

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Peter Behrakis
Nature of Application:	Off-licence
Premises: name	Channel Court Liquor
Premises: address	Shops 17 & 18 Channel Court Shopping Centre Kingston
Name of Decision:	Channel Court Kingston
Date & Place of Hearing:	16 May 2007 Hobart
Date of Decision:	15 June 2007
Members of the Board:	K Sarten (Acting Chairman) L Finney (Member)

DECISION

Application

Mr Peter Behrakis applies for an off-licence for premises within the recently expanded and developed Channel Court Shopping Centre.

Appearing at the hearing for the applicant:

Peter Behrakis – Applicant

Ian Duncan – Counsel

Neil Shephard – Town Planner

Brett McGrath – Centre Manager at Channel Court Shopping Centre

Sue Downes – Employee of Big W at Channel Court

Margaret and Eric Sanders – Customers of Channel Court Shopping Centre

Ian Maxwell – Proprietor, Full Life Edwards Pharmacy, Channel Court

Michael Turvey - Employee of Channel Court

Douglas Webb – Resident/Customer

Appearing as or for the objectors:

Daniel Hanna appearing for the Australian Hotels Association (Tas Branch) (AHA) and represented the President of the Kingston High School Parents and Friends

Association (Phillip Groom), the Principal of the Kingston Primary School (Mr Henry Kuryl), E. Kalis Group and Mr Ron Tabor (owner and licensee respectively of the Kingston Hotel).

Mr F Morgan, Executive AHA and Ms M Jeffrey – E. Kalis Group (Kingston Hotel) attended the hearing.

Written submissions in support of the application were received from Mr Peter Wise (Tasmanian Independent Retailers), local residents – Mrs Helen Drysdale, R. Tonge, Carol Risberg, S. Glenn and circular letters of support from a number of other residents.

Written submissions objecting to the application were received from residents, Tom Clarke, C. Taylor, M. J. Smith, Carmen Walker, and D. P & M.CP. O’Flynn.

The Application summary

The applicant has the required planning permit from Kingborough Council which restricts the hours of opening from 9am -11pm, and restricts the nature of the products sold to be ‘unopened alcohol, soft drinks, tobacco products and confectionary’.

The premises are situated in Channel Court Shopping Centre and were previously occupied by Australia Post, which has relocated within the centre. The shopping centre is well developed and includes a Big W, newsagents, pharmacy, banks; in total some 70 retail shops and 15 service providers. The centre is the largest services and shopping centre in the Kingborough Municipality, which is also the strongest growing residential area in Tasmania.

Nearby retail business licensed premises are the Kingston Hotel, Beachside Hotel (both with bottle shops), and a bottle shop in Kingston Town Shopping Centre. There are other lesser intensity licensed premises in the nature of restaurants and sporting clubs, as would be expected. The area is, within Tasmania, relatively fast growing.

The applicant gave evidence by his original submission (6 March 2007), a further submission in response to objections (dated 9 May 2007), alongside a report from Mr N Shephard, Town Planning Consultant.

The AHA lodged a written submission opposing the grant of the licence and Mr D Hanna appeared at the hearing to make submissions.

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 (s24A(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.

The Applicant's evidence further included:

- The intended area of the premises would be 321m² (half store, half retail display) as detailed on plans submitted (and approved for planning and building purposes by council) and would be open from 9am to 10pm 7 days a week;
- There would be a significant component of Tasmanian wines (40%), balance as would be expected in a suburban retail off-licence;
- Ample well lit and monitored car parking is available in the shopping centre car park;
- Estimated cost of fit out of existing empty premises is \$210,000.00;
- The Applicant and associates have been in retail business in Hobart for many years, and have completed responsible service of alcohol courses and intend to adhere to RSA principles in running the business if the licence is granted;
- The Applicant is qualified (within the meaning of the Act);
- The Applicant intends to run a successful and profitable business, and also to provide convenience, choice and quality product and service to the public;
- The Applicant acknowledges the likelihood of a shift of retail sale of liquor from nearby licensed premises (including some of the objector's businesses)

but that he anticipated the market would increase with more people buying locally and that convenience and choice were more important to consumers;

- That he has no present intentions to sell the business, but rather to keep it in the ‘family stable’;
- The Applicant undertook not to be involved in cut price bulk liquor promotions, liquor credit financing, or other practices which encourage harm; and
- That the application is supported by many members of the community.

The objection from the AHA was that the grant of the licence would contribute to outlet density, and that there had been inadequate time to review the impact of recent grants. Mr Hanna asserted that the grant of the licence would lead to a proliferation of off licensed premises. Mr Hanna submitted information indicating a downturn in turnover (however, no information regarding profitability) and a reduction in staff members at what appears to be approximately 2.5 full time equivalent (out of 28 staff members) at the Kingston Hotel. There was an indication of loss of hours available to be worked by retained staff. However, the information provided was on a confidential basis, and could not be teased out or challenged by objectors or, effectively by the Board. It is accepted that the Kingston Hotel has, due to a recent licence grant in the area, suffered some reduction in trade.

