

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Ian Tanner
Nature of application:	For an off licence
Premises: name	BWS - The Cheaper Liquor Co.
Premises: address	350 to 364 Westbury Road, Prospect Vale
Name of decision:	BWS – The Cheaper liquor Co, Prospect Vale
Date & place of hearing:	Launceston, 10 <sup>th</sup> October 2007
Date of decision:	10 <sup>th</sup> December 2007
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

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## **DECISION**

We direct the Commissioner for Licensing to grant an off licence to the Applicant, Ian Tanner.

## **Application**

The Application was heard at Launceston on the 10<sup>th</sup> October 2007. Preliminary documents were filed by the Applicant for the benefit of the Board, and were made available to interested parties.

Supporters and objectors to the Application lodged letters or documents in reply, and/or attended the hearing and some gave verbal evidence at the hearing.

The AHA (Tas Branch) [referred to as “AHA”] sought leave to appear by Counsel, and as that organisation could not otherwise appear except by agent of some nature, the Board granted leave to it, and consequently, in fairness, to all participants to appear by legal representative if they respectively desired.

The Applicant was represented by Counsel Mr L Bryant, and solicitors Mr M Kellock from Mallesons Stephen Jaques and Mr I Duncan from Argyle Law.

Counsel Mr D Armstrong represented the Respondent the AHA.

Mr Ian Carter, from a company Edward Baillie Capital Holdings Pty Ltd, Sydney, appeared on behalf of the owner and operator of the Old Tudor Inn, which is a general licensed premises near the intended licensed premises.

Other participants either relied on their written submissions or appeared in person.

## **The Hearing**

1. The Application is summarised in two documents, the substantive written submission and the further submission (designed to assist the Applicant to counter objections).

2. The Applicant is an employee of Woolworths Ltd or a subsidiary of that large public Australian company. The Company or subsidiaries retail liquor in a large number of outlets around Australia under the umbrella brand “BWS – The Cheaper Liquor Co.”.
3. The Applicant intends to develop a new outlet in an area shown on plans submitted nearby a shopping centre. The premises would have 214m<sup>2</sup> area, and retail space of 180m<sup>2</sup>, cool room of 35m<sup>2</sup>.
4. The location is on vacant land at the southwest corner of a car park which services the Prospect Vale Market Place Shopping Centre, and at the rear of an existing petrol service station. It is intended to be separate and apart from the businesses run in the shopping centre and the petrol selling business, except to the extent qualified below.
5. The premises would have a dedicated entrance, automatic sliding doors, and other facilities as per plans lodged with the Board/Commissioner. Parking would be provided in the area immediately adjacent of 13 spaces, as well as co-extensive use of the large adjacent car park servicing the shopping centre (some 300 spaces).
6. Much was made by the AHA of the pros and cons of parking arrangements. The Board concludes that although car parking arrangements might be considered less than perfect (whatever that might be), they are accepted by the Council as being sufficient, and they are adequate for the purposes of the Board’s consideration of what is in the best interests of the Community. We will deal in a bit more detail with the arguments presented, but suffice to say in summary, we were not left with any concern that parking or access arrangements were to be counted in the balance as in any way a negative aspect. A lot of time was spent at the hearing on this aspect, but the Board accepts that generally amenity in this regard is the province of planning authorities.
7. The estimated cost of construction and fitout is \$800,000.00. The premises will include staff office, toilets, large walk in cool room, fixtures and fittings and display area for wines, beers and spirits. In brief, a ‘modern’ off licence premises of the nature of many in operation around Tasmania and the rest of Australia adjacent to, or near hotels and shopping centres, or other hubs of retail activity.
8. The Applicant presented their entire Responsible Service of Alcohol manual, and described the procedures and strategies developed by the Company to adhere to RSA principles. The Board concludes that quite adequate, reasonable, and even superior attention (compared with many off licenced businesses) is intended, and that there is a proven demonstrable implementation in other BWS stores. Some criticism of the strategies were made by demonstrating that a woman of less than 25 years of age (in fact 23 years) had been served at BWS stores without being requested to provide proof of age, notwithstanding an asserted policy of seeking proof where customers *may* look under 25 years. The evidence demonstrated the difficulty in the area. The AHA employee, agent provocateur, Ms Victoria Sales

attended at BWS stores and acquired liquor without being requested to provide any evidence of age. It is apparent Ms Sales presented as a young professional businessperson, but that it would not be likely that anyone would refuse her service on the grounds of age. The evidence did not demonstrate that the Applicant's policy is ignored or ineffective.

