

Licensing Board of Tasmania	Decision
Legislation	<i>Liquor Licensing Act 1990</i>
Applicant	Alexia Kalis
Nature of Application	Off-licence
Premises: Name	Bevvies Bridgewater Bottleshop
Premises: Location	1 Hurst Street, Bridgewater
Name of Decision	Bevvies at Bridgewater
Date & Place of Hearing	21 February 2011, Hobart
Date of Decision	21 February 2011
Date of Reasons for Decision	4 April 2011
Members of the Board	K Sarten (Acting Chairman), D Logie (Member)

### **Decision**

Following the hearing the Board delivered oral reasons and a decision; directing the Commissioner to grant the licence as applied for. The Board indicated reasons for the decision would be made available in writing if applied for. These are the reasons for the decision.

In reaching its decision the Board took into account all written material received alongside the submissions made at the hearing.

### **Law**

The relevant parts of the *Liquor Licensing Act 1990* are:

#### **5. *Liquor shall not be sold except as authorised***

*A person shall not sell liquor except as authorised by –  
(a) a liquor licence...*

#### **9. *Off-licence***

An off-licence authorises the sale of liquor between 5am and midnight, on any day on the premises specified in the licence, for consumption off those premises.

#### **24A. *Requirements for licence***

- (1) 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.*
- (2) 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 Hearing**

At the hearing Ms Kalis appeared and gave evidence. She sought leave for Mr Damien Geason, counsel, to represent her.

In the circumstances of the objector Mr Peter Hope being unable to attend the hearing and seeking leave for Mr Kyle Somann-Crawford, counsel to represent him, leave was granted to both parties.

No other parties appeared at the hearing.

The Commissioner advised the Board that for the purposes of the Act the Applicant is a 'fit and proper person' to hold a liquor licence.

### **The Application**

Alexia Kalis applied for an off-licence for premises to be known as *Bevies at Bridgewater* to be located at 1 Hurst Street, Bridgewater; a commercial zone of Brighton Municipality.

In support of the application the Applicant lodged submissions that:

- provided detail on the proposed premises including proposed facilities and services;
- detailed the Applicant's industry experience and relevant qualifications;
- addressed responsible serving of alcohol ('RSA') practices and procedures; and
- addressed the requirements of the *Liquor Licensing Act 1990* with particular reference to the 'best interests of the community'.

Included in annexures to the Applicant's submission was a detailed Research Report conducted by EMRS in September 2010.

The Tasmanian Hospitality Association (THA) provided a letter in support of the application dated 28 October 2010.

There were 59 letters of objection in a standard form.

Mr Peter Hope, the owner of premises at 9 -11 Hurst Street, Bridgewater (presently leased to Green Point Medical Services) sent a detailed letter of objection.

### **Objections**

The standard form letter stated its writers concerns to be:

- 'the increased impact on our community' ; and
- 'I don't want another bottleshop here because I want to feel safe in my home and on the streets'.

Mr Peter Hope's letter stated he did not believe the application satisfied the legislative requirements because of the proximity of the proposed premises to Green Point Medical Services and Cove Hill Shopping Centre both being premises frequented by families with young children and the elderly.

Of particular concern with respect to the former was the possibility of those who were being or had been treated for substance abuse being 'exposed...to an outlet where alcohol will be advertised and sold'.

Of concern in respect of both sites was the concern that the proposed bottle shop would place 'those members of the community [being the elderly and young people] at increased risk of harm from violence and crime that arise from the sale and consumption of alcohol'.

In addition, Mr Hope expressed concern with respect to:

- the adjacent vacant tracts of land, in that this 'will make it an ideal outlet for minors to obtain and consume alcohol without fear of detection as a deterrent';
- the fact the application did not address 'social impact, crime rates, alcohol dependence, [and] socio-economic issues that are relevant to whether the granting of the off-licence is in the community's best interests';
- no evidence of support from the community;
- there being 'sufficient outlets' already;
- 'health and safety issues, crime acceleration or exacerbation, prospects of anti-social behaviour and harm minimisation strategies' not being addressed in the application;
- the close proximity of the proposed premises to schools, 'unnecessarily' exposing underage persons to the sale of alcohol; and
- the proposal being for a site that 'in the past has been identified as being particularly vulnerable or sensitive to the incidences of substance abuse and/or perceived as being socially disadvantaged'.

