

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Arnold Muir Wilson, 55 Main Road, Claremont.

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

The application was heard in Hobart on 13 February 2014.

Decision: 11 March 2014

Background

Appearing before the Board were the applicant, Mr Arnold Wilson; Ms Alexia Kalis, associate and employee of The Kalis Group which would own Bevvies Bottleshop, Claremont; and the applicant's legal representative, Mr Damien Geason.

Apart from Ms Kalis's written submission, there were no other submissions made in support of the application.

There were two written objections to this application and the four objectors were present at the hearing. Of these, the following made verbal submissions in support of their written submissions:

- Mr Paul Campton and Reverend Christina Campton (residents)
- Mr Phillip Constantine on behalf of himself and his wife, Ms Val Constantine (neighbouring residents)

The applicant seeks an off licence to sell liquor from a proposed outlet at 55 Main Road, Claremont. It is part of a small complex (3 shops) and the proposed bottle shop would fill the space that currently houses a large video rental store (Video City). This would move to a smaller shop in the complex; the third shop is vacant. The business, to be known as Bevvies Bottleshop Claremont, would be part of The Kalis Group that operates seven hotels and six bottle shops in Tasmania. The applicant, Mr Muir Wilson, is an employee of The Kalis Group.

The proposed hours of operation are between 9.00 a.m. and 11.00 p.m., 7 days a week.

The Claremont area currently has two general licences, three club licences, one off licence and one restaurant licence.

The applicant's submission

The applicant sought leave from the Board for his legal representative, Mr Damien Geason to appear on his behalf. 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.

There was some opposition by the objectors to Mr Geason appearing for the applicant. The Board conferred and was satisfied that the objectors would not be disadvantaged if the applicant was represented by counsel.

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).

The applicant submits that the addition of a retail liquor outlet (Bevvies Bottleshop) would offer the residents of Claremont and Austins Ferry and surrounds a larger range of liquor products from the convenience of a well-situated modern premises in the Claremont shopping precinct. This would provide another option for consumers and broaden their choices for the purchase of liquor.

The applicant submits that this is a growing population area not over-serviced by liquor outlets.

The applicant submits that the range of liquor products would exceed that currently available from other liquor outlets, in particular BWS which offers a limited product range. He submits Bevvies Bottleshop would not be a discount store offering cheap liquor.

The applicant relies on the reputation of The Kalis Group, for whom he has worked for the last five years, as an indication of the professional and responsible way in which the proposed bottle shop would be run. He submits that The Kalis Group has a sound reputation for running quality, professional operations with a strong safety and compliance record. The premises would be fitted out to a quality standard.

It is submitted that the fit-out (estimated at \$450,000) and subsequent operation would benefit the Tasmanian economy, with profits retained within the State.

The proposed outlet would have both internal and external security cameras installed which would be monitored rigorously. Additionally, improved lighting would be installed and a private security firm engaged to conduct random patrols thereby improving, the applicant submits, the safety of nearby residents.

The applicant states that the proposed bottle shop would contribute to community benefit through the employment of additional persons who would be trained accordingly.

In response to objections in relation to the potential for increased anti-social behaviour of prospective customers of the proposed liquor outlet, the counsel for the applicant submits that the sale of liquor would be conducted in a responsible and lawful way, supported by the existence of the security surveillance system. He submits that no evidence has been submitted to the Board that the proposed liquor outlet would exacerbate the anti-social or criminal behaviour of people frequenting the Video City store.

The objectors' submissions

As indicated, there were two written objections and three verbal submissions.

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

The common theme to emerge in these submissions is the adverse impact of a bottle shop on nearby residents and the potential for increased availability of alcohol to lead to increases in anti-social, violent and even criminal behaviour. The two sets of neighbours, one of whom would share a perimeter with the bottle shop, describe living in fear for both their properties and their personal safety.

The residents submit a graphic history of young people congregating around the video rental store at all hours with attendant negative impacts on their residential amenity, health and well-being. They submit that they already suffer from the ill effects of a range of anti-social or even unlawful behaviours in the form of littering, offensive language, public fornication, vandalism of property, and threats made to themselves and family members. They submit that these behaviours and their impacts would be exacerbated by the addition of a bottle shop next door to the video store, already the focal point for the extreme behaviours.

Mr Campton submits concerns on behalf of the Edge Anglican Church of which he is a member and his wife, Revered Campton, an officiating clergy person. The Church is located directly opposite the proposed liquor outlet whose congregation, he submits, contains a number of alcoholics and recovering alcoholics. He submits the location of the proposed bottle shop would be detrimental to these people – who see the Church as a sanctuary - and the resolution of their on-going health issues.

