

| | |
|-----------------------------|---|
| Licensing Board of Tasmania | Decision |
| Legislation: | Liquor Licensing Act 1990 |
| Applicant: | Ian Tanner |
| Nature of application: | For an off licence |
| Premises: name | BWS – The Cheaper Liquor Co. |
| Premises: address | 27 Cole Street, Sorell |
| Name of decision: | BWS – The Cheaper Liquor Co. Sorell |
| Date & place of hearing: | 11 th November 2007 at Bellerive Oval, Hobart. |
| Date of decision: | 10th December 2007. |
| Members of the Board: | PA Kimber (chairman), K Sarten and D Logie (members) |

C:\Documents and Settings\pak\My Documents\Liquor Licensing\Board decisions\Board decisions from 2002\BWS Sorell 2007 final.doc

DECISION

We direct the Commissioner to grant the licence.

Application

The Applicant is an employee of Woolworths Ltd or a subsidiary. The nature of his application is similar to that which he made in regard to *BWS-Prospect Vale*, refer decision of the same date. The Application documents were consequently quite similar, although arranged around the nature of intended off licensed premises to be established at Sorell in Southern Tasmania, compared with the Prospect Vale application for nearby Launceston.

It was agreed by the Applicant, and principal objectors, that material received relevant to this Sorell application in the Prospect Vale application would be taken into account and objections generally proposed in the Prospect Vale application would be taken into account in the Sorell application.

To the extent we made rulings in the Prospect Vale matter that are generic to the nature of this present Sorell application, they are supported in this decision. For example, our ruling that Mr Tanner’s capacity as an applicant, given that he has no intention of running the liquor store when completed if the licence is granted, does not disentitle him to apply (or the Board to direct grant), is also relevant to this application.

Law

The relevant provisions of the *Liquor Licensing Act 1990* are well known, were considered during the course of the hearing, and have been referred to in numerous written decisions (available at the Board website).

Consideration of facts

The applicant applies for an off licence for premises at 27 Cole Street, Sorell. It will trade under the name and style “BWS – The Cheaper Liquor Co.” if the licence is granted.

The principal activity would be sale of liquor. That meets one of the primary disentitling criteria in the Act. We are undoubted this is the Applicant's intention.

The proposed premises are located on vacant land adjacent to the northern boundary of the car park which services the Sorell regional shopping centre, and immediately west of the existing service station. Access to the premises would be from the shopping centre car park, the north west access off Station Lane, and the north east access off Weston Road.

In the scheme of things, the location and access to the premises would be suitable, it being adjacent to a car park in a shopping centre: little could be said controversial about that proposition.

Car parking would be provided immediately adjacent (14 spaces) and co-extensive with the centre car park and other centre users (350 spaces). A drive through facility would operate: one express lane, 2 browse lanes, and parking capacity in that scenario for 10 vehicles.

The cost of the facility is to be in the order of \$800,000.00. The premises will include retail area, staff office and toilet facilities, large walk in cool room and fixtures and fittings for display and sale of the intended product: beer, wines and spirits.

Hours of operation would be 9am to 10pm Sunday to Thursday and 9am to 11pm Friday and Saturday.

Details for safe and responsible serving of alcohol dealt with in *BWS Prospect Vale* application, are replicated here, and are adequate and appropriate. The manual for staff, and the reinforcement of obligations at common law and under the Act are excellent.

The Applicant is 'qualified' within the meaning of the Act. He will hold the authority for grant, if made, but as the premises are completed, Woolworths will seek an appropriate and qualified person to take over the management and control of the premises. This is acceptable to the Board and within the Act provisions. Refer our conclusions in this regard in *BWS Kingston 2005* and *BWS Prospect Vale*.

Benefits described and accepted by the Board to arise if the licence is granted are set out in the application document and include:

- Service to the purchasing public by way of a variety and range of product and services, increased choice to the customer.
- Price competitiveness – contributing to ensuring that suppliers in the region 'sharpen their pencils'.
- Availability and continuity of supply.
- Convenience; both by a new locality, proximity to other retail services, and a brand new purpose built off licence with browsing and a drive-through facility.
- The ability for those who do not wish to attend at hotels with on-licence facilities to acquire liquor in a different environment.

- Beneficial use of existing unused land in an economic and social manner, which adds to economic growth.

