

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Anthony John Bennett
Nature of application:	For an off licence
Premises: name	Nubeena One Stop Bottle Shop
Premises: address	Shop 1 and 2 no. 1856 Main Rd, Nubeena
Name of decision:	Nubeena Bottle Shop
Date & place of hearing:	27 th September 2006 at Hobart
Date of decision:	12 th October 2006.
Members of the Board:	PA Kimber (chairman), L Finney and K Sarten (members)

DECISION

Application

Mr Bennett applies for an off licence for premises within the Nubeena shopping complex.

The application was opposed by the Tasman Ex Services Club Inc, and the proprietor of the Nubeena Tavern and Restaurant (Mrs Audrey Noye). Also the Australian Hotels Association (Tasmanian Branch) lodged an objection and Ms Bonde of Counsel appeared for the AHA. The Applicant, along with Mrs Bennett, appeared and gave evidence. They lodged documents in support, and the objectors lodged documents supporting their objection and seeking that the licence not be granted.

The premises are in a single building in which is housed, amongst other things, a supermarket, and then adjacent to the premises, a 2nd hand goods shop.

The premises had been licensed in the past for a relatively short period, but the tenant surrendered the licence and the premises have been vacant for some time.

The objectors submitted that the application was in connection with the activities of a supermarket, and hence contrary to the terms of the Liquor Licensing Act (s25A). For the reasons enunciated in *BWS Cheaper Liquor Co Bridgewater (August 2005)* and *BWS Cheaper Liquor Co Kingston (August 2005)* we do not consider this present application to be one which is '*in connection with the activities of a supermarket*'. Whilst there are links between the nearby supermarket, and the intended premises, they are not contiguous, and do not have the same ownership (although there is association between the owner of the Supermarket being Mrs Bennett and the owner of the intended bottleshop business Mr Bennett as partners in the personal sense, and Mrs Bennett is the owner of the freehold). The significant issue is that the premises are not contiguous.

However, if we are wrong about that, then in any event the application falls to be determined on the ground of the best interests of the community as perceived by the Board.

The evidence in that regard was altogether much more persuasive for refusal of the application than in the previous application (when a licence was directed to be granted).

The Applicant asserted that there would be social and economic benefits to the local community by the use of currently vacant premises, and the employment of staff.

Against more cogent evidence of adverse impact on community services which would be caused by the diversion of income from sale of bottled liquor from the RSL Club to the intended bottle shop, and the demonstrable and apparent likelihood that the Club would rapidly become uneconomic and close, the balance of public and community best interests dictates that we refuse this application.

Evidence presented, which was not contradicted in any substantial way, indicated that whilst the premises were licensed the RSL Club suffered a serious and substantial decline in income, such that it suffered a net deficit of funds. It was apparent that attempts were made to arrest the decline, but that they were not successful. The net reversal was in the order of \$41,000 over the period the premises operated.

It is not the Board's job to try to prop up failing enterprises by limiting allocation of liquor licences, however, on rare occasions a community based service club may well have such a mix of services (which include providing food, liquor, recreation, cultural, hospitality services and supporting other community club activities, including - in this instance- the bowls club, darts club, and Lions club) to the community that unplugging one element which provides some level of income may jeopardise the entire operation: see *Kentucky Fried Chicken Pty Ltd v Gantidis* [1977] 140 CLR 675.

The Applicant gave unsubstantiated information about the level of turnover in the previous off licence business in the premises, but did not have any financial statements available at the hearing. In the absence of that little could be made of the information provided.

The impression given, and supported by a list of apparent signatories indicating they would prefer the bottle shop to reopen, was that there would be an element of convenience to shoppers at the supermarket if they could also obtain liquor from a nearby bottleshop, rather than using existing services at the (non-public) RSL Club and the nearby Nubeena Tavern (across the bar). There was no evidence presented from any independent members of the public at the hearing to support the licence application.

Some of the evidence filed in objection indicated that the decline in bottle sales to the RSL Club was approximately \$25,000 to \$30,000 turnover, and that the reduction in other services as a consequence of the need to rationalise, lead to a further decline in overall income from all sources. Whilst the club continued to trade in deficit, the evidence was that it could not continue to do so, and that clawing back from that deficit would take some time.

