

<b>Licensing Board of Tasmania</b>	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Anthony C Smith
Nature of application:	For an off licence
Premises: name	BWS Deloraine
Premises: address	53-55 Emu Bay Rd, Deloraine.
Name of decision:	BWS Deloraine
Date & place of hearing:	Deloraine Community Complex, Alveston Drive, 16 <sup>th</sup> May 2011.
Date of decision:	10th June 2011.
Members of the Board:	PA Kimber (chairman), K Sarten (members)

## **DECISION**

### **Application**

Mr Smith (represented by Counsel Mr L Bryant instructed by solicitor Mr M Kellock of Mallesons) applies on behalf of the Australian public company Woolworths Ltd in regard to a subsidiary of that entity, for the grant of an off licence to permit the sale of liquor for off premises consumption from a development to be pursued at 53-55 Emu Bay Rd, Deloraine. The premises are presently vacant. The premises had previously been used as a restaurant and motor vehicle service station.

Deloraine is a vibrant country town in the north of Tasmania, with a quite unique community spirit of enthusiastic engagement. It has, along the Emu Bay Road, a number of small business offering goods and services to the local community and tourists. It is, although small, an important part of the tourist services offered by Tasmanians encouraging people to come and stay in Tasmania.

Much of the complaint by the objectors was in regard to the perceived 'monopoly', 'big business', unfair competitive edge effect or homogeneity of service provision of a Woolworths owned venture coming into that community, with perceived potential to disrupt provision of similar services by existing local suppliers. We will come to that issue later in this decision.

We have had a number of decisions by managers on behalf of Woolworths subsidiary BWS in the recent decade. The applications are of a similar nature, and the ambit, evidence, and style and quality of premises has been commented upon in those written

decisions (see for example; *BWS Cheaper Liquor Co Kingston 2005*, *BWS Cheaper Liquor Co Bridgewater 2005*, *BWS Cheaper Liquor Co Prospect 2007*, *BWS Cheaper Liquor Co Sorell 2007*) – see at Licensing Board website from [www.treasury.tas.gov.au](http://www.treasury.tas.gov.au) ).

The evidence of the Applicant's intentions regarding the business and premises if the licence is granted are set out in the application documents, reply to objections, and the Commissioner's report of 10<sup>th</sup> February 2011.

In summary:

- It would have 1,300 to 1,400 product lines, similar to other such BWS businesses around the State;
- The existing building would be refurbished. It would have a floor area of 178m<sup>2</sup>, have a walk in cool room, store room, sales area, office and staff facilities. Total area of proposed licensed premises would be approx 475m<sup>2</sup>.
- Two entry and exit driveways to the premises come from Emu Bay Road (the Board inspected the site and is familiar with the vehicle access).
- Off street car parking for 10 cars would remain.
- The premises are in the main business area of Deloraine. There are a number of other licensed premises in the vicinity, offering bar, dining, and off premises service. It is within the Emu Bay Road shopping strip.
- Council permission from a planning perspective has been granted, taking account of the Planning Scheme, and development intentions, and such amenity matters as are relevant (including vehicle and pedestrian access, and parking).
- Responsible service of liquor practices will be instituted, consistent with that presented to the Board in other like matters, and as apparently in place in other BWS businesses around the State.
- On opening of the business the licence would be transferred to a local on site manager 'on behalf of BWS'.
- The estimated investment is \$850,000 (excluding stock).

- Intended hours of operation (within the overall limit granted by the Liquor Licensing Act) would be 9am to 10pm Monday to Thursday, 9am to 11pm Friday and Saturday, and 9am to 9pm Sunday.
- The Applicant has been assessed by the Commissioner as qualified to hold a liquor licence, and the ultimate licence holder is inevitably to be a person qualified, within the meaning of the Act, s 22.
- The business will add to the quality and diversity of liquor services available to the local and touring community.
- Demographic review of the area, although debated at the hearing, was put forward on behalf of the Applicant in a report by Chris Abery dated 18<sup>th</sup> April 2001. The 'Abery Report' provides useful data and description of the locality, and where it fits in the broader Tasmanian community.
- The population of the 'settlement' of Deloraine is about 2,200. It is within a local demographic area of about 10,000 people, serviced by 3 townships. Growth in the population in the area is estimated at between 0.2% and 0.5% pa for the next ten years.

## **Law**

The Board is required to make a decision as to whether the grant of the licence is in the best interests of the community. See s 24A Liquor Licensing Act 1990.

## **Objections**

At the sometimes spirited hearing for this matter, the objections were put cogently by a large section of the local community. Approximately 200 adults attended. Many participated in a forthright and firm manner in questioning the Applicant and his witness, and in putting forward their views about the suitability of the introduction of the proposed licensed premises in Emu Bay Road.

