

Licensing Board of Tasmania	Decision
Legislation:	<i>Liquor Licensing Act 1990</i>
Applicant:	Anthony Bennett
Nature of application:	For an off licence
Premises: name	Nubeena One Stop Bottle Shop
Premises: address	Shop 2, number 1856 Main Road Nubeena, Tasman Peninsula
Name of decision:	Nubeena Bottle Shop Number 3
Date & place of hearing:	18 th April 2007 at Nubeena
Date of decision:	24th April 2007
Members of the Board:	PA Kimber (chairman), L Finney and K Sarten (members)

DECISION

Application

The premises had previously been licensed as a bottleshop from February 2005 to June 2006. The then tenant and operator ceased occupation and the licence was surrendered..

The present applicant, Mr Bennett, applied for the 2nd licence for the same premises during 2006. The Board heard the application, and on the material before it, decided that it had not been demonstrated that it was in the best interests of the community for the licence to be granted. See decision 12th October 2006, Applicant AJ Bennett, Premises “Nubeena One Stop Bottle Shop” (for present purposes, we will call that Nubeena Bottle Shop 2, or NBS2.

The decision in NBS2 was made against a background of inadequate information. In that context, with assertions that other important social and community resources being at serious jeopardy of closure, the Board declined to grant the application.

The *Liquor Licensing Act 1990* does not prevent or limit recurrent applications. Obviously in many instances, after a rejection, a further application would be futile: without substantially different evidence, the result would be the same. There is some judicial comment about the appropriateness of discouraging repeat applications.

However, the reality is that the evidence supplied by the applicant in NBS2 was not cogent, clear, substantial, or, in the end product, adequate. The Board decided that the

evidence was not sufficient to meet the onus on the applicant. He did not address the critical criterion of what is “in the best interests of the community”.

The present application (for convenience, “NBS3”) is substantially the same. However, as was revealed at the hearing, there are differences in the nature and quality of evidence provided. The application came on for hearing on the 21st February 2007 in Hobart, and it was apparent that there was substantial community support for the application, demonstrated in the form of numerous letters of support and a ‘petition’ signed by many people. The quality of that evidence, in the absence of the writers and signatories quickly became an issue. The Board offered to hear the matter in the locality, and the applicant supported that proposition. One of the major objectors rejected the suggestion. We decided to reconvene at Nubeena, and did so on the 18th April 2007.

At the hearing at Nubeena 78 people attended from the general community, with the large majority (over 95 per cent) very strongly in favour of the application and two people indicating dissent.

The original objectors maintained their objection: Mrs Noye from the Nubeena Tavern, the Tasman Ex-Servicemen’s and Women’s Association (Ex Services Club) - represented by its President Fred Wilson, and the Australian Hotels Association (Tas Branch) (AHA) represented by its Executive Director, Daniel Hanna.

The applicant was represented by Gayle Johnston, counsel from Simmons Wolfhagen.

Law

The relevant provisions in the Liquor Licensing Act, and consideration of the history of those provisions and previous decisions of the Board, are set out in recent decision

Bayview Market 21st March 2007:

[http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/Bayview-Market.pdf/\\$file/Bayview-Market.pdf](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/Bayview-Market.pdf/$file/Bayview-Market.pdf)

Consideration of facts

Ms Johnston presented a substantial amount of written material, regarding the local community, and which was helpful to the Board. In particular:

1. Submissions, supported by the presence of members of the public and their statements in favour of the application, to the effect that overwhelming numbers in the local community wanted a stand alone bottle shop, that they perceived they had benefited from, when it was operational before, and that community studies indicate that as a tourist area, new businesses providing food and wine services were considered highly desirable.
2. That there was little or no opposition to the application apart from the existing hotel business, the Australian Hotels Association (Tas Branch) and the Ex – Services Club, all of which should be viewed as trade protection respondents, and their submissions discounted and evidence looked at sceptically, as based on self interest rather than community interest.
3. The premises have all required permissions, and have as part of the planning permission, limited hours from 9am to 6pm daily.
4. The business will offer convenience in a safe environment, and in a manner which the local community wish to enjoy – including women shoppers, who prefer not to have to enter a bar room scene to obtain liquor, and find the ability to browse, select and purchase in a retail environment for home consumption highly desirable (by comparison).
5. The premises will be separate from adjacent businesses in the small shopping complex.
6. There is a desire in the community to increase facilities, and not to have them held down by existing business operators, to increase diversity, competition, which should lead to greater choice and quality, and assist to leave income and capital within the community, and to provide some job opportunities.