9. The Applicant does not intend to operate the premises on a day-to-day basis personally if the licence is granted. He intends to oversee the erection of the premises, the engagement of staff, and the appointment, prior to opening the store, of a store manager who will be the licensee. The Applicant will transfer the licence to the intended store manager/licensee before the store opens. That person would, of course, be someone whose particulars would be submitted to the Commissioner for assessment of qualification to hold the licence under s22 of the Act, including consideration of that person's reputation (note changes are still proposed to the legislation to rope in 'fitness and propriety' rather than simply reputation).
10. The AHA submitted that these arrangements were in breach of the Act and the Board could not legally direct the grant of the licence, because the Applicant today had no intention of running the business or managing the sale of liquor. We refer to our decision in *BWS – The Cheaper Liquor Co – Woolworths Ltd – Kingston Town & Bridgewater* (two matters, of 16th August 2005). We adhere to that component of those decisions relevant to this issue, and hold that (as per para 62 of those decisions) the Commissioner has jurisdiction to make the decision under s22. To the extent that the Board has or would have any concern, it would be whether there is in the application some 'pregnancy' for intended breach, which we hold there is not. Under s24A – the *best interests of the community*, there is nothing in the arrangements which is in the balance to be taken as a negative aspect for our consideration of *the best interests*. Simple commercial arrangements do not have to be dealt with in a cumbersome or complete manner in the legislation – some common sense about how particular applicants and their associated business owners will conduct, setup, start and continue intended licensed premises must be applied. Previous (historical) arrangements involving grant of authority preliminary to commencement have been simplified in the 1990 Liquor Licensing Act with that implicit need in mind.
11. Prospect Vale is in the Meander Valley Council area, but effectively a suburb of the City of Launceston and is about 8 minutes by car to the centre of the city. The nearest premises authorised to sell liquor for off premises consumption is the Olde Tudor Motor Inn, and Mr Carter, a person involved in the ownership and operation of that licensed premises, appeared in objection to the application. These premises are less than 2km from the intended BWS premises. Mr Carter's evidence and submissions were couched in terms of community concerns, and objection to the quality of evidence provided by the Applicant, and whether the onus of proof has been met. However, it is clear that a considerable concern to him is the financial impact of a competitor.
12. The Applicant's evidence was that the new business premises would offer an alternative to existing arrangements, would provide convenience to shoppers for liquor, would add to price competitiveness in the locality without

necessarily causing a reduction in prices, would provide for a broad range of liquor with 'guaranteed' continuity of supply, convenience due to a drive through facility, an alternative to the need for locals to purchase take away liquor from hotels (i.e. separate from on premises consumers, and hence away from premises where liquor had been/was being consumed, with attendant safety aspects).

13. He asserted it would be of benefit to the community further because existing vacant land would be developed and people would be employed in the development and the business.
14. The objectors asserted that the evidence was not sufficient to demonstrate that there would be, overall, an increase of employed people, as there was a prospect of some employees in existing licensed premises losing employment due to reduction in sales. The Board accepts that there is no proof of an overall increase in employment. Likewise, there is no evidence there will be an overall decrease. On balance, we conclude, that there is not likely to be any significant change in overall employment in the locality due to the new premises, and there is a reasonable prospect of an increase.
15. The objectors also submitted that the premises would not be vacant in the long run if not used for a liquor outlet, so the apparent benefit of use of vacant premises due to a liquor outlet being established was illusory. The Board accepts that in the long run the site would probably be developed for some other use if it were not licensed for sale of liquor. Nevertheless, there is some benefit in use as a liquor outlet from the point of view of using an otherwise vacant site.

