

Licensing Board of Tasmania: Decision

Application

Applicant: Mr James Digolis, 9/11 Newtown Plaza, New Town Plaza Shopping Centre, Shop 5/1 Risdon Road, New Town.

Type of Application: Off Licence (Section 9 *Liquor Licensing Act* 1990).

The application was heard in Hobart on 23 July 2013.

Decision: 27 August 2013

Background

The application is for an Off Licence for a bottle shop to be located in the New Town Plaza, in the suburb of New Town, Hobart.

The application was heard on 23 July 2013 at which were present the applicant, Mr James Digolis, 9/11 Group Properties Manager, Vantage Hotel Group Pty Ltd and his legal representative, Mr Benn Dance; the objector, Ms Alexia Kalis, of the Kalis Group which comprises a number of bottle shops, hotels/inns/taverns in Tasmania.

Mr Digolis's application was supported by a range of written documentation including a research report prepared for the Vantage Hotel Group (a division of the Federal Group) by Enterprise Marketing and Research Services (EMRS).

Ms Kalis made a written objection dated 5 July 2013.

The proposed premises is currently vacant located within the shopping plaza, with an entrance adjacent to Coles Supermarket. There is also another external entrance that provides access from the main car park of the shopping centre. Operating hours are proposed between 9.00 a.m. until 11.00 p.m., 7 days a week.

The applicant's submission

The applicant seeks an Off Licence to sell liquor from vacant premises in the New Town Plaza. He submits that this is in the best interest of the community.

He cites his own experience as a licensee (the applicant is currently the holder of (general and off) liquor licenses for 6 properties in Tasmania) as well as the Vantage Group's long-standing commitment to the responsible service of alcohol. There are thirteen 9/11 stores throughout Tasmania, employing over 120 people and offering a large range of quality products at competitive prices. A new outlet would potentially offer employment for up to 10 people.

The applicant submits that the grant of this Off Licence would offer the public an alternative choice by providing a safe, easily accessible non-hotel environment to shop for liquor supplies. The proposed licensed premises would offer the community the convenience of

making liquor purchases as part of a broader one-stop shopping experience without having to travel to other locations to do so.

Additionally, he claims that many, particularly females, feel more comfortable in purchasing liquor through a shop front in their chosen shopping complex than from a hotel.

On the basis of these arguments, the applicant submits that it is in the best interests of the community to have a liquor licence granted for these premises (s24A (1) *Liquor Licensing Act 1990*).

The objector's submission

Ms Kalis made an objection in writing (dated 5 July 2013) and appeared in person at the hearing in Hobart on 23 July 2013.

Ms Kalis objects to the granting of the off licence on two grounds.

Her first objection relates to Section 25A of the *Liquor Licensing Act 1990* (the Act) which states that:

The Board must not direct the grant of a liquor licence in connection with the activities of a supermarket.

Ms Kalis seeks clarification of Section 25A from the Board. She submits that due to its proximity to the supermarket entrance at the New Town Plaza, the proposed outlet would essentially be operating in connection with the activities of a supermarket. The doors are adjacent and shoppers could move seamlessly between the two shops.

She also submits that the local community is already well-served by existing liquor outlets of various kinds and there is no community benefit in granting another licence. She claims that there are “numerous” off licensed premises within minutes, by foot or car, of the proposed site.

Based on these arguments, the objector queries the benefit the granting of this licence would have for the community.

Considerations by the Liquor Licensing Board

The Liquor Licensing Board of Tasmania is called upon to determine this application for an Off Licence authorizing the sale of liquor for consumption off the premises (s9).

The principal test for the granting of any licence is if it is the best interests of the community to do so.

In considering an application for a liquor licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community (s24A (1)).

The Board did not give much weight to the applicant's argument around female preference for purchasing liquor from a stand-alone bottle shop. Bottle shops – whether stand-alone or located within hotels - are not gender specific and not viewed by the Board as particularly disquieting places for women.

In relation to Ms Kalis's submission regarding the application of section 25A of the Act, the Board is guided by the decision of the Full Court of the Supreme Court in *Australian Hotels Association (Tasmanian Branch) v Licensing Board* (2006) TASSC 91. Slicer J referred to the Second Reading Speech of the Minister who introduced the Bill for the *Liquor and Accommodation Amendment Act 1995* which emphasised the Government's opposition to the sale of liquor **in** supermarkets.

Of relevance is Justice Evans' statement in paragraph 28 where he said:

....A liquor licence authorises the sale of liquor from specified premises and a defining activity of a supermarket is the sale of food and other domestic items from premises. This common matter confirms for me that the connection between the grant of a liquor licence and the activities of a supermarket that is prohibited by s25A relates to the sale of liquor from the premises of a supermarket.

The circumstances of this application are clear. While adjacent, 9/11 New Town Plaza is entirely separate physical premises to Coles. 9/11 New Town Plaza is clearly not a supermarket. 9/11 New Town Plaza is not owned by Coles Supermarkets and has no consequent financial or corporate relationship with any part of its operation.

Consequently, there is no impediment to the granting of this licence under Section 25A.

The Board does acknowledge that there are some emerging community concerns around the proliferation of liquor licences, particularly off licenses, particularly in lower socio-economic areas.

However, given the adult population of New Town, the Board does not see the addition of another off licence as constituting an excess in the availability of off licenses.

As a result, the Board is of the view that the granting of an Off Licence for 9/11 New Town Plaza is in the best interests of the community.

Decision

The Board directs the grant of an Off Licence to Mr James Digolis authorising the sale of liquor for consumption off the premises, 9/11 New Town Plaza.

Jenny Cranston (Chairperson)

Ann Cunningham (Member)

27 August 2013