He further submits that the proposed site is “high profile” and its location on the main road such that it would subject many children and youth to the undesirable influences and potential dangers of alcohol through its advertising and ready accessibility.

In summary, the objectors submit that the proposed bottle shop would add nothing positive to the social fabric of the Claremont community; it is “intrusive, unnecessary and unwelcome”. They submit that given that the applicant has failed to put forward any convincing argument to the contrary, it cannot be said that this application is in the best interests of the community.

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 in 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 Board has a broad remit to interpret “community”. As stated in previous decisions (Rokeby Liquor 2013; BWS Port Sorrell 2013), it is not just the local community whose interests must be served but also those of “society” in general – the broader Tasmanian populace.

The Board has weighed submissions made by both applicant and objectors.

Firstly the Board considers whether the case is made by the applicant regarding this bottle shop being in the best interests of the community.

We can see some benefit in the establishment of the liquor outlet in terms of breadth of choice for potential customers. The liquor offered for sale would be price competitive, presumably of interest to customers.

There is a BWS right around the corner in the Claremont Plaza so the arguments around convenience are somewhat weakened. However, there would be a clientele for whom access off the main road would be more convenient than locating a car parking space in a busy shopping centre and then walking a further distance to the BWS.

Based on the record of The Kalis Group, we accept that the establishment would be well-run, well-lit and provide an enhanced level of security for residents.

As this is a new retail outlet, we accept that there would be some net employment gain; this is estimated at 1-2 full-time staff and 3-4 casual staff.

The investment by The Kalis Group in the refurbishment of the proposed site, estimated at \$450,000, would offer the opportunity to some trades people for increased employment/income over this period.

All of these points go to making the case for the application being in the best interests of the community.

While the submission of Ms Kalis in support of the applicant makes claim to community involvement, no evidence or examples of this were submitted to the Board.

As stated above, in considering best interests, the Board must consider both the community as a whole and the community in the immediate area.

The Board acknowledges the submissions of heartfelt concern from the members of the immediate community that the addition of a bottle shop has the potential to exacerbate an environment already characterised by a range of anti-social behaviours from those who frequent the video store.

Considering these submissions, it would be hard to say that their best interests would be served by this bottle shop. They appear to already live in a challenging environment, the ills of which they have no doubt would be exacerbated by the presence of a bottle shop.

We are of the view, however, that the existence of the proposed bottle shop could very well improve the insecure and challenging environment that the residents describe. The Board is aware of The Kalis Group's strong industry reputation; we expect that the applicant, as their representative and employee, would safeguard this. The extra security cameras, enhanced lighting, security patrols and a desire by both the applicant and Ms Kalis to operate a professional business, attractive to all customers, would in our view, potentially, be of benefit to the residents.

One of the problems with the current site (which members of the Board visited separately on two occasions) is the existence of vacant premises and a large empty car park. The addition of another attractive, professionally run business (the bottle shop) used by a broad section of society could attract a third business to the complex and this, in the opinion of the Board, could well make the site less attractive and accessible to those who wish to congregate in the car park, potentially carrying out anti-social and even unlawful behaviour, currently the cause of great concern to the nearby residents.

The proximity of the proposed outlet to the Church opposite is acknowledged. However, the Board was not presented with any persuasive evidence in relation to the congregation's particular vulnerability. Mr Campton submits the impact of a bottle shop would be deleterious but the Board has no way of testing this. We do note that the existing BWS liquor store is very close to the Church and doubt that the addition of another bottle shop would necessarily cause greater temptation than what potentially already exists.

In relation to whether the Claremont area is sufficiently serviced by liquor outlets, the Board notes that the Woolworth's BWS outlet is the only off licensed premises in the area. The other general and club licensed premises are located across the suburb and surrounds. Whether this is sufficient supply in this community is debatable. In any case, Mr Campton's submission relates more to the location of these other premises - in side streets that were less visible than the proposed outlet on the main road.

The Board is of the view that the potential benefits to the broader community by way of extended choice, convenience, and employment outweigh the opposition and concerns - albeit genuinely held - expressed by a small number of nearby residents. Consequently, the Board determines, on balance, that it is in the community's best interest to direct the grant of this licence.

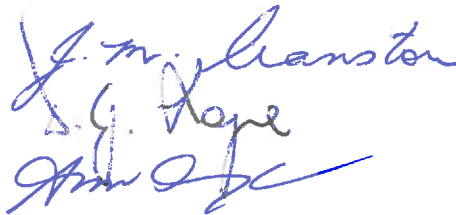
Decision

The Board directs the Commissioner to grant the application of Mr Arnold Muir Wilson as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)



11 March 2014