The Applicant argued that there was not going to be any adverse or detrimental consequences for car parking and traffic in and around the premises. We accept that. Such evidence to the contrary is taken into account, but does not indicate that there is likely to be any detriment worthy of obliging the Board to decline the application.

A traffic assessment by an expert Milan Prodanovic of January 2007 was taken into account, was persuasive, and is accepted in entirety. Mr Prodanovic gave evidence and was cross examined at the hearing.

Amongst other conclusions Mr Prodanovic stated that the traffic generated by the BWS store would not be expected to give rise to any safety or operational problems around the car park, driveway junctions and adjacent public streets.

Such adverse impacts as noted would, on the evidence, be addressed positively by the Applicant, and on balance do not disentitle him to a licence grant.

The demographics of the area are such that it can be described as a strong growing area in Tasmania with a diverse population. A 32% increase in population over 10 years to 2006 is accepted, from ABS figures provided. The area is likely to continue to grow.

The area is also a through way for the majority of tourists who spend any time in Tasmania: it is the turn off after a drive from Hobart, to the East Coast tourist areas, and the Tasman Peninsula – including the tourist highlight of Port Arthur.

To our knowledge, there have not been any recent new grants of off licences in the locality. With the demographics and this factor taken into account, we can easily understand an entrepreneur would see that a new service, providing facilities intended by the Applicant, would meet with strong demand by the public.

The Board is obliged to make a decision which it considers to be in the best interests of the community.

We must weigh up the benefits of the application as portrayed, logically quite enthusiastically by the Applicant, and the detriments we consider relevant including those explained to us by objectors. Those objections may be from members of the broader community, the specific locality, and may include objections put forward by hoteliers or other licence holders with an active interest in preserving the status quo for trade protective reasons.

We have on numerous occasions indicated that objection on trade protective bases are of little impact, and that our consideration is ‘what is in the best interests of the community’. Many aspects of the converse of trade protection, viz competition, are considered by the broader community to be favourable issues for consideration in licence grant applications. We see it that way. The Board is not established with any mandate to provide trade protection.

Our principal concern will be the risk of harm associated with liquor consumption, the prospect that the intended new business will exacerbate or otherwise contribute to that harm, and whether the refusal of an application will help to limit that harm.

In hearings before the Board off licence premises have not been demonstrated to contribute to or exacerbate the harm associated with liquor. Whilst consumption of liquor in our community is a major concern from a health impact perspective and in consideration of anti-social behaviour and harm, the reality is that liquor is nevertheless part of Tasmania's social and economic culture, remains a product many in the community wish to be able to purchase from regulated licensed outlets and where the premises are safe and the operators are qualified. There is a significant degree of autonomy desired by the individual to make decisions for him or her self about which potentially unsafe products they wish to acquire and consume. It is legal, and permitted, and the Act authorises the grant of new licences.

In considering the evidence, we take account of the above factors and the following as being positive in favour of grant:

- 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 new business would be likely to have flow on beneficial economic effects in employment, improvement to services, access to services in the immediate locality instead of further away (eg Hobart), and in the use of otherwise vacant land.

The planning report relied on by the Applicant in their development application to the planning authority, the Sorell Council was submitted, and is accepted as being an appropriate expert objective assessment. The conclusions made indicate that there are no amenity issues to the people living and working or passing through the locality which would arise from the grant of the licence.

Amongst the objectors who spent considerable time and effort presenting material to the Board were the Australian Hotels Association (Tasmania Branch), Mr Frank Morgan, hotelier of the district, Mr and Mrs Priest owner of the freehold of the Dodges Ferry Café and Bar (premises in Dodges Ferry for which the Board granted a general licence some years ago), the Sorell Football Club (operating under a liquor permit), Mr G Jablonski on behalf of the Pittwater Community Centre, Mr D Old of Midway Point, Mr M Scott of the Little Athletics Centre, R Bunyan of Sorell Junior Football Club, and the licensee of the Dodges Ferry Café and Bar. Support letters were received from P Schneider, J Forscutt, D Pickett, and P Morrisson.

All the material lodged has been taken into account.

It is immediately apparent that the weight of objection is material collated by local hoteliers or their trade association. Significant among their concerns, it is clear, is the

adverse impact on their trade or the 'precedent' value of any decision to grant a licence. As stated, this is not a matter which weighs strongly with the Board, as the broader community interest is that which must be taken into account.

Those objections from members of the public, which were not supported by personal appearance, have not been tested by examination or cross examination, and have consequently diminished weight.