They were unanimously opposed.

Additionally, the Board has the benefit of numerous written submissions opposing the grant, and the Applicant's written response to those criticisms.

Examination of the witnesses, and cross examination by members of the public was extensive, and gave opportunity for the application, and the objections, to be fleshed out comprehensively.

The Applicant provided a table listing the objections by nature/ground, number and percentage. This reflects the following essential nature of objection:

Insufficient/no need	97%
Adverse impact on local businesses, and preference for locally operated business	31%
Parking, traffic	17%
Large multi-national chain/profits leaving Deloraine	36%
Reducing local employment	28%
Rise in crime, anti social behaviour, social problems	28%
Negative impact on youth	20%
Increase in alcoholism/intoxication	17%
No community benefit (generally)	16%
Inappropriate location	14%
Aesthetic concerns	13%
Deter visitors/affect Deloraine's image	11%
Excessive opening hours	10%
No community benefit (sponsorship and support)	8%
No community benefit (meals and accommodation)	8%
Lacking personal service	2%

### **Consideration of facts**

Notwithstanding substantial debate and criticism of the Applicant's intentions by the objectors at the hearing, the Board accepts that the Application is faithfully propounded in the Application documentation and supporting expert evidence report.

There is no doubt that the Applicant, on behalf of his employer, intends to build an off licence liquor store on the site in Emu Bay Road, in the nature of similar such ventures in other parts of the State, and will seek to provide stock for purchase by those living in the township, the general locality, Tasmanian travellers, and interstate visitors.

We have no doubt that the Applicant would institute the business in accordance with the terms of the Application, and include such responsible service of alcohol arrangements as are evident from the Application, and from existing similar premises.

There may be debate about the size and other demographics of the population, but in general terms the nature of the local community, in its position regarding nearby townships, and the proximate cities is faithfully rendered in Mr Abery's report, and in any event, those characteristics are well known by the Board members.

It is a small local community, and businesses trade with the locals, as well as people living in nearby townships, those driving through on longer journeys, and a significant part of the travelling tourist public. The Applicant's business would provide service to those 3 categories of customer.

Whilst the business would no doubt adversely impact on the gross return from sale of off sales liquor by the nearby hotels (of which there are 4 in the township, and one with a drive through liquor store component), there was no evidence, and we doubt that the impact will be such that overall, if the business was licensed, that there would be a reduction in services to the community. On the contrary, if licensed, there would be an overall increase in services available.

However, the public in the locality have firmly stated that they do not wish to have an increase in the provision of liquor services in Deloraine.

We could quite properly grant the licence on the basis of the Application material, supporting documents, evidence given by the Applicant and his witness, and taking account of our knowledge of the streetscape along Emu Bay Road, the demographics of the locality, and the manner in which similar off licensed premises are conducted by the Applicant's employer.

The range of objection specified in the table above and splitting the concerns into percentages, should not imply that the objectors were limited in that way. In fact, it was apparent that the broad body of all objectors agreed with, endorsed, and supported all and any of the criticisms put forward. Some chose however to express themselves in regard to isolated components.

The question for the Board is whether the expression of concerns is such that we can conclude that the Applicant has not demonstrated that the grant of the application would be in the best interests of the community.

This matter is similar in some respects, and the comments and consideration we made/had in a recent application regarding a proposed off licence at corner Hill and Arthur Streets, West Hobart (*Hill Street Cellars: P Morrison Applicant: 11<sup>th</sup> August 2010*).

We endorse that consideration and the conclusions in that matter in regard to this present application. To paraphrase and summarise:

1. The Applicant sees an opportunity to start a new business. The site is available, they have the capability, they can obtain a lease, start the business and very likely make a profit.
2. The Applicant has a good reputation and is qualified to run the business under such licence as applied for.
3. The Application is similar to other licence applications. It is supported by cogent evidence, which although untested, is generally accepted by the Board.

Included in that is a general assessment of the demographic nature of the local community and existing services.

