquor.

Information provided by the Applicant was sketchy and uncertain. It was unsupported by persuasive objective evidence.

Based on any reasonable interpretation of the ‘principal activity test’ – practical test, reasonable person test, or purposive test (see *Latrobe decision 2 – above*) the Board is not satisfied that the principal activity will be sale of liquor.

As Mr Best stated, if we were to grant this application on the material before us, we would be obliged by analogy to grant an off licence to any applicant who had a mixed business shop. That is not what the legislation intends.

This is not a matter where due to isolation or lack of alternative facilities for the public, some latitude should be given by the Board in determining whether this is in the best interests of the community.

It is also not a matter (as submitted by the Applicant) of the Board seeking to break a perceived ‘monopoly’ held by local liquor outlet owners.

We direct the Commissioner to refuse the application.

PA Kimber; Chairman.

K Sarten; Member.

D Logie; Member