Those members of the public who did lodge submissions or attended (or both) to indicate their enthusiasm for the proposal due to an interest in convenience, quality, diversity and safety in provision of liquor supply services, are relevant and cogent.

Harm associated from consumption of liquor is of significant import to the Board: however a general statement as advanced by some objectors, principally the AHA, that this licence will in some way exacerbate that harm, was not demonstrated by any relevant evidence.

General statements to the effect that 'there are sufficient licensed premises in the locality' without working through the statement and showing how the granting of the present application will somehow specifically be detrimental to the community are also of little weight in our consideration.

Broad assertions of vandalism or underage drinking in the community are not cogent in opposition to the present application. How such statements (for example, advanced by the Sorell Football Club Inc) should assist the Board to conclude that the present application should be refused, as urged by the Club, is unclear. Mere potential without any obvious causative link is not persuasive.

Mr Joblonski did not attend, so we were unable to garner from him the evidence behind or support for his contentions generally expressed in his letter that the granting of this application would make liquor more accessible to under age people.

Mr Old indicated his view that the licence should not be granted because 'the need for another licence is dubious'. The submission is noted, but for reasons above is not determinative.

The Little Athletics Centre submission is noted, and is a general expression of concern about liquor consumption. It is not specific to this application, and there is no evidence to support a demonstrable link between the grant of this application and an exacerbation to harm associated with liquor consumption.

On the other hand, statements from members of the community to the effect "we have been crying out for a safe and convenient and price competitive liquor outlet for many years" are also general but they support a personal perspective that the service is desired for service and access and diversity, quality and safety reasons. We refer to Mr Schneider's letter of support, Ms Forscutt's letter, Ms Pickett's letter ('convenience, safety, competition').

The Board heard from members of the community; Councillor Keith Ward, Sharon Fotheringham, Stephen Wilson and Councillor Mike Purdon. Ms Fotheringham has

lived in Forcett for 20 years. She had been a police officer at some time to 1996. She confirmed that there are traffic issues in the municipality – noting that it is very difficult to enter and exit car parking for the Pembroke Hotel. She said that with this new intended outlet, with security cameras, it would make her feel safe. She said she does not frequent hotels, and prefers liquor outlets in the nature of stand alone bottle shops, as she believes one will not find abusive people at such outlets, whilst sometimes that can be expected at hotels.

Ms Fotheringham indicated a desire to have an element of one stop shopping: groceries, meat, petrol and liquor, all within a close proximity. She said there would be ample parking and security with lots of people around. She said to her mind Sorell is the fastest developing area in Tasmania and can easily support another outlet.

In general Ms Fotheringham's evidence supports the grant of the licence, and she demonstrated to be an honest, forthright, informed and objective witness. We accept her perspective.

Mr Frank Morgan, (with his family and associated company) has the privilege of being the sole provider of commercial liquor service in the Sorell township. It is evident that Mr Morgan wishes to retain this monopoly and is keen to put resources into preserving it. Nevertheless, there is little strength to his submissions from the perspective of the best interests of the community. With little likely adverse impact from the intended new licence, and with significant benefit in the form of new, professional, modern, well run and easily accessible, safe premises offering an alternative to existing operations, Mr Morgan's position is not persuasive against the grant.

Len and Pam Priest of the *Dodges Ferry Café and Bar* lodged a letter of objection. They say there are enough licensed premises in the area. It is surprising to hear this from Mr and Mrs Priest as their applications (two in 1996) for the licence they obtained were firmly placed on the basis that competition was needed in the locality and broader community, and that new operators should not be held out of entering the hospitality and tourism industry by existing operators. Mr Morgan was indeed a strong opponent to both those applications by Mr and Mrs Priest. It is interesting to see that they team up now in opposition to the present application.

Mr Tim Wier from the Sorell Football Club gave evidence for his club and associated Sorell Junior Football Club and Sorell Cricket Club. His club has been operating for 125 years in Sorell. It holds a liquor permit. He indicated the club relies on sponsorship or income by sales over the bar. He continued with evidence about other outlets in the vicinity, problems of underage consumption, and his concern that there would be a risk of young people 'with' alcohol. He said his club may lose its licence somehow due to confusion about how liquor had been supplied. He said he buys the club's liquor from local hotels, notably Mr Morgan's Pembroke Hotel. He said that significant sponsorship is given to the club by the Hotel operator, equating to 50% of club income. He said 40% of the total income for the club comes from sale of liquor, and that the club has a membership of 120. He felt the grant of the licence applied for would be detrimental to the community.