4. In similar applications, reflecting a change over time of public purchasing patterns, the public have lent support to the grant, yet in others community concerns have been expressed opposing the grant.
5. Planning approval has been given, taking account of many amenity factors regarding the local neighbourhood.
6. The local community has been galvanised in opposition, they have expressed themselves coherently and intelligently. They do not want another liquor outlet in what they consider to be their township, where the nature of the outlet is simply provision of take away liquor supplies. That is a relevant factor.
7. They also express themselves as having broader opposition to the nature of the Applicant's employer's overall enterprise: They prefer local business and local shops, not those owned by large public companies. We however do not see it as one of the relevant factors we may take into account.
8. There is no doubt the business which would be established if the licence is granted would bring some attributes which would be classed as benefits by some, and are considered benefits in some context by the Board: new business premises, use of otherwise disused commercial/retail premises, employment, broad stock availability, choice, and price competitiveness. They are relevant factors.
9. This may be compared with Mr Morrison's West Hobart application (p3, 1<sup>st</sup> para) where he urged the benefit that his local operation would be of more benefit to the community than that of a larger chain operative (like the present application), and with a greater prospect of any surplus going back into the local Tasmanian community.
10. We do not make our decision on the basis of a comparison between the benefit of a locally owned business compared to a business owned by a national

public company. We consider that would be an irrelevant consideration in the present context.

11. The principal activity would be sale of liquor, and it would not be provided in connection with the activities of a supermarket: Grant of a licence is therefore not prohibited on the grounds set out in the Act.
12. There is evidence, or it can generally be accepted that, in the nature of this local community another outlet will probably put strain on the gross income of other liquor outlets in the township. However, there is no evidence that any of such businesses would curtail any operations, or reduce the service they provide to the public.
13. Car parking and traffic issues have, in our view, been adequately dealt with by the council in its planning capacity, and although sought to be agitated in this hearing, are not issues which strongly influence us against the grant. The premises are in the middle of the commercial/retail strip in the town, it has off-street car parking, and it has ingress and egress arrangements which have been considered and on balance are likely to be the best solution available to the inevitable strain between as desire to have perfect car parking solutions. Ultimately if car parking and ingress and egress is too difficult, then the other premises in the locality offering similar service will benefit. In our opinion the traffic solutions are adequate and do not militate against grant of the licence.
14. If the Applicant is not successful, the site will either be used for another shop or service entity, or may even be vacant for some time.
15. The objectors were sceptical of the stated benefits of the grant. They were critical of ready availability of a broad range of liquor in the community, and although in one breath would say they are 'satisfied' with the ready availability, they were not interested in having any more outlets in particular, of the type proposed. This is as relevant consideration. In the absence of countervailing evidence of some unmet community need, these assertions were particularly persuasive in this instance.

16. The mere prospect that a liquor licence may lead to harm by supply of liquor which may be misused is not of itself a justification to refuse the licence. There were no particular issues raised indicating particular vulnerability of the community that they would be adversely affected by the liquor being available from the premises.
17. The community perspective includes that it can do better from this particular site. They simply do not think that a liquor outlet of the type proposed adds anything of relevance to their amenity. If it provides anything, it is not something which they will miss if it is absent. This is a valid consideration.
18. Excessive numbers of outlets in places where the local residents do not want them is not in the community interest. That is a valid consideration. It must be weighted in the balance with the positive considerations of contribution to economic growth, employment, etc as mentioned elsewhere in these reasons.
19. Different suburbs (townships) have different demographics. Generalising is of some use, but does not describe the essentially different characteristics of some local towns. Deloraine has some unique qualities as to its people and the nature of its development. Those who live there do not wish to have another liquor outlet, and see no benefit in having one 'forced upon them' by the Applicant and the authorities (including the Board). This has some validity. The Board's concern is the best interests of the community. That is not necessarily always what the community may express itself, but that expression of perception of best interests is of some relevance. The test is objective. It is also not exclusively the relevance of the wants and desires of the people in the community: the whole community of Tasmania is the proper subject of consideration. That said, the wants and desires of the local community are relevant.

We have considered this matter in the manner in which and by reference to administrative considerations set out in pages 12-16 of the *Morrison* (above) matter.

We are concerned not to limit consideration to the ‘community in the locality’. We are aware that we are to take account of the whole community. The wishes of the local community ought not to be determinative, necessarily, but will most likely be relevant.

We do not accept that all of the fears of the objectors, though perhaps genuinely held, can be borne out. There is no specific evidence that the premises will give rise to abuse or misuse of alcohol.

However it is abundantly clear that the local community does not want a liquor outlet of the nature (that is, an off- licence) offered. They would find it out of harmony with their expectation as to the development of their community.

The local people feel that the proposal will be intrusive, unwelcome, and unnecessary for their needs.

### **Decision**

The almost universal expression of opposition from the local community before the Board in nearly every submission, and in each person who presented at the hearing (except applicant) does, on weighing the factors in favour with those in opposition, dictate that the community desire as expressed should require that the licence application be rejected.

To do otherwise would be to seriously undermine the relevance of the local community’s universal expression of discontent with ‘an unnecessary liquor outlet’. We do not consider the legislation compels us to direct the grant of a licence over such universal expression of desire against it.

We direct the Commissioner to refuse the licence application.

PA Kimber; Chairman.

K Sarten; Member.