

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Tony Smith, BWS – the Cheaper Liquor Co (BWS) Port Sorell, Port Sorell

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

Decision: 11 November 2013

Background

Appearing before the Board were the applicant, Mr Tony Smith, BWS Port Sorell, represented by his legal counsel, Mr Lloyd Bryant; and objectors: a number of residents and business owners of Port Sorell and the General Manager of Shearwater Resort, Mr Nicholas Dodd represented by his legal counsel, Professor Ian Duncan.

Ten written submissions were received all objecting to the application.

Thirty four objectors/observers were present at the hearing. Of these, the following made verbal submissions:

- Mr Nicholas Dodd (General Manager, Shearwater Resort)
- Ms Mary Buchanan
- Mr Wayne Gannon (licensee Salt Lounge Bar (Thirsty Camel))
- Mrs Helen Murfet (timeshare owner and Secretary, Port Sorell Golf Club)
- Mr Andrew Quarry (Big Bargain Bottle Shop)
- Mr Barry Richardson (timeshare owner)
- Mrs Pamela Richardson
- Ms Wendy Smith (resident)
- Mr Ben Walker (Tasmanian Hospitality Association)
- Tony Kidson (Port Sorell Men's Shed)
- Mr Ken Michelle
- Mr Peter Martin (President, Port Sorell Golf Club)
- Mr Rob McCreedin (member Port Sorell Golf Club)
- Mr Shane Carter (owner Salt Lounge Bar (Thirsty Camel))
- Ms Stephanie Tuckett (resident)
- Mr Shane Allison

Both Mr Bryant and Professor Duncan sought leave from the Board to appear on behalf of their respective clients. Section 213(6) of the *Liquor Licensing Act* 1990 states that:

A person is not entitled to be represented at a hearing unless the Board is satisfied that injustice could otherwise result.

The Board granted leave for both counsel to appear.

The applicant seeks an off licence to sell liquor from a proposed outlet, part of a shopping centre development project currently under construction on the corner of Alexander Street and Poyston Drive, Port Sorell. The development, which has received Council planning approval, includes the construction of a Woolworths supermarket and a number of speciality stores. The proposed outlet is a standalone building 21 metres at its closest point from the supermarket.

There are a number of licensed premises in the Shearwater/Port Sorell area including two general licences (Shearwater Resort and Salt Lounge Bar (Thirsty Camel)) which operate bottle shops.

The applicant's submission

Through his counsel, Mr Bryant, the applicant submits that it is in the best interests of the community to have a liquor licence granted for these premises (Section 24A (1) *Liquor Licensing Act 1990*).

He bases this on the following arguments:

- There are no off licensed premises in Port Sorrell and a new off licence would add diversity and choice for the community;
- BWS has an impeccable record of compliance with liquor regulations throughout Australia and has a strong customer safety record;
- BWS would present alcohol for sale in well lit, attractive premises, adding to the amenity of the surrounding area;
- A liquor outlet would serve the three towns of Port Sorell, Shearwater and Hawley Beach and there would be less leakage of alcohol sales to Devonport which would have economic benefits for all in the local area;
- The estimated cost for construction and fit-out of the proposed premises is \$850,000 which would inject funds into the local community;
- Latrobe Council has already approved the shopping centre development which includes a liquor outlet in the design;
- The over-riding objection in relation to there being insufficient need in the community is an anti-competitive argument; it is not the Board's role to prevent competitors from entering the market; the objectors are potential competitors of BWS and therefore not dispassionate;
- Port Sorell is not a disadvantaged area – it measures well above average on SEIFA¹ - and therefore not an area with substantial risk of increased harm from additional access to alcohol;
- Many of the objections are made against the supermarket rather than the liquor store.

The proposed outlet would operate from 9.00 a.m. to 9.00 p.m. Monday to Thursday, 9.00 a.m. to 10.00 p.m. Friday and Saturday and 9.00 a.m. to 8.00 p.m. on Sundays and public holidays. It would offer an extensive range (approximately 1300-1400 different lines) of

¹ Socio-Economic Index For Areas 2011 (Australian Bureau of Statistics)

quality liquor and associated products and services which would increase the choice available in the area. Prices would be competitive and favourable to the consumer. It would operate from a brand new – modern, safe and clean – store and would therefore add to the amenity of the area.

As part of the shopping centre complex, the proposed bottle shop would add the convenience of one-stop shopping for consumers and provide an option for those who do not wish to frequent hotels to purchase liquor.

The applicant submits that there would be a net employment gain in that three full-time and four part-time staff would be employed. There would also be the added benefit of employment prospects for those associated with the construction and fit-out of the proposed outlet estimated at \$850,000.