Mr Kyle Somann-Crawford tendered additional material to advance Mr Hope's submissions including the:

- *Children Come First Report*, Child Family Community Support & Services, Tasmanian Government 2009 to highlight the proportion of youth in the Brighton Municipality and the socio-economic status of the Brighton Municipality. The data was taken from the 2006 ABS census;
- *Liquor outlet concentrations and alcohol-related neighbourhood problems*, Alcohol Studies Bulletin No 8, AER Foundation April 2006, a study of licensed premises in NSW. The report highlights the need for studies to be conducted to ascertain current levels of alcohol related harm in 'specific local areas' including harm associated with 'extended trading, or even the overall number of alcohol outlets' rather than ascertaining the appropriateness of a new outlet based on a market need test. The Report acknowledged that there was a need for 'more specific research' to better inform policy makers of 'the specific thresholds above which problems in a particular local area will manifest';
- A Table of the Unemployed and Unemployment Rates in local areas from September 2009 – September 2010, Small Labour Markets – September Quarter 2010; used to support the submission that the unemployment rate in Brighton was above the national average and high within Tasmania;
- Data from the Department of Education, Employment and Workplace Relations, also in support of the submission relating to a high rate of unemployment in the Brighton Municipality as at September 2010;
- *The Appropriateness of the Regulatory Regime for the Sale of Packaged Liquor in Victoria*, a submission by the Australian Drug and Community Action Network 2007. The paper states 'there is not enough evidence available, either in Victoria, nationally nor internationally to arrive at a definitive formula to predict the effect of licence density on levels of harm'... however a review of the available research shows a positive correlation between packaged liquor outlets, assault and neighbourhood problems'...'it is unlikely that a one-size fits all formula can be derived...Factors {to be considered include} – the profile of existing packaged licences and the licence being applied for : eg large high volume business or small family run

venue; licences other than packaged liquor operating in the area; the socio economic profile of the area; and existing alcohol related harm statistics and issues..'. The paper expressed the view that the 'onus should be on the applicant...and not the local government authority or community group to fund an independent health and social impact assessment';

- Bennetts R, Seabrook R, *Retail Sales of Alcohol and the Risk of Being a Victim of Assault* PLoS Med 5(5) e108 (2008), a paper that surveyed a number of international studies and highlighted factors that are important in the link between alcohol sales and violence;
- Adams D, *Skills and Social Inclusion* May 2009, submitted in support of Brighton being a Municipality at risk of being socially excluded due to high unemployment and a work force with low skill levels;
- Australian Bureau of Statistics Data from 2007 that highlighted a low median individual and family income in Bridgewater as compared with other districts in Tasmania and a high percentage of one parent families.

In summary Mr Somann-Crawford submitted that the Brighton municipality and in particular the Bridgewater community is one with a low socio-economic population and because of this factor it is a community vulnerable to the effects of alcohol. This evidence, it was submitted, was sufficient to demonstrate that the Applicant had not met the onus of demonstrating to the Board that the application was in the best interests of the community.

### **The Applicant's Response**

Mr Geason on behalf of the Applicant submitted further evidence in support of the Application including:

- Small Area Labour Markets Australia, Department of Education, Employment & Workplace Relations, Reports from 2001-02-03, 2005- 06, 2008-09 and 2009-10. The Reports were in support of the Applicants submission that the demographics of the Brighton municipality have been steadily improving over the past decade.
- Labour Markets and Related Profiles, Centrelink Payment Report, Newstart Recipients comparison Jun-01 – Jun09, submitted to demonstrate a significant decline in recipients and therefore to support the Applicant's submission of improving demographics in the region.
- Population Projections, Demographic Change Advisory Council, Department of Treasury and Finance 2008, submitted to support that Brighton is predicted to be one of the fastest growing regions in Tasmania.

Mr Geason submitted that merely pointing to the fact the area had a population that was in a lower socio-economic community on its own was insufficient to demonstrate that the application was not in the best interests of the community. It was submitted that in any case, the fact that the area was growing and the demographic profile was improving were sufficient to counter this.

### **The Decision**

The application is for new premises to be established with a total investment on the site of approximately \$1,000,000. The premises will form part of a retail development consisting of three shops. The Lessor owns the adjacent properties and intends to also develop these for commercial and retail use.

