

Application by Michael John Prosser for an Off-licence for the premises at Shop 7, 2 Bucaan St, Chigwell.

Decision: Licence refused

Date: 18 May 2016

The application

The applicant seeks authority for the sale of liquor under an off-licence from a premises at Shop 7, 2 Bucaan St in Chigwell.

The applicant proposes to fit-out and use a currently vacant store that he owns as a bottle shop. The store is located in a small shopping strip on the corner of Bucaan St and Allunga Road, Chigwell, which also offers a combined newsagent and Australia Post service, hairdresser, pharmacy, butcher, doctor's surgery and a small, combined supermarket and take-away. The premises will ultimately be branded under one of the independent retail liquor banner groups, such as Cellarbrations.

In support of his application, the applicant submits that:

- "the suburb of Chigwell has undergone a major transformation in the last 15 years from a low socio-economic housing commission area to a more house-proud multi economic area."
- "15 years ago house prices were in the \$40k range but since this has risen to the \$250k to \$400k+ range due to the influx of higher socio-economic group." and that
- "Most of the housing commission homes are now in private hands and have been upgraded. New housing of approximately 200 units has been built and there are plans for a similar amount of expansion going forward."

The applicant further submits that the area would benefit from a licenced premises that would provide:

- the convenience of a small liquor outlet in the area as one needs to drive to the other side of the highway for the same. This would give the shopping strip the character of a one stop location for local residents' needs;
- trading hours aligned to the closing of the supermarket/take away for the convenience of locals and reduction of noise/traffic;
- camera security in the area of the shops which would provide a level of security for all stakeholders;
- sponsorship to the local community house for fund raisers (be it non-alcoholic beverages for children's events as an example) and education in regards to alcohol in general.

The applicant states that Chigwell and the greater area are in expansion; that the school site has been sold and will be subdivided for housing; that subdivisions are expanding up the surrounding hills and through to Berriedale and Collinsvale; and that consequently the existing shopping strip is very busy.

Representations

Representations were received from Mr Andrew Wilkie MP, Alderman Kristie Johnston - Mayor of Glenorchy, Britt Kronawitter, Phil Brooke, Debra Medhurst and Kathleen Barrington, the latter four being persons who live or work in Chigwell. In addition, Mary-anne Evans, Executive Officer of Bucaan Community House provided a submission on behalf of

Bucaan Community House and also provided 46 template letters of objection, primarily from local residents, and a copy of a petition containing 659 signatures that was presented to the Glenorchy City Council in opposition to the proposed off-licence when the proposal was before Council on a planning matter.

Mr Wilkie, in opposing the application, says that numerous constituents and community groups have raised concerns with him about the application and that he was present at a well-attended community meeting in June 2015 at which a number of interested parties spoke strongly against the proposal. Mr Wilkie believes that a bottle shop situated near children's play areas, the local skate park, park land, the Bucaan Community House and small businesses poses a risk to the community. He submits that easy access to alcohol goes hand-in-hand with increased crime, underage drinking and safety issues for residents and neighbouring shopkeepers. Mr Wilkie further submits that he has received numerous complaints from Chigwell residents regarding an increase in anti-social behaviour such as "hooning" and dangerous driving, and that this behaviour is correlated in the minds of local residents, with irresponsible consumption of alcohol. Mr Wilkie says that he does not believe that the proposed bottle shop would add to the social fabric of Chigwell in any positive way and that it would only exacerbate the existing alcohol related crime within the community.

The Mayor of Glenorchy, Alderman Kristie Johnston, submits that the Glenorchy City Council wishes to express grave concerns about the impact the proposed bottle shop might have on the local community. The Mayor notes that a petition of 659 signatures was received by Council in opposition to the proposed bottle shop when it came before them and that this was "one of the largest petitions that Council has ever received and is reflective of the groundswell of community concerns about the negative impact of a bottle shop in this location." The Mayor's representation sets out the Council's general concerns about the harm caused by alcohol and submits that the Council is of the opinion that the community is already well serviced by bottle shops. The Council opposes an increase in the prevalence of bottle shops within the municipality, stating that the small amount of economic activity generated by an additional bottle shop is far outweighed by the social harm it would cause.

Mrs Evans from Bucaan Community House opposes the granting of the licence applied for. She states that she writes on behalf of concerned residents, who believe that increased availability of alcohol in their community is "not needed, wanted or right." Mrs Evans provides social and economic data from the Australian Bureau of Statistics which she says paints a clear picture of socio-economic disadvantage in the Chigwell community. In particular she cites the SEIFA Index (Socio-economic Index for Areas) and notes that the Glenorchy LGA, with a SEIFA Index score of 915, is the eighth most disadvantaged municipality in Tasmania and that Chigwell is amongst the most disadvantaged of the 11 identified statistical areas within that municipality. Ms Evans proceeds to cite research that she asserts evidences that excess drinking is detrimental to community well-being and safety.