The applicant submits that the people who now travel to Devonport to do their food and grocery shopping also purchase alcohol at the BWS (Gateway Hotel) there. He contends that a BWS in Port Sorell would capture sales lost to it and other liquor outlets in Devonport and overall liquor sales in Port Sorell would increase substantially with the opening of Woolworths and BWS in close proximity.

The applicant submits that the area of Hawley Beach, Port Sorell and Shearwater is one of the fastest growing in Tasmania and that the proposed outlet would positively assist in providing greater choice, convenience, competition and diversity of licensed premises for the developing catchment. The addition of the proposed outlet would continue to revitalise the surrounding area and increase the potential for further development and employment in the surrounding area.

The applicant submits that Councils are elected to drive community development strategy not just for the present but also for the future. The Latrobe Council has approved the shopping centre project as it sees the need to encourage commercial and residential development which, along with a new public school already established, will attract new population growth. This is about the area's long term viability and sustainability and concerns future communities not just the existing one.

The objectors' submissions

All of the objectors' submissions claim that the grant of this licence would not be in the best interests of the community (Section 24A (1)).

Mr Nicholas Dodd, General Manager of the Shearwater Resort spoke to his written submission outlining his objections to the application. Shearwater Resort is a time-share complex owned by 2000 members. It employs 52 people and is seen as the hub of the town.

He submits that a key document (the Aberly Report) on which the applicant relies was developed for a separate purpose, namely the development of the shopping complex. It was prepared for Woolworths and as such is not an unbiased document.

Mr Dodd submits that the service, safety and standards of Shearwater Resort are of the highest order.

He submits he is not anti-competitive indicating that Shearwater Resort made no objection to the application for a general licence by the Salt Lounge Bar (Thirsty Camel) in 2008.

He submits that the buying power of Woolworths would significantly affect the Resort's operation which would lead to a loss of jobs. Shearwater Resort employs 52 people whose livelihoods are threatened. Mr Dodd acknowledges that there will be new employment created at the proposed new business but submits that the applicant fails to address the job losses that would occur at the two existing establishments as a result.

Mr Ben Walker, representing the Tasmanian Hospitality Association, submits this is a "zero sum game" at best – no net employment gain and loss of income and profitability for some to the benefit of BWS. He submits that any profit made by the proposed outlet would not remain in the micro-economy but would transfer to Woolworths generally and its shareholders.

Many objectors submit that the two existing bottle shops in Shearwater are sufficient for the needs of a small community. Mr Dodd submits that the applicant's claim that the area is one of the fastest growing areas in Tasmania is no longer accurate and that by 2016 the population will still be less than 5000 people.

Mr Dodd submits that the existing establishments have invested well over \$250,000 into the community by way of donations, sponsorships and training and education. Many of the objectors confirm this contribution and spoke of the support provided by Shearwater Resort for various communities and sporting groups – the community service club, the golf club, Port Sorell Men's Shed.

Additionally it is submitted that the Resort adds benefit to the community by returning investment in good quality general accommodation, entertainment and services, with locals employed both in the service side and as local tradesmen along with the purchase of town materials and produce. It provides heavily subsidised food and beverage for community charity events and, on occasions, makes available meeting rooms free of charge. This is compared with the inability of BWS, as a standalone bottle shop existing solely for the sale of liquor, to provide anything positive to the social fabric of the community.

Mr Dodd further submits that there is evidence that additional access to alcohol increases the incidence of alcohol related harm. The existing outlets are approximately 800 metres from the proposed bottle shop and this is an adequate supply given the population. He submits that an additional outlet would lead to greater consumption of alcohol and therefore there is an increased risk of harm. He questions Mr Bryant's contention that overall demand for alcohol would not increase as incongruous with other statements he makes in his submission.

The licensee of the Salt Lounge Bar (Thirsty Camel) submits that his bottle shop offers well over 1500 stock lines to customers and that there is no need in the community for more liquor outlets. Other objectors submit similarly that the area is already well served with outlets.

Some objectors claim that the proposed bottle shop threatens the lifestyle of Port Sorell. It is described as a little village that has grown around the timeshare resort which has become its heart.

Mr Dodd questions the validity of the anonymous letters submitted by the applicant which in any case are in support of the supermarket, not the liquor outlet.

He submits that section 25 of the Act is relevant in that the BWS would operate “in connection with the activities of a supermarket”. BWS is owned by Woolworths and all employees would be employees of Woolworths.

Considerations by the Liquor Licensing Board

The Liquor Licensing Board of Tasmania is called upon to determine this application for an Off Licence (Section 9) authorizing the sale of liquor for consumption off the premises.

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 (24(A) (1)).

The applicant makes a number of submissions as to why this proposed bottle shop would be in the best interests of the community.