Mr Hanna provided no further information about outlet density and harm associated with consumption of alcohol in this particular locality apart from the general assertion that this would be one further premises selling liquor.

Mr Hanna rightly pointed out that the applicant and a number of his witnesses had a financial interest in the grant of the application, and were hence motivated to give evidence and make submissions in support. In response, the applicant and his counsel submitted that in mirror image, the respondents and a number of witnesses objecting were motivated by trade protective issues and sponsorship provided by objecting members.

What was not presented was any evidence directed towards indicating that there would be any adverse impact on the local or general Tasmanian community from the grant of this particular licence in this locality.

Mr Hanna submitted that the likely impact was neutral rather than positive, as job losses in one business may well be taken up by new employment in the applicant's business.

In representing or advocating on behalf of the Principal of Kingston Primary School and the Kingston High School Parents and Friends Association, Mr Hanna stated that they 'strongly object to the application'. The concerns were of availability of liquor close to the school and the possibility that such may result in an increase in underage drinking and anti-social behaviour in and around the school grounds as a consequence. The Parents and Friends Committee of the High School additionally expressed concern at signage advertising alcohol and that it is 'totally unacceptable to have school children passing an additional bottle shop on the way to school'.

Again, these objections were not supported by evidence of harm associated with the concerns, except for the very general assertions that harm might arise. We have no evidence of any increase in harm arising from the grant of off licences in recent years.

The pure argument that another licence granted will cause an increase in harm has been dealt with in previous decisions (see for example, paras 63 - 77 of *BWS-Kingston August 2005*).

Consideration of the evidence

There is nothing unusual about this application or the submissions and evidence made in objection to it being granted.

In many respects, the conclusions reached in *Bayview Market (Blackmans Bay) 21st March 2007*, and *BWS – The Cheaper Liquor Co Kingston 16th August 2005* are appropriate to this application.

The area is a vibrant and growing regional shopping area, undergoing significant improvement and development to the benefit of the local community and the community as a whole. It is reasonably to be expected, that in the absence of any direct evidence of an increase in harm associated with the sale of liquor from a new off licence premises, that the social benefits of convenience, competition, quality, choice, and appropriate change in the provision of retail services, will be considered a community benefit and in the best interests of the community.

The Applicant's intentions and the planning permit satisfy s24A(2) regarding 'principal activity'.

The Applicant's associate (his brother) holds an existing licence in association with a jointly held business at Salamanca Fruit Market for sale of Tasmanian wines for off premises consumption, and has not drawn attention to that business by any inappropriate practices contributing to harm associated with consumption of liquor;

The objections by and large were from, or on behalf of, trade competitors, wishing to reserve the sale of liquor from their own premises. Those expressed to be purely in the community interest, for example the school principal Mr Kuryl and P & F Committee, were expressions of concern, and were not backed by any indication that their concerns have any likelihood of being realised in the sense of any increase in harm to the community by the activities of the intended new business.

The objector Mr Tabor from the Kingston Hotel gave evidence (in his written submission, although he was not present for examination on the material) to the effect that he and the owner of the premises were combining to revamp the Kingston Hotel with an extension of the current bottleshop, demolition of the "Liquor Barn", erection of a new liquor off licence premises, large deli, and 3 specialty shops, 24 underground staff car spaces, and 20 accommodation units. Whilst the written information indicated that these plans might be adversely affected by the grant of the present licence, in the context, the Board concludes that the development is probably stimulated in part by the present application.

It is a well known economic reality that business stimulation arises from competition or the threat of competition, and the converse also applies.

Mr Tabor additionally submitted in his written evidence (again, unsupported by his presence or availability for examination or cross-examination) that he considers the Board should somehow be considered responsible for business failure by Tasmanian hoteliers, or 'kids wandering shopping centres drinking alcohol'. We reject these assertions, and note there is no evidence provided by him of these statements. Indeed, such financial evidence and submission put by him indicates his business continues, the premises he occupies is to be re-developed and improved, and that overall there is no indication of any lessening of total economic activity from the one grant of an addition off licence in Kingston by the Board in the recent years.

The social concerns he expressed were unsupported by evidence, and were general and vague. It is a paradox of so many of the objection submissions made in such applications that it is the principal vendor of liquor in the vicinity who asserts that the prospective new licensee will be the cause of social harm.

In conclusion, the application meets the criteria of the Act, and we direct the Commissioner to grant the licence.

K Sarten, Acting-Chairman.

L Finney, Member.