7. That there is no stand alone bottle shop in this community; it is the administrative 'capital' of the area, and purchases are consequently made outside of the area, to the economic detriment of the local community.
8. Existing premises, suitable for the business are otherwise utilised at a lower capacity and to have them re-engaged in the intended business is better economically for the community.
9. Information about the number or ratepayers, residents, the seasonal nature of residing in the area of many with property, and the high tourism component of the district were highlighted. In part the figures (ABS) assist, but a tour of the area is instructive, to see the general nature of agglomeration of residences and businesses, and which areas are 'shack' areas, which have a substantial local full time residential flavour, and which are tourism business and have high tourist visitation. The Board's impression is that the people likely to use the intended bottle shop would be those living or visiting in the immediate vicinity of Nubeena and White Beach. Tourists passing through are likely to be a significantly lower proportion or number than visit the Port Arthur Historic Site, but there will be some business derived from that source.
10. The area is a small community. A residential population of somewhere near 2,300 is spread throughout the municipality, so that number itself is not indicative of the true catchment area for the business. The seasonal influx of shack dwellers, holidaymakers (to caravan parks and the like) and State and National and International tourists, makes the number of local residents only a part of the picture. Assertions about the 'licensed premises' to 'local residents' ratio and comparisons with the State as a whole or nationally, are thus somewhat distorting and give a false impression of oversupply of premises, given the impact of variable numbers of visitors. That raises separately the question of numbers or ratios of licensed premises and the relevance of that per se to the question of grant of a licence. We will deal with that later.
11. Figures provided indicated a slight downturn in visitor numbers to the Port Arthur Historic Site, reflective of visitor numbers State wide in the last season.

Whilst an issue for many and in the short term, and something which others are addressing, the Board's conclusion is that this has little impact on the question of whether it is in the best interests of the community for this community to have the licensed bottle shop proposed. Tourist numbers fluctuate: community services should ideally generally improve and increase.

12. The *Tasman Tourism Development Strategy, July 2005*, considers future development of the locality, to assist in developing a unified and cohesive approach to development. Top infrastructure needs are identified, and high amongst them are food and wine services for locals and tourists.
13. Much discussion and evidence was presented regarding the positive involvement in the community of both the applicant and objectors. In the context the evidence in that regard is not determinative of this application. Offers by the applicant of financial support to those community groups implicitly on condition of indicating alignment with the application were certainly not persuasive. However so far as it is relevant, it indicated that the operators of the existing licensed premises objecting to the application, and the applicant are all people with a solid interest in the continuing improvement of the social and economic fabric of the community.
14. There is no evidence presented or apparent that indicates that the local community is in any way particularly vulnerable to adverse impact from sale from off-licensed premises of liquor.
15. Premises intended to be licensed are some 2 km out of the town centre near the junction with the road to White Beach, on the way towards Port Arthur. Whilst premises more central to the township might be thought more suitable, these have their benefit in providing car parking, being in a distinct shopping zone, and being able to provide for and catch custom from travelling public on their way to and from White Beach and Port Arthur, as well as servicing (perhaps with less than ideal ease) those living in the immediate Nubeena locale. On the other hand, that many if not most purchases from a bottle shop of the nature intended would be made from people driving to the shop, the extra distance out of town is probably almost irrelevant.

Objections

The Ex-Services Club: Mr Wilson presented the position of the Club. It is a local voluntary umbrella organisation, with owned freehold premises in Nubeena, providing a centre for members, and visitors, for food and refreshment and sporting and social interaction. It has substantive links to returned service men and women. It is a club, and as such, with a liquor licence, its primary focus should not be on the consumption of liquor. That should be an adjunct to its primary purpose.

Undue reliance by a club on sale of liquor is not in the community interest. At the same time, it is expected that some generation of income from the sale of liquor will assist such clubs in providing their other substantive services.

The previous hearing in 2006 (NBS2) was declined on the basis of inadequate evidence about the community benefit from the licensed business if the licence were granted, taking into account the significant prospect as enunciated at that hearing, that the Ex-Services Club would continue to decline financially, and overall services to the community would be less.