- She quotes a study by a Professor David Fone which finds, with reference to a four-year study in Wales, that: "A higher risk of binge drinking was found in residents living in deprived neighbourhoods, particularly in young- and middle-aged men."
- Mrs Evans also points me to a research project from Scotland that shows a link between alcohol-related hospital admissions and lower socio-economic areas.
- She cites research showing a link between outlet density and harmful alcohol consumption.

Based on this research, Mrs Evans concludes that the socio-economic status of the Chigwell area, coupled with the relationship (she submits exists) between lower socio-economic areas

and harmful drinking, and between outlet density and harmful drinking, suggests that it would not be in the best interests of the community to grant the licence applied for. Mrs Evans submits that: “concerned residents of Chigwell have rallied to their Community House seeking our leadership and support to oppose the granting of a liquor licence that, in light of local socio-economic data and research findings, will have detrimental effects on the local community.” To evidence the level of community concern Mrs Evans attaches a petition addressed to the Glenorchy City Council in opposition to the relevant planning permit and signed by 659 persons. Mrs Evans also references an online petition similarly addressed with 114 signatories (66 of whom say they are from Chigwell or nearby suburbs) opposing the planning permit, and attaches 46 signed letters addressed to me specifically addressing the licence application.

The 46 signed letters provided with Mrs Evans’s representation are in template form. They object to the granting of the off-licence and say that such a business “could prove detrimental to the health and wellbeing of the community.” The letters note the socio-economic status of Chigwell and say that there are a number of foster-care houses and supported accommodation and rehabilitation residences in close proximity to the proposed bottle shop. The letters also note the proximity of the premises to a children’s playground, community park, and the community house. The template letters raise concerns about the potential for increased vandalism and unsafe incidents related to the misuse of alcohol that might occur in the vicinity of the premises. The existing liquor outlets are said to be sufficient for the community’s needs and the addition of an outlet in Chigwell is said to be potentially detrimental to the suburb’s reputation.

Britt Kronawitter submits that she lives in the suburb of Chigwell and that she has concerns for the safety of those working in the shopping centre, as well as those who frequent the shops, were the application to be successful. She states that she has two children and feels that a bottle shop would be a negative influence on their, and their friends’, lives. Ms Kronawitter submits that Chigwell is a low socio-economic area and that the sale of alcohol is not warranted in such close proximity to small businesses, a neighbourhood house (which, she asserts, assists vulnerable and disadvantaged people including those whose lives are affected by alcohol and/or drug addiction) and a children’s play area. She says that the area is already serviced by at least three other bottle shops within a three kilometre radius of the shopping centre. Ms Kronawitter expresses a concern that the shopping centre does not have good lighting or security, and is very poorly maintained and in a state of disrepair.

Mr Brooke submits that he is part of an original family that moved to Chigwell Housing Estate in the late Fifties and that the Berriedale and Claremont Hotels have adequately met the needs of residents over that time. He submits that the area has the Granada Hotel bottle shop, Claremont Hotel bottle shop and two other bottle shops in the Claremont area not very far from the proposed premises. Mr Brooke notes Chigwell’s status as a “low social economic community” and believes that having a bottle shop in the proposed location could create a temptation for those people whose “living needs should be directed elsewhere”. Mr Brooke says that there are many people trying to enhance the reputation of the area and he believes that the granting of a liquor licence would be detrimental to their cause.

Debra Medhurst submits that she works in the shopping centre and would have concerns for her safety, and the safety and welfare of others working in the centre, as well as those who frequent the shops, if the application were to be successful. She provides comment regarding the shopping centre, Chigwell’s socio-economic status, and the features of the local area and existing alcohol retailers in the same terms as Ms Kronawitter.

Ms Barrington makes similar submissions to Ms Medhurst and Ms Kronawitter, and adds that she has concerns that a bottle shop might be an attractive target for burglaries.

Applicant's response to representations

The applicant was given the opportunity to respond to the representations. In response, he states that rather than the community areas and local businesses being negatively affected by a liquor outlet, a new bottle shop would in fact attract more custom to the current shopping strip and give the community the convenience of having all services in one building.

The applicant responded to concerns of the impact of such a premises on under-age drinking by stating that anyone without the correct identification suspected of being underage, or supplying alcohol to underage persons, would be refused service.

The applicant submits that on his enquiries, alcohol related crime “on a percentage basis is no higher than in any other neighbourhood with a shopping centre which includes a liquor outlet.”, he does not state to whom he enquired or provide any figures.

The applicant submits that the actions of those who might misuse alcohol should not negatively impact the responsible community members who would benefit from the convenience of having such a premises in the area.