The operating hours will be from 9am – 9pm Monday to Saturday and 9am – 7pm on Sunday. The premises will have car parking on site, be well lit and monitored by CCTV cameras. The Applicant intends to staff the premises with 3 full time and 6 part-time/casual staff. As far as possible staff will be employed from the local area. All staff will undergo RSA training and in addition to this will be supported through standard and advanced wine appreciation courses. Product training and education of staff will be ongoing. The product range will include over 1200 lines, however neither ready-to-drink (RTD) product with an alcohol content in excess of 7%, nor high energy drinks will be sold. Cigarettes will not be sold from the premises.

According to the report the Board received authored by Michelle Khan of the Commissioner for Licensing's office the Applicant is an experienced local operator with an exemplary record. The Applicant is associated with the Kalis Group, which owns and operates a number of licensed premises, some of which have existing bottleshop arrangements, and other premises which are licensed off premises. The Applicant's compliance history with the Commissioner's office is of a high standard, demonstrating a professional manner of operation of premises under her management.

Research (we were told) indicates that over 65% of residents of the Bridgewater area questioned were either "quite likely" or "very likely" to use a new bottleshop if one opened. A research report obtained by the applicant from EMRS re "Bridgewater Liquor Outlet" was tendered. The Applicant contended that the report indicated an under servicing in Bridgewater area in regard to bottleshops, and that such under servicing is considered significantly inconvenient by the residents of the area.

The Applicant's submission, that the area is undergoing substantial growth and currently has lower levels of service as compared to other areas in Tasmania was accepted. This is consistent with the Board's decision *Greenpoint Off Licence* 20 June 2010, where similar submissions were made with respect to the areas changing demographics and the lack of services in the area.

In summary the Applicant submitted that the application met the criteria of s24A(1) of the Act and that a decision to grant the licence would be in the best interests of the community. The 'dot point' propositions in support were:

- Convenience and access
- Use of a prime but under developed vacant site
- Contribution to the economy in the cost of development and fit out
- Retention of profits from the business within Tasmanian community
- Provision of a quality bottle shop for the residents within the primary target market, which is presently significantly under-serviced
- Price competition with existing premises in the locality
- Development of a purpose built business premises, with excellent on site car parking, secure, well lit, and not associated with hotel bar operations and consequent consumption of alcohol in the vicinity or outside smoking areas.
- Employment opportunities, commitment to staff training
- Promotion of Tasmanian products
- Commitment to RSA
- Support of local charities and community groups

The Board had the benefit of photographs of existing establishments of the Kalis Group which indicate similarity to the intended new premises.

The existing RSA Manual of the Kalis Group was tendered.

The THA offered a letter of support and indicated their confidence in the professional and responsible manner in which the Applicant would run the business.

The objections raised a number of concerns. Many of these concerns have been addressed in previous decisions of the Board. For example, the proximity to the proposed premises of schools and other facilities is not in itself sufficient to demonstrate that an application should fail. There was no evidence led to demonstrate why this would in itself lead to any harm associated with the sale of alcohol: see *TKM Investments P/L 2004*.

Indeed, the evidence tendered by Mr Somann-Crawford tended to support that without more evidence of a community's socio-economic status is not in itself conclusive of whether there will or will not be harm associated with the availability of alcohol. It is significant that no submissions were made by the Tasmania Police or any local community groups. Similarly no objection was received from the Brighton Council.

The application falls into the same category as the recent *Greenpoint Off-licence 20 June 2010*.<sup>1</sup> On the balance of the evidence, although there is expressed community concern there is no evidence that the grant of a licence will increase the harm associated with the consumption of liquor in the community. Clearly there are other licensed establishments in the vicinity. It would appear that the substantial impact of the present proposal would be to provide a more convenient access in a competitive and modern environment, to those who live and shop in the locality.

Whilst there has been expression of concern against the grant, there has also been expression of positive interest in having the grant for reasons of convenience, competition. Expressions of concern do not demonstrate that the concerns are well founded.

On balance the grant of the licence would be in the best interests of the community in the context of s 24A of the *Liquor Licensing Act 1990*, providing the benefits advanced by the Applicant stated above.

K Sarten (acting chairperson)

D Logie (member)

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<sup>1</sup> For discussion of the relevant principles for consideration see:  
[http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/GreenpointShoppingPlaza.pdf/\\$file/GreenpointShoppingPlaza.pdf](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/GreenpointShoppingPlaza.pdf/$file/GreenpointShoppingPlaza.pdf)