The Club had the opportunity to present whatever evidence it could muster to support that proposition at the present hearing. Whilst the evidence in support of the application was substantial more cogent and persuasive in the present application, that provided by the Ex-Services Club or about the Ex-Services Club did not indicate other than:

- When the bottle shop was open before the Club suffered a reduction of overall income of in the order of \$41,000 (over what precise period, and in the context of what overall budget, was not explained);
- That if a decline occurs again, then action will need to be taken to replace paid staff with volunteers, and some services (what, and how much were not explained) may need to be curtailed;
- There was no statement made or any support provided for the view that the Club might close due to the grant of the proposed licence: this is a significant relaxation from the view expressed by Mrs Wylie on behalf of the Club during NBS2;

- The impression was given that the Club seeks to cater for existing members, and has not taken any ‘aggressive’ approach to advertising, signage etc or seeking to gain extra visitors by innovation, especially taking account of the opportunity to do so with the relatively new regulations permitting casual visitors to attend licensed clubs without sign-in or introduction from existing members, provided they normally reside more than 5km from the club.

In the context then, the Board concludes that the Club may be forced to re-address services in order to support core purposes, and that reliance on off-sales of liquor may have to be adjusted, but that there is no evidence that the club would certainly be forced to close, or otherwise that the services it offers would disappear.

Mrs Noye and the Nubeena Tavern

The Nubeena Tavern is managed by Mrs Audrey Noye, a long time resident in the municipality and provider of liquor and hospitality services. It would appear that in reaction to the prospect of competition from the present application being granted, the owners of the Tavern have authorised Mrs Noye to progress the establishment of a bottle shop at the Tavern premises. It is apparent that this would not have happened had it not been for the threat of competition and prospect of loss of some business.

That is a beneficial aspect to competition, and is starkly evidenced in this present application.

There is no prospect, from the evidence presented, that the community will suffer a lessening of services from the present application being granted. Indeed, it is direct support for the conclusion made in the *Tasman Tourism Development Strategy, July 2005* (see above).

The Board does not doubt that the Nubeena Tavern and Restaurant provide an important service desired by many in the community. It (or more correctly, the manager of it) is not, however, because of that, in a position to hamper the development of other businesses which might compete with it.

The expression of objection when competition is removed from the equation, is left as a statement that ‘there are sufficient liquor services already in the community’.

As such, that is not in itself a reason solely to reject a licence. It is often the plea left over to an existing operator when faced with a prospective competitor when it is explained or comprehended that the existing operator is not entitled to trade protection via liquor licensing regulation.

The AHA

Mr Hanna was careful to express his organisation’s objections in terms of community benefit and detriment. He reminded the witnesses present that the AHA takes an active role in assessing liquor applications, and submits opposition to no more than a considered 20% of all applications. The Board appreciates the studied information and research presented to it by the AHA when it impacts on the criteria of consideration set out in the Act: predominantly, the question of what is in the best interests of the community.

His concern at the abuse of the liquor licensing system by a further application in substantially the same terms as one recently rejected is an appropriate concern. The Board should not lightly change a decision, unless there are clear differences in the factual material relevant to the application. The Board is not here to hear applications, expose the failure of the applicant in regard to collation and presentation of evidence, just to then have the application re-jigged to meet those deficiencies.

In this matter, we are content that the community interest as expressed by a significant proportion of the community, and large relative numbers of people, is a relative change in circumstances, which ideally would have been presented in NBS2. However, it is justification for the Board to listen to the community and take account of their express views, and to consider this application afresh.

Mr Hanna also drew the Board’s attention to the developing body of academic information indicating link between licensed premises density on the one hand, and community harm on the other.

We have taken account of that general submission on a number of previous occasions and made comment in written decisions in the last year or two, as to that general information being of interest, and indicating care which Board should take in considering whether there is likely to be an exacerbation in harm caused by a particular new licensed premises in a particular locality. However the general proposition is not supported here by any evidence of likelihood of increased harm due to consumption of liquor arising from the grant of this present application.

Decision

In conclusion, we consider the application should succeed. There is demonstrated cogent intense community support. The premises did operate before, as licensed premises, and although it apparently had some impact on the income of the Ex-Services Club, it has not been demonstrated that there is going to be an overall lessening of services in the community from the grant of the licence, nor is there going to be any increase in the harm associated with the consumption of liquor. Whilst the onus is on the applicant, we conclude that he has met that onus and that the grant of this application would be in the best interests of the community.

We direct the Commissioner to grant the license.

PA Kimber; Chairman.

L Finney; Member.

K Sarten; Member