In regards to security, the applicant submits that extra lighting would be provided for the shopping centre and 24 hour CCTV security would add to a safe environment for all. He notes that the Council approved operating hours of the bottle shop would mean that the overall opening hours of the shopping strip would not be extended and there would not be late night trading. Further, the applicant submits that the business will provide employment, and that the building would be painted and presented so as to enhance the presence of the centre overall thereby enhancing the value of the other businesses in the centre and projecting an image of a maturing and positive environment and neighbourhood.

The applicant submits that a convenient outlet such as that proposed might actually restrict the incidents of drink driving. He reasserts the view conveyed in his application that Chigwell is no longer labelled a “low socio-economic housing area” and that most of the housing stock is privately owned and the area has benefited from quality upgrades from house proud owners.

Finally, the applicant submits that he is a responsible operator with 38 years' experience in the hospitality industry, and notes that he currently holds the licence for Prosser's on the Beach restaurant which celebrates its 30th anniversary this year.

Site visit

I visited the premises subject to this application on 19 April 2016, accompanied by Ms Jane Scott, Manager Operations at the Liquor and Gaming Branch. Mr Prosser showed me the premises and provided me with a general summary of the shopping strip, its constituent shops and the general principles of its operation. I visited Bucaan Community House, where Mrs Evans provided me with a tour of the building and summarised its operations. I inspected the skatepark, community hall, adjacent park, barbecue area and children's playground as well as the general area of the application taking in the full length of Allunga Road, Arunta Crescent, Boondar Street, Alkoo Circle, Beenak Street, Biara Street and Bucaan Street. This area includes some of the recent housing developments identified by Mr Prosser, and the former school grounds said by him to be the location of future housing developments.

Considerations

The primary matters to be considered for a licence application of this type (off-licence) are to be found in sections 22, 24A and 25A of the *Liquor Licensing Act 1990* (the Act).

Section 22

Section 22 of the Act sets out the criteria that a person must meet in order to be qualified to be granted a liquor licence. I am satisfied that the applicant is qualified in accordance with section 22.

Section 25A

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.” I am satisfied on the basis of the evidence provided to me and my inspection of the premises that the proposed off-licence will not be operated in connection with the activities of a supermarket.

Section 24A

Section 24A of the Act is as follows:

24A. Requirements for licence

(1) In considering an application for a liquor licence, the Commissioner or the Commission must make a decision which, in the opinion of the Commissioner or the Commission, is in the best interests of the community.

(2) In considering an application for an off-licence, the Commissioner or the Commission must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on-licence for a restaurant, the Commissioner or the Commission must be satisfied that the premises are, or are intended to be, used as a restaurant.

Section 24A(3) is not relevant to this application as it applies only to an application for an on-licence for a restaurant.

With respect to section 24A(2) I am satisfied, on the basis of the material presented by the applicant, that the principal activity to be carried on at the premises will be the sale of liquor.

Section 24A (1) – best interests of the community

Section 24A(1) requires that I must make a decision which, in my opinion, **is** in the best interests of the community. That is to say, I cannot make a decision that I think *may be*, *appears to be*, or *is likely to be*, in the best interests of the community. Rather, my opinion must be that it **is** in the best interests of the community. The onus falls upon the applicant to put forward a credible case.

In determining the best interests of the community in respect of this matter I have weighed the submissions of the applicant and representors, and, where relevant I have obtained statistical information to assist me to evaluate those submissions.

Applicant submissions

Considering the applicant’s submissions first, in seeking to demonstrate that the granting of the application is in the best interests of the community the applicant states that there is an opportunity to start a new business in a vacant premises; that an off-licence will augment the services currently on offer in the shopping strip; and that the proposed bottle shop will be convenient for the local community, saving them the effort of driving to existing liquor

retailers in the municipality. The applicant states that the new store will employ people but does not tell me how many or whether they will be from the local area. The applicant also advises that there will be improvements to the premises (which is in a run-down state) and that he will add security cameras. With respect to the risk of social harms, the applicant says that the socio-economic status of the area has increased over the years and that people residing in the area are responsible. He does not provide me with any evidence of community support for the proposed bottle shop.

Community representations

Turning to the seven individual letters and 46 template letters that comprise the representations, all of which are in objection to the off-licence being granted, the arguments are in essence that:

- the community does not want or need such a business;
- the socio-economic status of the community is such that it has particular vulnerabilities to the harms that come from the misuse of alcohol; and
- the particular location of the applicant's premises is not in the community's best interest as it is immediately adjacent to a block containing community facilities such as a children's playground, community house, skatepark, park, and community hall.

There are also some concerns about increases to crime and drunken behaviour but I am provided with no evidence of this.

I cannot take the two petitions provided as representations in and of themselves as they are directed to the Glenorchy City Council and relate to the planning stage of the proposed off-licence. While the petitions are referred to in the representations of Mrs Evans and the Mayor of Glenorchy as evidence of the level of community concern about the application I can give them little weight.