### **Car Parking and Traffic**

16. We have referred to that in brief above. As so much was made of this issue by the objectors, it is something it may be appropriate to deal with in more detail in this decision.
17. First, Council have dealt with the issue and are generally accepting of the arrangements. As the planning authority, it has an 'interest' to ensure that appropriate balance is achieved between new development, resident amenity, and associated services. Some issues are dealt with by conditions on the Development Application Permit (DAP), others are dealt with by recommendation from the Council, which has been taken up by the Applicant and which he assures the Board he will act upon in the course of developing the site. Other arrangements raised by the objectors are matters which will, in the Board's view, be dealt with in a 'suck it and see' manner during the course of working out day-to-day and long term arrangements to maximise utility to patrons, and profit to operators. The two are co-existent and it can reasonably be presumed that the Applicant will wish to provide the maximum utility to patrons consistent with the resources available to maximise business return.
18. If there are some aspects of the Council approval which indicate a less than perfect solution to access, ingress, egress and parking, on the totality of the evidence and the use of the overall site (including the intended licensed

premises) the Board concludes that the arrangements are adequate, suitable, and on balance beneficial to all concerned. Aspects which might be considered negative or have the risk of being negative are outweighed in the balance by the reality that it is a shopping centre environment near a residential area, and people and cars will make do with the facility or exercise their choice to go elsewhere.

19. There was no evidence of any credible or persuasive nature that there would be any significant detriment from the increase in intensity of use of the area to existing patrons of the shopping centre or people living or working in the vicinity. To the extent that there may be some detriment, we determine that it is outweighed by the overall benefit of use of premises, additional service to the public, convenience, competition, employment etc.
20. Demographics: again there was debate about the quality of evidence as to the nature of the locality. That information which was supplied, albeit criticised as to quality, together with our local knowledge of the area, leads the Board to the conclusion that the Prospect Vale area is predominantly 'middle Tasmania'. It is not a zone with any substantial disadvantage from a socio-economic perspective, and is not an area in decline. The population has historically increased on a slow but continual basis, and we predict it will continue to do so. ABS statistics presented support that conclusion.
21. In light of the conclusions in the abovementioned *BWS Kingston 2005* matter, there is no issue in this matter regarding s25A of the Act.
22. Expert evidence was presented to the Board by Michael Livingston, Research Fellow, AERF Centre for Alcohol Policy Research, Victoria, in a document dated 9<sup>th</sup> October 2007, and Mr Livingston gave verbal evidence at the hearing.
23. Mr Livingston's material was to the effect that research has established that there *may* be a link between outlet density and increase in liquor consumption. His research makes interesting reading. It clearly indicates the complexity of research in the area, and further that research in different places throws up converse conclusions.
24. His evidence was not site specific to the Prospect Vale area. He was clear to the effect that he could not conclude that the intended new premises would increase liquor consumption in the locality, or would contribute to the harm associated with liquor consumption in the locality.
25. The Board appreciated the opportunity to hear the evidence from Mr Livingston, and to have his report and review of available literature on the topic. It is informative, and would be useful as a background to particular evidence of the risk of increased consumption and/or harm due to a new licensed premises being opened.
26. It is no doubt problematical for respondents to licence applications to show that there will be an exacerbation of harm caused by consumption of liquor as a result of new premises. In the absence of some indication towards that

conclusion for the particular locality, or some particular issue with the locality contributing to that conclusion, or even objective evidence from those living and working in the community in the locality, the Board in drawing as best it can from experience and local knowledge, concludes that it is unlikely in the present circumstances that the opening of the intended premises will exacerbate harm, or increase consumption in the locality.

