

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Anthony Bentley-Williams
Nature of application:	For an off licence
Premises: name	TBA
Premises: address	Shopping centre, 148 Channel Highway, Taroona
Name of decision:	TBA Taroona
Date & place of hearing:	22 <sup>nd</sup> June 2006 at Hobart
Date of decision:	3 <sup>rd</sup> August 2006.
Members of the Board:	PA Kimber (chairman), L Finney and K Sarten (members)

## DECISION

### **Application**

Mr Bentley-Williams applies for an off licence for premises within the “Taroona Village” intended shopping centre.

The application was opposed by the Australian Hotels Association (Tas Branch) represented by Mr D Hanna with Ms M Bonde, and the Applicant was represented by Mr David Wallace, counsel.

The Board inspected the external area of the premises and the intended shopping centre, and was supplied with plans and application submissions in writing.

The premises used to be a shopping centre, but at the present the internal areas appear largely if not exclusively to be given over to service businesses or are vacant, and the public do not access the internal part of the large building. It is intended apparently that the business the Applicant seeks to start will be one of the new businesses to commence in the centre as it is re-opened to the public.

The subject shop is intended to be created out of a re-vamping of internal walls to expand an existing internal tenancy.

The Board heard some indication from the developer of the intended Taroona Hotel, part of an apartment development within a kilometre of the subject premises, and for which, early this day, a general licence was directed to be granted. The submissions from Mr Gray on behalf of the developer were apparently motivated by a trade protective view, and were not persuasive to the Board.

The Applicant addressed criticism of his plans by stating that there would be social and economic benefits to the local community by the use of currently vacant premises, and the employment of staff.

Mr Paul O’Brien attended and gave evidence opposing the application. Mr O’Brien appeared to be unconnected with any business in the area and put forward his objection on the basis of being a member of the local community having lived in Taroona for 35 or so years. He opposed the licence as he perceived 2 licences in the

vicinity authorised to sell liquor for off premises consumption was not 'required' (that is, there is no need), that there is a low population, and the residents did not require the benefit of a stand alone bottle shop, and that siting the new premises in a disused shopping centre without any other current retail outlets was not beneficial to the community locally or generally.

Mr O'Brien also raised concerns at the proximity of the premises to places where children play.

Mr Hanna argued that the lack of need for the premises, the absence of any other redeeming features apart from simply supply of liquor, and the lack of evidence of the impact the premises would have on the particular community militated against grant of the licence, and that the onus being on the Applicant, the Board should refuse the grant.

Mr Hanna urged caution in granting an off licence on the general basis that greater accessibility to liquor had been demonstrated to contribute to greater harm associated with the abuse and misuse of liquor.

Taroona is a residential suburb with a population of about 3,000 people, with residential housing of 1,194 (ABS 2001). The impression we have is that the retail supplies for households are acquired from either the city, Sandy Bay, or Kingston, where shopping complexes and infrastructure is significant. The intended Taroona Village is effectively defunct at present, serving no visible retail purpose. The only evidence we had of the intended future use was a letter from a real estate agent tendered on behalf of the Applicant to the effect that he has 'secured a new tenant' for the ex-supermarket area of 621m<sup>2</sup>. No further information was given and the agent was not brought forward by the Applicant for further information.

There was no evidence from the community indicating a desire for the services intended to be offered by the Applicant. The *Taroona Community Association* (President Jill Hickie) submitted a letter indicating caution about endorsing either the present application of that dealt with earlier in the day for the Taroona Hotel.

The Applicant's evidence at the hearing was to the effect that his experience was in property development in NSW and more recently in Tasmania, that the present building and the community would benefit from his intended investment (\$15,000 shop fitting and \$45,000 stock, employment and use of currently vacant premises), that he had joined a national buying group to supply the premises/business, and that the closest outlets were in Kingston (some 6 km away), or the Riverview Inn (with limited off sales capacity and some 4 km away).

The Board's impression is that the Applicant's plans are relatively simple; indeed, it is a simple business to establish. A light touch of renovation, stock the shelves, put in a cashier and one or two staff, and see how it goes. Responsible service of alcohol policies would no doubt be taken into account and the need to avoid selling liquor to intoxicated people or minors would be stressed to staff. The identified market to sell was expressed as "anyone who wants to buy". The range was expressed to be "standard range".

## CONCLUSION

Our conclusion is that the evidence in support of the application is not sufficient to meet the onus required of applicants for an off licence. The *Liquor Licensing Act 1990* requires the Board to make a decision which in its opinion is in the best interests of the community.

In some instances there is a demonstrated need for the service intended to be provided, with evidence from the community in support. Whilst 'need' is not a requirement for grant of a licence, and in some instance competition from additional premises may be taken to be in the public interest, in this application we are not persuaded that the community will be benefited from the grant of this licence.

The AHA's submissions were general in nature and express the issues of concern to this Board, but in this instance were not demonstrated to be matters which would be exacerbated by the grant of the licence. Issues of increasing accessibility and the link to greater harm are general and do not necessarily apply to any one particular premises. There was no evidence that they did in this instance. Social impact is relevant, and whilst fears or concerns can be raised, in this instance there was no demonstrated negative social impact – but on the other hand, there was no demonstrated beneficial impact of sufficient significance to dictate that the licence should be granted. Opening a store to sell liquor is not per se in the best interests of the community. Health and safety aspects, expressed very generally, do not indicate that the licence should not issue in this instance.

The AHA expressed concern at the 'normalising' impact of placing liquor sale businesses near other retail outlets. In this context, in these premises, no particular harm was demonstrated as being likely to occur because of this.

The AHA said there was no analysis of the community, and no evidence of having consulted 'the community'. We agree. There was very little information about the local community to assist the Board in determining that granting the licence would be in that community's best interests.

Concern at the impact on the community of not only the intended Taroona Hotel as well as the present application were not assisted by any cogent evidence of community impact.

It is not that the intended licensed business has been demonstrated to be against the public interest, it has simply not been demonstrated to be in the best interests of the community.

We were reminded of the desire for the Applicant in *BWS-Bridgewater 2005* to simply use vacant premises as a part of re-enlivening a disused shopping centre. The application is simply not attractive enough to meet the criteria implicit in s24A(1) of the Act.

PA Kimber; Chairman.

L Finney; Member.

K Sarten; Member