Of relevance and accepted by the Board are the convenience factor (the one-stop shopping advantage), the possibility of a small employment gain, competitive pricing of liquor and potential access to a more diverse range of liquor products than that currently available from the other outlets.

On the basis of the Woolworths shopper transaction data submitted by the applicant, it seems credible that there could be increased sales of liquor in Port Sorell away from Devonport outlets, particularly the BWS (Gateway Hotel) there. We believe that if residents choose to undertake their shopping locally (in Port Sorell), this is likely to have flow on benefits for the community.

Whether there is sufficient supply of alcohol in the area already – and therefore insufficient need for another liquor outlet - is an issue basically related to commercial interests. We acknowledge the submission of the applicant in which he states that “the concept of need or demand is not a discrete ground for refusing an application. To be attached any weight the evidence in respect of need or demand must demonstrate that the granting of a licence in an area would be detrimental to that area to an unacceptable degree”.² There was no persuasive evidence put that, in the circumstances of this case, any increase in access to alcohol would lead to an increase in alcohol related harm.

² Applicant’s Further Submission in Support of Application for an Off Licence at Port Sorell. 11 September 2013 (page 9).

A significant issue for the objectors present at the hearing was the impact that the proposed outlet would have on other licensed premises, particularly the Shearwater Resort. While it is true that any new business can negatively affect those already established, consumers decide where they wish to spend their money and it is not up to the Board to manage competitive market forces. Generally, the Board has not found arguments focussed on the commercial interests of competitors compelling.

Having said that, the Board has some sympathy for the argument that a hotel has a role beyond the sale of liquor in some communities (as we have said before (Rokeby 2013)). Some objectors with no direct vested commercial interest in either of the licensed premises making objection (Shearwater Resort and Salt Lounge Bar (Thirsty Camel)) were highly supportive of the Shearwater Resort in particular and the central role it plays in supporting the community. They see the addition of the proposed bottle shop as a threat to the ability of the Resort to continue to support valued community associations and activities.

The Board does acknowledge that the fear of this occurring is genuinely held by most of those present and is expressed also in written submissions. If this fear materialised in fact, we acknowledge the loss of this aspect of community life would be deeply felt in the Port Sorell community.

However, the Board is not convinced that the proposed bottle shop would necessarily threaten these community contributions and services; there was no persuasive evidence put to us demonstrating this and we are not satisfied that this would necessarily eventuate. In any case, a community, appreciative of the good corporate citizen role that the Resort in particular plays, would no doubt continue to support it through its purchasing power; this would be a sure way to ensure the on-going community support the Resort provides.

At a broader level, some objections relate to the impact of the proposed bottle shop on the social fabric and general amenity of the town and its inability to offer something positive in this regard. While we agree that it is difficult to identify any specific social capacity building element to bottle shops by virtue of their definition, the Board's view on this is a general one: if this criterion were to be an over-riding one, no application for a bottle shop would ever succeed. This is clearly not the purpose of the *Act* or Parliament's intention in including this category of licence within it.

It is clear that the resident objectors to this application do not look forward to the perceived negative changes that the shopping centre development will bring to their lifestyle and their locale. At the hearing, the Board spent time turning back argument and comment that related to this project and the alleged non-inclusive Council processes that led to its approval. These are not relevant issues for the Board. Council has given approval and the development is proceeding. Once the shopping centre is fully operational, we doubt that the existence of a bottle shop on its own would contribute to the continuation of this view.

The Board has a broad remit to interpret "community". As stated in previous decisions (Rokeby Liquor 2013; BWS Deloraine 2011), it is not just the local community whose

interests must be served but also those of “society” in general – the broader Tasmanian populace, including future populations.

The Board is aware of many small communities throughout Tasmania struggling to survive when vital services such as schools, banks and medical centres close down as populations shift to more dynamic and economically viable locations. We accept the submission put on behalf of the applicant that the Council’s approval of the overall shopping centre development, including the proposed bottle shop, is a means of leveraging future sustainable population growth to the area which in our view would be a benefit to the community, now and into the future.

In relation to the objections around section 25A of the *Act*, the Board holds the view (supported by previous decisions of the Board (BWS Kingston 2005) and upheld by the Supreme Court of Tasmania (Australian Hotels Association vs. Licensing Board 2006)) that the proposed outlet would not be run “in conjunction with the activities of a supermarket”; it is an entirely separate building, some distance from the supermarket, operated as a separate business, and run by separate staff.

Having considered all issues, the Board is satisfied that, on balance, it would be in the best interests of the community to direct the grant of this licence.

Decision

The Board directs the Commissioner to grant the licence to BWS Port Sorell as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)

11 November 2013