27. The arguments together present a conundrum. An applicant might be called upon by objectors to demonstrate a need. As in this case, objectors say “there is no need for the premises, the locality is already adequately serviced with liquor outlets”. If the locality is adequately serviced, then all that the new premises can offer is convenience, and potentially an alternative with factors including safety, quality and diversity. It might not add to overall liquor consumption.
28. But if an applicant engages in the dispute by asserting that there is in fact a need, because the locality is under-serviced, then the objectors may assert that the applicant will contribute to harm because he/she will be making liquor available in such a manner and place as to increase overall consumption.
29. The Board’s conclusion in this application is that the question of need for a service is just one potentially relevant criterion of many. Sometimes there may be no need, and the licence should be granted in any event because of the contribution to competition, and the benefits which sometimes flow from that (improvement in service to customers, improvement in quality, safety and diversity, price competitiveness). No specific need is required in the legislation, or in this application. This is not an area where potential patrons are unable without significant difficulty to get their reasonable liquor supplies. Rather, the Applicant’s position that the business will offer competitiveness and convenience is accepted and is relevant in favour of the licence grant.
30. The Applicant’s Counsel referred to a number of VCAT cases regarding the desirability for subject locality specific evidence of risk of increased harm from new premises, if such evidence is to be persuasive against the grant of a particular licence. Without setting out all the citations, we re-iterate our acceptance of that general proposition, as referred to in *BWS-Kingston 2005*, and *Executive Director of Health v Lily Creek International Pty Ltd & others* [2000] WASCA 258 (12 September 2000) – paras 51 and following.
31. We also re-iterate our comments in the *BWS-Kingston 2005* matter at para 63 to 77.
32. We have taken account of the written submission by Mr Veltkamp dated 6<sup>th</sup> October 2007 in objection. The issues raised have been substantially dealt with in terms of the above conclusions. Other issues raised are considered in the balance, and we conclude that they do not tip the balance against the Board’s discretion to direct the grant of this licence in making a decision as to the best interests of the community.

33. We have taken account of the written submission by Mr J Carter and Mr J Steinthal leasehold owner and director of freehold owner of Olde Tudor Motor Inn respectively. The issues are dealt with above generally.
34. Mr Carter lodged a further submission dated 18<sup>th</sup> October 2007 after the hearing. This was responded to by the Applicant by submission of 25<sup>th</sup> October 2007. This was responded to by Mr Carter by submission of 12<sup>th</sup> November 2007. We have taken account of all that was presented in those submissions. We will now deal with the matters raised in those countering submissions.
35. The debate at the hearing as to the extent of the range of lines available at the Olde Tudor, and those intended to be provided at the Applicant's premises is not determinative of this application. We accept that the Olde Tudor has a broad range of liquor available, and likewise accept that the Applicant will provide a broad range. It is not determinative that there are any missing lines from the Olde Tudor list which will be provided by the BWS, so we do not need make a decision on that question. It is sufficient to say that the Board accepts the Applicant's submissions that it is a benefit for the community for a contribution to competitiveness, and for diversity and an alternative source for purchase of liquor to be available, and the prospect of additional lines being available in the circumstances of the locality.
36. Mr Carter submitted we should take account of community input. We do. He indicated there were a greater number of submissions against the application than for it. Our process is not an election, it is to hear matters and weigh evidence, and to make a decision which we consider to be in the best interests of the community. The logical conclusion, indeed the conclusion in this instance, is that there is community support from a number of *representative* members of the local community, and there is also opposition from some nearby neighbours and some businesses which will suffer competition from the business. We take all that into account.
37. Mr Carter urges us to conclude that there is no tangible evidence that there will be more choice, better safety or more convenience. On the material we heard and read it is apparent that there will be more choice, (in a number of different facets), there will be a safe new business, and there will be more convenience to customers. None of this detracts from the present safety, quality and diversity offered by Mr Carter's Olde Tudor Inn – it is additional.
38. Mr Carter provided population figures for the locality. He asserts that they demonstrate the local population cannot support the new business premises. We can not reach that conclusion from the material provided. New competitive premises have diverse effects. People may purchase liquor closer to home, they may divert from the Olde Tudor Inn and obtain their liquor supplies from the new premises for convenience reasons, the existing suppliers may change the method and style of their operation to meet the competition (as, for example, happened in the recent Nubeena matters and Kingston matters).