It is clearly a small market for services in the area, and there is a fluctuating population, with generally a small population during most months, and an increase

during the summer months from holidaymakers. We were told that the total population of the Tasman Peninsula is 2600 people including children and 1800 rateable properties. The demographic information provided (by Mrs Noye) indicated that the Peninsula is within the three lowest income areas in Tasmania, and with an elderly age base. The average income for those over 15 years (we were told, undisputed) was \$200 to \$299 per week, well below the State average. Most residents are self paid retirees, unemployed, or on age or disability pensions.

It was evident that the existing enterprises make endeavours to provide services needed and desired by the community. Reduction in those services would not be a good thing for the community. It is apparent that any reduction in overall services would not be replaced merely by the provision of a bottle shop in the intended premises.

It is not stipulated as a necessity for applicants to provide any particular evidence for the grant of a licence. Any relevant information will be taken into account. The level and quality or cogency and persuasive nature of evidence will depend on many factors, including the nature of evidence in opposition. In this instance the level of evidence provided in support did not sufficiently counter the opposition, principally of the adverse impact by reduction of services and likely closure of the RSL Club.

The applicant did not explain the market for demand of relevant services such as to give us confidence there would not be an overall lessening of services for the public. That is, the impression we have is that if the intended bottleshop is licensed and opens, the net result will be closure of the RSL club and an overall lessening of services for the community. With the level of turnover asserted, an 'investment' by the applicant in obtaining and presenting relevant and objective market data and the impact of transfer of gross sales income would be expected.

The applicant did not provide and explain demographic evidence in a manner which countered the negative aspects of the application.

The applicant did not provide cogent strategies to address the potential negative impacts on the local community, and hence failed to demonstrate an understanding of the issues related to the community and provision of services from hospitality and trade outlets generally.

Ms Bonde argued that the absence of any other redeeming features apart from simply supply of liquor, and the lack of evidence of the impact the intended licensed premises would have on the particular community militated against grant of the licence, and that the onus being on the Applicant, the Board should refuse the grant.

Ms Noye submitted that since the granting and surrender of the previous bottleshop licence there had been a substantial downturn in economic activity in the Nubeena area. Ms Noye cited that the Port Arthur Historic Site's visitor numbers were down some 20% on the previous year and that this coupled with the low socio-economic demographic of the area did not support the application. She stated that there were existing drug and alcohol problems which would be exacerbated by the granting of the licence.

The Applicant's evidence at the hearing was supported by a petition to demonstrate demand alongside quoted turnover from the previous operations of over \$460,000 for the 11 months traded. Financial information supporting the turnover was not presented. Whilst a list of signatories may demonstrate some community interest in having a bottleshop, it is not strong evidence and does not address the critical criterion of what is 'in the best interests of the community'.

The Applicant did not present any evidence as to the likely effect of the grant of the application in response to Ms Noye's submission and evidence regarding the make-up of the community.

CONCLUSION

Our conclusion is that the evidence in support of the application is not sufficient to meet the onus required of applicants for an off licence. The Liquor Licensing Act 1990 requires the Board to make a decision which in its opinion is in the best interests of the community.

In some instances there is a demonstrated need for the service an applicant states they intend to provide, with evidence from the community in support. Whilst 'need' is not a requirement for grant of a licence, and in some instance competition from additional premises may be taken to be in the public interest, in this application we are not persuaded that the community will be benefited from the grant of this licence. In particular, the negative impact on other service entities in the community has been demonstrated to us to be significant, with evidence drawn from the experience whilst the premises were previously licensed.

The submissions from the RSL Club, Ms Noye and the AHA raised concerns about the negative social impact the grant of this licence would have. Once these issues are raised with particular reference to an application, the Applicant carries a greater responsibility to satisfy the Board that it is in the best interests of the community for the licence to be granted. There are recognised dangers associated with the consumption of liquor and opening a store to sell liquor is not per se in the best interests of the community.

The application is simply not worthwhile enough, in balancing it with the diminution of service likely from the impact of re-opening, to meet the criteria implicit in s24A(1) of the Act.

PA Kimber; Chairman.

L Finney; Member.

K Sarten; Member

