

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	James Angus Digolis
Nature of Application:	Off-Licence
Premises: Name	9/11 Kingston Plaza
Premises: Address	Shop 4, Kingston Plaza, 20 Channel Hwy, Kingston
Name of Decision:	9/11 Kingston
Date & Place of Hearing:	17 September 2008, Hobart
Date of Decision:	21 October 2008
Members of the Board:	K Sarten (Acting Chairman), D Logie (Member)

DECISION

Application

Mr James Digolis made application for an off-licence for premises within the recently developed Kingston Plaza shopping centre.

Appearing at the hearing for the Applicant:

The applicant, Mr Digolis, 9/11 Group Operations Manager, attended and gave evidence and was represented by Counsel Ms S Sealy. Also present providing representation in support of the application were Mr Peter Grubb – General Manager, Vantage Hotel Group, Mr John Mortensen – Director, Federal Group, and Mr Grant Kench – Rockfam Investments Pty. Ltd (owners of the freehold of the site)..

Objectors:

Counsel Mr Damien Geason appeared on behalf of Cooley's Pty Ltd, the owners of the freehold of the Kingston Hotel, with Mr Ron Tabor licensee of the Kingston Hotel.

Ms Victoria Sales from the Australian Hotels Association (AHA), appeared on behalf of the AHA.

Counsel Ian Duncan appeared on behalf of Mr Martin Donnelley, and also called David Clements – CEO, Alcohol, Tobacco and Other Drugs Council Tasmania

Ms Jennifer De Martino and Ms Robyn De Soza appeared to further their written submissions.

A number of other written submissions objecting to the grant of the licence were received and were considered by the Board.

The Application Summary:

The premises are situated in Kingston Plaza shopping centre, a recently completed development. There are 14 new shops within the centre which include a Coles Supermarket. The centre is one of a number of shopping centres within the Kingborough Municipality, one of the fastest growing residential areas within the State.

Nearby business retail licensed premises include the Kingston Hotel and Beachside Hotel (both with drive through bottle shops), and stand alone off-licence premises: Channel Court liquor, and BWS in the Kingston Town shopping centre.

The applicant gave evidence by his original written submission dated 14 August 2008.

Mr D Geason on behalf of Cooley's Pty Ltd put forward their written submission of 5 September 2008 opposing the direction for grant.

Mr Donnelly lodged a comprehensive written submission opposing the grant, and his Counsel, Mr Duncan, referred to the report in summary. Mr Clements appeared at the hearing and made submissions opposing the direction to grant.

The *Liquor Licensing Act 1990* prohibits the sale of liquor without a licence, and permits the grant of an off licence (s9). S 24A states that in considering an application for a licence, the Board must make a decision which, in the opinion of the Board, is in the best interests of the community. In addition, s 24A(2), states that 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. Clearly the intention of the applicant is to have the principal activity to be the sale of liquor.

The Applicants evidence included:

- The intended premises are part of 14 new retail premises in a shopping complex, the intended off-licence business would be 193m² as detailed on plans submitted, and have opening hours from 9am – 11pm, 7 days per week
- The estimated cost of fit out of the empty premises is \$300,000
- The Applicant sees a business opportunity to expand the existing 9/11 operations (being generally established in Hobart, Glenorchy and Sandy Bay) and intends to offer convenience, choice, variety of product range, enhanced by store appearances from winemakers and suppliers to improve product knowledge of employees and customers
- The Applicant currently holds the liquor licence for five 9/11 premises and is committed to professional standards including maintaining and enforcing strong RSA principles. The proposed outlet would be staffed by 2 full time and up to 10 part time/casual staff
- The proposed premises are to service those customers who use the Kingston Plaza shopping centre generally.

The objections

Mr. Geason asserted the Kingston area is sufficiently served by liquor outlets and that the grant of an additional licence would not be in the best interests of the community due to asserted 'proliferation' and referred to the Board's *Ferry Road* decision. Mr Geason also noted the proximity of existing liquor outlets to each other, which he said would be exacerbated if the present application were granted. Mr. Tabor supplied photographs in support of this contention. Mr Geason submitted, again with reference to the *Ferry Road* decision, that there was no 'special need' for the grant of an off-licence.

We note that the *Ferry Road* decision (Dean Krueger, 15th April 2008) does make reference to proliferation, but in the context of 'types of licences'. That is, it is acknowledged that an issue of some concern to the community is that liquor should not be available from a proliferation of *types* of premises: in particular s24A(2) is intended to prevent liquor in off sales stores from being sold from all sorts of mixed businesses. See our decision in *Bladerunner 2003*. (refer page 10, para 3 *Ferry Store*).