39. Mr Carter says BWS would operate on a lower wage to turnover ratio than the independent bottleshop industry and hence that there will be a reduction in employment with this outlet being licensed. We can not reach either of those conclusions on the evidence provided. Nor can we conclude that if the first precept is correct that it is a factor against grant of the licence.
40. Mr Carter says the site is in a residential area and that there are concerns about risks to pedestrians, and of anti social behaviour in the area. There is nothing in the evidence and the nature of the application that indicates the grant of the licence will exacerbate harm to nearby residents. Our impression from other such premises licensed in recent years is that no greater harm arose of this nature attributable to such licence grants. Whilst there are nearby residents and residences, this application does nevertheless relate to a shopping centre and a commercial retail zone. Activities like cars driving in and parking and leaving are surely to be expected by the residents. That would also happen whether the site was developed for sale of liquor or for another retail activity. There is nothing which indicates it is to be an unduly intense activity.
41. Mr Carter referred to the quality and diverse nature of service offered at the Olde Tudor bottle shop. This is not disputed, or if it is, we decide this matter on the basis that the Olde Tudor does provide a quality and diverse service in the nature of bottle shop services. However, that is not reason to decline to licence new premises. The Board's task is not about protection of existing operators.
42. Mr Carter goes into further detail regarding the traffic study. We re-state that our position was not moved by all the debate about traffic. It is a retail position in a shopping centre car park, and whilst no matter what traffic arrangements are available there is no doubt they will not be considered to be perfect at all times by all users. There is nothing which indicates to us that the arrangements will increase the harm associated with liquor consumption, nor will they be detrimental to the public. If a retail business is permitted for planning purposes, then there is nothing in the overall balancing of considerations regarding amenity to users which indicates liquor sales should be prohibited.
43. Mr Carter made a number of objections, or expressed a number of concerns, about the process of this hearing. The Board is predominantly a summary jurisdiction. Exchange of submissions is to help the Board understand what the Applicant and what the Objectors wish to say. We are bound by the rules of natural justice – more appropriately in this context referred to as procedural fairness. In the fact of the hearing time given, the opportunity for all to participate and cross examine other party's witnesses, and the opportunity to provide further submissions after the hearing, we are certain that every person with a desire to do so had a fair opportunity to present their case, to know what the other party's position was, and to bring in such evidence as they wished. 'Closing' dates for lodging material are for the Board's benefit: not hard and fast dates to enable preclusion of anything which the Board considers relevant. We are entitled to inform ourselves as we consider appropriate. Material submitted will not be ignored, but ultimately when a hearing process has been pursued, if someone wishes to continue lodging submissions and evidence, we will have to bring the matter to an end and make a decision.

44. Mr Carter indicates that cross examination during the hearing caused some people who may have wished to give evidence not to stay and give evidence. Regrettably the process of a hearing does not mean we can schedule individual witnesses with certainty. If they wish to be heard they can wait and give their evidence, lodge written submissions and their evidence in writing, but if they leave, without being available for examination and cross examination, the quality of their evidence may be reduced.
45. Mr Carter indicated that the plans for the intended store were inadequate. For our purposes, we have found them adequate. Mr Carter had opportunity to examine the Applicant regarding the site and plans.
46. Mr Carter supported the AHA submission that the Applicant would not have effective control. We have dealt with that submission above.
47. The Applicant in response made a number of submissions. We note the following which have been taken into account specifically by the Board:
  - a. Tangible evidence of the factors which might be considered to be in the best interests of the community in the application was presented. The Applicant's written submissions pre-hearing meet that requirement. Oral evidence in support meet that requirement. Letters and oral evidence of lay witnesses assist to meet that requirement. We take account of the evidence by Michael Lindsay, Melanie Edwards, Anita Bird and Barry Cole, and the traffic assessor Terry Eaton. That Mr Lindsay and Ms Bird may be enticed to support the application due to affiliation to Woolworths Ltd, or staff discounts, did not in fact diminish the relevance of their evidence. The evidence of Ms Edwards regarding poor behaviour near the Olde Tudor Inn has not been taken into account as adverse to Mr Carter's case.
  - b. The evidence supports that the community has been growing for some years and will continue to grow. It supports a conclusion that there have not been any additional off licence premises licensed in the immediate vicinity for many years.
  - c. No evidence supports the proposition that the licensing of the Applicant's proposal would increase anti-social harm in the locality.
  - d. There is no evidence to indicate that the current service at Olde Tudor Inn would be discontinued. Consequently there is nothing to indicate that there would be lesser service to the community if the direction to grant is made.
  - e. We accept that commercial interests in location of both the Olde Tudor and the intended BWS are relevant to them. That goes without saying. But it is not a negative factor in a licence application. The location nearby a shopping centre is logical for planning, amenity, convenience, and business reasons.