The reality of all this evidence by Mr Wier is that it is in no way adverse to the grant of the present application. That his club is so heavily reliant on alcohol sales and sponsorship from liquor outlets is not a relevant factor in this application. The heavy reliance by sporting clubs on liquor is a matter of community concern, addressed by the *Good Sports* program. See <http://www.goodsports.com.au/>.

This program recognises that strategies pursuing less reliance on alcohol in sporting clubs contribute to making such clubs more viable and improve the range and quality of sports options available within the community. Sporting clubs with undue reliance on bar sales and hotel sponsorship have been demonstrated in this program to benefit from alternative strategies, making the clubs less alcohol reliant, more family and particularly children friendly. This is perhaps not the place for a comprehensive review of the Good Sports program, but the general concept is supportive of the conclusion that this Board would not necessarily be acting in the best interests of the community by reinforcing reliance on alcohol sales and sponsorship in clubs by Board decisions on grant of new licences.

Following the conclusion of the hearing, the Board permitted Mr Morgan to lodge a final written submission. He did so on the 26th October 2007. We have taken that into account. Mr Morgan notes that he is the current licensee of the Pembroke, Gordon Highlander hotels and the owner of the Sorell Wine Cellar, all of which are in the town of Sorell.

Mr Morgan submitted that the grant of this present application would not comply with the intent of the 2003 amending Act (refer to the history of legislation regarding off licenses as set out in the Board's decision in *Bentley-Williams Off Licence Application, Blackmans Bay November 1996*). The Board must interpret the Act in accordance with its natural meaning. We take account of the 2nd reading speech by the Minister relevant to the 2003 amendment, but find that there is nothing in his comments which indicate our interpretation as applied to the present application should give a different result, or that practical and realistic considerations with sufficient evidence to support them are being ignored, or that irrelevant considerations are being taken into account.

A number of summary conclusions regarding Mr Morgan's submission should be recorded:

- A primary justification for liquor regulation is harm minimisation: agreed.
- The 2nd reading speech of the Minister regarding the 2003 amendments is relevant to interpretation: agreed.
- The Act as amended would ensure the sale of alcohol remains restricted to properly licensed stores such as bottleshops, and not extended to local stores and supermarkets: agreed.
- The framework of the Act and the specific wording of the Act is to be considered in interpreting the intent and meaning and hence application of the Act.
- The Board should not grant the present application because it is 'totally against the true intentions of the Act as expanded upon in the second reading speech.' We disagree. This conclusion is one desired by Mr Morgan.

- The Applicant’s responsible service of alcohol policy is nothing other than a ‘feel good policy’. We disagree. It is evidently a comprehensive attempt to professionally ensure that appropriate policies are developed, continually reviewed, imaginatively considered, and imposed on management and staff and patrons, and enforced. That it is not perfect is not to the point.
- Availability and continuity of supply equates to increased consumption: there is not adequate evidence to conclude this in the present application, nor that if it is the case, that it is a bad thing in the circumstances.
- There will be adverse and detrimental impact on the community in relation to car parking. We disagree, for the reasons set out above taking account of the expert report and evidence received.
- Demographics: we are unable to reach any conclusion on the demographic evidence that there is anything inherent in the nature of the locality and the community in it which makes the grant of the licence particularly likely to increase harm associated with the consumption of liquor.
- Mr Morgan points to the infrastructure and services offered by his licensed establishments. We accept that evidence, and conclude that Mr Morgan and his family make a significant contribution to social and economic life in Sorell by running their businesses. However, nothing in that evidence indicates that the Board should prevent the competition which will arise if the present application is granted.
- There is no evidence from Mr Morgan that existing services (by his businesses) will deteriorate if the licence is granted, or that overall services in provision of retail liquor in the Sorell area will deteriorate. Indeed, it is self evidence that the services will be more extensive, and offer additional quality, diversity, safety and competition.

Finally we note that general evidence taken in the *Prospect Vale BWS Off Licence Application* heard the day before this matter was, at the request of the parties in this matter to be taken into account in this matter. We have done so, and the same conclusions as recorded in that decision apply here regarding those matters.

Decision

We direct the Commissioner to grant the licence.

PA Kimber: Chairman.

K Sarten: Member

D Logie: Member