Ms. Sales asserted the application was not in the best interest of the community and submitted that:

- there were already two premises aside from hotels where liquor could be purchased in the near vicinity,
- existing premises already offered a wide range of product and choice,
- another licensed premise would lead to 'normalisation' of alcohol (meaning that liquor would be considered a normal product),
- growth in the area is modest with statistics covering from Tarooma to Bruny Island,
- because there is a bottle shop in the other retail centres is no reason for one in this case,
- the Applicant had not discharged the onus of proving the application was in the best interests of the community.

Mr. Donnelly read his prepared submission which supported the objector's submissions from the above, also referring to the Board's Decision regarding *Ferry Road*, and supplying photographs in support. Mr Donnelley submitted there had been an increase in outlets in excess of growth in population citing State wide statistics.

Mr Clements appeared in support of Mr Donnelly and raised the prospect of further harm as a result of the grant of the licence due to consumption of alcohol in our community. Mr Clements cited National and International reports which he said showed some causal relationship between outlet density and liquor related harm, however conceded that there was no evidence in relation to Tasmania, or in particular to the Kingston community, that the present application, if granted, would lead to an exacerbation of harm associated with the consumption of alcohol. He also acknowledged that the evidence of increased harm due to

increased number of licensed premises mainly related to taverns and nightclubs as distinct from off-licence premises.

Mr Tabor submitted there were sufficient outlets, product range and convenience in Kingston.

Ms. De Soza and Ms. De Martino both stated that the purchase of alcohol should not be too convenient, otherwise that would be detrimental to the community.

Consideration of the Evidence

As per the Board's decision in *BWS – The Cheaper Liquor Co- Kingston*, paras 53- 61, 'although not bound by rules of evidence the Board is keen [and obliged] in providing procedural fairness, to take account of relevant material, ignore irrelevant material, and to give appropriate weight to evidence'. Once a prima facie case is established by the Applicant, it is for the opponents to raise some evidence to the contrary, or some evidence which throws the matter into doubt.

The majority of objections were directed at statements made by the Board in the *Ferry Road* decision, specifically regarding 'proliferation' of outlets. The present application is to be distinguished, these premises are not being hived off part of an existing stand alone business premises and the application in that sense does not have to prove a 'special need' as discussed in the *Ferry Road* matter.

The proposed premises are in a newly developed centre of 14 retail tenancies alongside a redeveloped supermarket. It is acknowledged that retail development in Kingston has resulted in a number of shopping precincts each attracting their own portion of the local market, and also extending competition, service, and improving quality generally in the locality which is recognised as a growing community. Further regarding assertions that the Applicant must demonstrate a need please refer to the Board's previous decision, *BWS – The Cheaper Liquor Co – Prospect Vale* paras 27-29.

The Board have on a number of occasions, including in a number of written decisions, addressed the issue of outlet density. The concerns raised by the objectors were general in nature and unsupported by evidence related to the Kingston community. Statistical data presented regarding population growth in Tasmania and the growth in licences needs to be assessed with reference to the changes to the *Liquor Licensing Act 1990* over the same period and the generally dispersed nature of the Tasmanian population. Such data then needs to be refined and analysed to provide something objective and relevant to this particular application. There was no evidence presented of any credible or persuasive nature that there has been any detrimental impact from the grants of off-licences in the Kingston area and the consequent new off licence businesses which have been established, nor any evidence to support any assertion of potential harm arising from the potential grant of this licence. Rather, the evidence presented, alongside the Board's own knowledge of the area, pointed to continued growth, development and business expansion in the area. On this basis, and in the absence of some objective evidence to the contrary, the Board concludes that the grant of this licence is unlikely to lead to increased consumption, nor to exacerbate harm associated with the consumption of alcohol in our community.

A number of written submissions were couched in terms directed at the nature and impact of the employer of the Applicant in our community in regard to the diverse business interests, connections, and power which it holds and were not considered by the Board, in the context, to be relevant. The Board notes it is the province of the Commissioner to determine whether or not an Applicant is qualified to hold a licence and that this has been determined prior to referring the application to the Board. Objective, substantiated concerns of a serious nature of matters which may have arisen, or come to light, between when the application was referred by the Commissioner to the Board and the hearing would be required for the Board to delve into this area, if at all. As such personal unfavourable opinions are of no relevance, they do not add any value by way of relevance to submissions.

On balance, and with due consideration of all submissions, the Board determines the application meets the criteria of the Act and we direct the Commissioner to grant the Licence.

K. Sarten (Acting Chairman)

D. Logie (Member)