- f. Submissions and evidence received were received in such a manner as to enable various parties interested to provide countering evidence or submissions. We do not consider procedural fairness has been denied any interested person.
- g. We accept that there are other licensed clubs and establishments like the Olde Tudor Inn in the locality, including in the Launceston CBD. However, their proximity did not in our discretion indicate that the licence grant should not be made.
- h. Questions asked by Mr Carter in his last submission are too late in the day, however the general tenor, and concerns underlying them are taken into account. On the evidence, they do not disclose good reason to reject this application.
- i. The possibility posited by Mr Carter of BWS approaching him to lease his or other premises is an irrelevancy.

48. Clubs and voluntary associations made submissions indicating that some of them have a reliance on income from sale of liquor in their own premises, and a reliance on sponsorship from existing operating licensed premises in the vicinity. The Board notes that the sale of liquor by clubs and voluntary associations is generally to be as an adjunct to some other principal purpose, not a predominant purpose, and nor is there any express or implied support in the Act of a proposition that such organisations relying on income from liquor, or other liquor traders, is a relevant factor for consideration in a new licence application. Generally the Board is of the view that clubs should not be overly reliant on sale of liquor to promote or engage in their activities. Liquor should be an adjunct to serving member needs, not a reason for being, or of such predominant importance as to indicate that a reduction of income because of the risk of reduction of sponsorship should be a negative factor in the prospect of grant of a new licence.

49. On occasion it might be demonstrated that the hospitable sale of liquor in conjunction with a social club's existence is important to its continuation, and evidence of risk of failure of the club due to grant of a fresh commercial licence in the locality is real and significant. Generally, however, that will be rare indeed, in our experience (see however the line of decisions in the *Nubeena Off Licence* matters).

50. We note that the Australian-Italian Club provided a letter of objection (dated 24<sup>th</sup> July 2007) indicating 18% of total sales were takeaway liquor (presumably to members) and that grant of the present licence would jeopardise the continuation of that level of sales and hence income from that. The signatory to that letter was not present at the hearing. The evidence was not tested. In general the proposition remains that undue reliance on sale of liquor by clubs to support other activities is not a militating factor against grant of a new commercial licence. Clubs should look to their principal activities, and use sale of liquor as an adjunct supporting hospitality to members and their guests.

51. Submissions from trade competitors, and such clubs as mentioned above, to the effect that the grant of the licence would increase availability of liquor to underage people were not supported by any cogent evidence, and are discounted.
52. Issues raised by objectors that the Woolworths Ltd group seeks to dominate sales of product (whether groceries or liquor or otherwise) with an aim to ultimately decrease competition and dominate a market and manipulate prices, were general statements, unsupported in fact as to the likelihood of that occurring in the locality regarding the sale of liquor, and as such were not sufficiently supported to be issues the Board could take into account as a disorienting factor, or a factor against the grant of the licence. That these statements generally came from trade competitors or clubs (as mentioned above) did not increase the persuasiveness of the statements as relevant factors.
53. In general trade competitors and their union or support organisations and other entities relying on the sale of liquor for contribution to costs, or for surpluses or profit, must at least start to accept that their submissions couched in terms of community benefit are at least equally comprehended in terms of seeking trade protection, and this Board has for over a decade made it clear that we are not about trade protection.
54. Safety issues regarding traffic flow and parking, the existence of young people and elderly citizens in the locality raised in general letters of objection are not accepted by the Board as being sufficiently supported to be negative factors in this application. To a large extent the Board relies on the consideration of community amenity issues regarding such factors by the local council as resolving the balance. Our consideration can encompass such matters, but generally council or RMPAT consideration of the issues resolves them. Our predominant consideration is regarding the sale of liquor, and we are concerned with the adverse (or positive) impact to the community from sale of liquor from an Applicant's proposed business premises.
55. There are social issues regarding the consumption of liquor including community attitudes which can and do have a significant impact on the consumption, excessive consumption, binge drinking or other adverse methods of liquor consumption which can not be controlled in many instances by curtailing grant of new licences. The Board expects there will be new licence applications and that the Act enables grant of licences. Sometimes that will be against a background of other licences being surrendered, cancelled or changed as to use. Sometimes it will be a new licence in a locality already served by a number of licensed premises and without a change or reduction in the locality. It is not a necessary result, or even often a likely result, that the mere grant of the licence will cause an increase in harm associated with the consumption of liquor.
56. The Board is mindful of real and not exaggerated risks, where they are apparent from local knowledge, or suggested from either the absence or presence of evidence in a hearing. Merely rejecting applications because they will cause the establishment of a further licensed premises is not the strategy