On the matter of the socio-economic status of the area, the representors say that it is low and research is provided that links such a status to increased risk of harms from the misuse of alcohol. The applicant says that rising house prices in the area and an influx of owner-occupiers and corresponding reduction in government housing evidences a lift in socio-economic status that means the risk of harm from alcohol misuse has decreased. However, I am not satisfied that on its own a measure such as house prices is an accurate indicator of socio-economic status. House prices have increased considerably in the last decade and a half around the nation. Further, if I consider the immediate area around the applicant premises, that is to say the area bound by a line commencing at the intersection of Allunga Road and Boondar Street, then going from Boondar Street up Arunta Crescent, down Beenak Street, down Allunga Road to Coraki Street, then down Corranga Drive to Danina Street and back to the intersection of Boondar Street and Allunga Road, and review the land titles database, I find 117 residential properties (not counting the shopping strip and community facilities), 28 of these are owned or co-owned by the Director of Housing and 16 are owned by persons whose residential address is different to the address of the property. Consequently, I am not satisfied that the change in ownership status argued by the applicant evidences a change in socio-economic status. The SEIFA index that is produced by the Australian Bureau of Statistics following each census is a product that ranks areas in Australia according to relative socio-economic advantage and disadvantage. This is an objective measure of the socio-economic status of an area. Chigwell is ranked in the lowest decile of suburbs in Tasmania on the SEIFA measure, and sits well below the average measure for Tasmanian suburbs. While it is difficult to compare SEIFA results from census to census it is clear that Chigwell has been in the lower decile for some time (I have reviewed the SEIFA results from 2001, 2006 and 2011). I am

satisfied that Chigwell is a community with a lower socio-economic status as argued by the representors and that this is a relevant factor in my considerations.

The Licensing Board of Tasmania, which determined licence applications up until August 2015, has considered a number of off-licence applications that involved significant community opposition. Recent examples are the Ravenswood Cellars application of 2010, Hill St Cellars of 2010, BWS Deloraine of 2011, Ravenswood Duncan's of 2013, and Rokeby Liquor of 2013. In these decisions the Board has taken the views of the local community as a relevant matter for consideration in determining an application. All of these applications were refused. In Hill St Cellars the Board considered that:

“Community may mean those living and working in the locality, or may mean the broader Tasmanian community. It means, we think, in the context of the present legislation, a composite of both. Neither should, when relevant to the issue, be ignored.

The general community has an interest in seeing the orderly development of liquor facilities, and the control of grant, suspension and cancellation of licences. The wishes of the local community ought not to be determinative, necessarily, but will most likely be relevant.”

In the Ravenswood Cellars decision the Board considered that:

“The community’s expression of interest or lack of interest is of relevance. This is not a venture of major State significance. Consequently, it is not something which the Board and the entrepreneur will impose on the local community for the benefits which will arise to the whole community. Whilst liquor licence applications are not ‘beauty contests’ or straw polls, or referenda, the peculiar perspective of the people in the local community is a relevant factor.”

Further, the Board went on to state:

“We do not consider that we should take account of the strong local community opposition irrespective of the cogency of the reasons – but in this case we are obliged to determine the issue taking account of that opposition and the cogency of the reasons behind them.”

The Board provides judicial support for their proposition from the court decision of *Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24* which the Board states gives indication of the proposition that the “likely reaction of the community to the action proposed” is encompassed in relevant factors for consideration in making a discretionary judgement. I take a similar view in this matter to that of the Board with regard to the community’s expression of opposition. That is, I think the community opposition is a relevant matter to be taken into account. While some of the concerns expressed, though genuinely held, are not supported by objective evidence, it is clear that the community does not want an off-licence of the type proposed at the proposed location. Chigwell is a proud community (this was evident from my inspection of the area) and its members feel that such a business is antithetical to the nature of their community and that the proposed location of the bottle shop would change the nature of a part of their community that is focussed on children, families and community support. The community as a collective do not believe that they will be inconvenienced by the absence of such a business. This view is supported by the Glenorchy City Council who have written in opposition and state that there is no need for additional liquor outlets in their municipality. I accept that the community’s views regarding the siting of the proposed bottle shop nearby to the community facilities that are listed above, and their views that the services offered by the proposed bottle shop are already available to them such that the added convenience of such a service in the shopping strip does not outweigh their concerns, coupled with the socio-economic factors that I have discussed above, are cogent arguments and matters that should be taken into account in my determination.

Decision

In weighing the above evidence I am not satisfied that the application is in the best interests of the community and consequently the application is refused.

A handwritten signature in black ink, appearing to read 'J C Root', with a horizontal line extending to the right.

J C Root
Commissioner for Licensing

18 May 2016