in the Liquor Licensing Act, nor apparently what the community seeks. With this present application and others heard recently, it is apparent to the Board that a significant but not necessarily vocal segment of the community wish to have new facilities, convenient access (including those nearby to shopping centres), and a competitive environment. Where there is little or no persuasive evidence of exacerbation to harm associated with consumption of liquor in the community, the Board must take these views into account as positive aspects to applications.

57. Some concerns in this matter were with the possibility of sale of liquor from 5am to midnight. Whilst the specific licence applied for would permit operation for that period, the Applicant indicated the intended hours are 9am to 10pm Sunday to Thursday, and 9am to 11pm on Friday and Saturday.
58. The Applicant presented evidence in support from a number of witnesses who appeared in person. Whilst some were indirectly associated with Woolworths Ltd and hence might be seen as less than objective, the general propositions they advanced were accepted. The Board accepts that their association is more likely to have been a contributing factor to these witnesses actually attending, rather than to encouraging some lack of credibility or persuasiveness of their evidence.
59. Mr Michael Lindsay from Prospect, purchasing officer, gave evidence. He confirmed that it would be convenient for his family to exercise one stop shopping for various goods and services including liquor, if the licence is granted.
60. Ms Melanie Edwards of Prospect, a zoologist, gave evidence. She has a 5-year-old son. She indicated a preference for the convenience of obtaining her liquor supplies at the shopping centre, which she would be able to do if the licence is granted. Ms Edwards also gave evidence commonly heard at such applications, that she feels more comfortable purchasing liquor from an off licence liquor outlet rather than an hotel where liquor is also sold for consumption on the premises where patrons consume liquor otherwise than always with a meal. She said she had experienced uncomfortable attention at the Olde Tudor from other patrons, and she expects such behaviour would not occur if at the BWS if this licence is granted. She relied on experience in acquiring liquor supplies from both hotel bottle shops and other off licence liquor outlets. The Board accepts the general tenor of such evidence, and the reasonableness of prospective patrons having the choice to use off licence premises proximate to their home as one positive factor.
61. Ms Anita Bird from Carrick, employee of Statewide Wholesalers, a related entity to Woolworths, gave evidence of purchasing groceries from Prospect and a preference to do one stop shopping for groceries and liquor supplies. Again, this is positive evidence for the application. Not to say that on its own it is sufficient to justify a grant of licence, but it is supportive of the application.
62. Barry Cole of Summerhill gave evidence of his desire for convenience of shopping, paying bills etc at the shopping centre and also to be able to

purchase liquor supplies at the same locality. He gave evidence of his impression that the price of liquor from BWS outlets are less than at hotels. There was no supportive evidence to that assertion and we have not taken it into account. We do accept that there will be a lesser impact, that is price competitiveness as a consequence of establishment of an outlet near the shopping centre.

63. Wayne Couch gave evidence of concern of access by young people to liquor and risk of congregation of young people in the shopping centre car park, exacerbated by the grant of a liquor licence on this application. The concerns were generalised, and any evidence was anecdotal. Whilst legitimate issues to be concerned about, there is no persuasive evidence of the risks he perceives being increased by the grant of the present application.

### **Decision**

We direct the Commissioner to grant the off licence.

PA Kimber: Chairman.

K Sarten: Member

D Logie: Member