

**Application for an Off liquor licence from James Angus Digolis at the premises 9/11 Sandy Bay, Tenancy 1, 2 Churchill Avenue, SANDY BAY, 7005**

**Decision: Licence application is approved**

**Date: 22 June 2020**

**The application**

The applicant seeks authority for the sale of liquor under an off licence. Mr Digolis is the Properties Manager for Vantage Hotel Group Pty Ltd and currently holds eight off licences for the 9/11 chain and one general licence.

Mr Digolis states that the 9/11 Sandy Bay will operate under the 9/11 bottle shops model to provide a safe and convenient means for members of the community to purchase liquor. He submits that the premises intends to trade between 9:00am and 11:00pm seven days a week and there would be no internet sales or home deliveries made from the premises.

With regard to best interests of the community, Mr Digolis states that the operation of the proposed licensed premises will create employment positions for up to ten people (full time and casual positions) together with business opportunities in the community throughout the construction phase. The business will also have a continued community presence through Vantage Hotel's commitment to assisting Tasmanian charities. Mr Digolis states that the business will offer the public an alternative choice for purchasing liquor by providing a safe, easily accessible non-hotel environment, backed up by a strong commitment to the responsible service of alcohol. He further states that the premises will benefit the community by providing good service and competitive pricing.

**Representations**

In accordance with section 23(3) of the *Liquor Licensing Act 1990* (Tas), the applicant gave public notice of the application on 11 January 2020. The representation period ceased on 24 January 2020.

Eight written representations were received. Five representations were from General Practitioners working at the medical practice co-located at the site of the proposed 9/11 (some of whom are residents in the area), one was from a representative of the operator of the medical practice (IPN), one was from the licensee of a nearby premises and the last was a joint representation from two GPs who reside nearby.

Six representations in objection to the application, from GPs and from IPN, covered similar concerns:

- that the presence of an off licence adjacent to the medical practice entrance, particularly a chain off licence with associated discounting and advertisement of liquor promotions, would send a confusing message to patients of the practice, noting that persons adversely affected by alcohol misuse are patients of the practice and any modern medical practice promotes good health and the reduction of harmful levels of alcohol consumption to its patients - in this regard it is said that patients attending for alcohol related health issues may experience unnecessary additional psychological distress. My attention was directed to 4(b)(iii) of the *Liquor Licensing Regulations 2016*;
- that the proximity of the proposed off licence to the University and the Hutchins School would expose younger persons to alcohol advertising;
- that the application was made after GPs, who would not otherwise have agreed to be co-located with an off licence, had committed to the practice; and

- that there are sufficient off licences in the local area to meet the needs of the community.

One representation stated no objection to the application. This was from a GP operating in the medical practice who saw little risk of detriment from the operation of an off licence in the building, and no likelihood of adverse impact on minors or patients of the practice.

The licensee of the Globe Hotel objects to the application on the grounds that it would offend section 25A of the Act. Matters relating to parking are raised and an alleged reduction in the size of the Hill St Grocer premises. However with respect to the former, this is not a relevant consideration and the latter objection is misconceived, as the applicant's premises is currently vacant and not used for the Hill St Grocer.

### **Response to representations**

The applicant was invited to provide a response to the submissions prior to a decision being made on the application. As Mr Digolis was unavailable within the response period, Mr Martin Kelly, General Manager of Vantage Hotel Group Pty Ltd, provided a detailed response on behalf of Mr Digolis.

Mr Kelly reiterated the applicant's reasoning as to why the application was in the best interests of the community, addressed the concerns raised by the representations and provided examples of off licensed premises in proximity to medical service providers. Mr Kelly made reference to the interpretation of the term "community" (Rokeby Liquor 2013 and BWS Port Sorell 2013 decisions). The Board stated that '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'. Mr Kelly states that while the Vantage Hotel Group appreciates that the persons who made representations hold genuine concerns for their patients and alcohol related harms, these views are not representative of the community as a whole. Mr Kelly brought my attention to the fact that the area around the applicant's premises is one of socio-economic advantage, not disadvantage.

### **Further inquiries undertaken**

In response to concerns of the representors, I wrote to the Vice Chancellor of the University of Tasmania to ensure that any concerns the University might have regarding the presence of an off licence could be considered. The University advised that it would not be making a submission. I am satisfied that it therefore has no concerns regarding the application.

I spoke to Ms Hunt, IPN State Manager, to better understand the concerns of the GP practice.

Ms Hunt confirmed that her original understanding was that when IPN entered into an agreement with the landlord, the premises subject to the application would be a pharmacy. She stated that IPN and the majority of practitioners at the location were concerned that the proposed liquor outlet and associated marketing located right outside the ground floor entry door to the medical practice would send mixed messages to patients. She said that IPN would not have moved to the location if it had known that this type of business would be there. The shared doorway is the difficulty and, were the application to be granted, some of the practitioners would feel obliged to move their practice elsewhere. This would have a direct business impact for IPN as it is a service provider to the doctors who utilise the practice. The financial impact would be substantial for IPN and GPs would have to be replaced.

### **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 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 24A**

Section 24A of the Act states at (1) that:

“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.”

The term “best interests of the community” has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*).

Regulation 4 provides:

### **4. Best interests of the community**

For the purposes of the definition of *best interests of the community* in section 3 of the Act, the following interests are prescribed:

- (a) the general costs and benefits to the community of the supply, or proposed supply, of liquor;
- (b) whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –
  - (i) reside or work; or
  - (ii) attend schools or other facilities frequented by children; or
  - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
  - (iv) attend places of worship;
- (c) possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor.

I am satisfied on the evidence provided that the consideration of the interest prescribed at 4(a) of the *Liquor Licensing Regulations 2016* is relevant to the determination of the application. With regard to 4(b), under which parts (i) and (ii) by inference, and (iii) directly, were brought to my attention, I have considered it in my determination.

The context for the consideration of the best interests of the community is provided by the Object of the Act which is defined at section 2A in the following terms:

- 1) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –
  - (a) minimise harm arising from the misuse of liquor by –
    - (i) ensuring that the supply of liquor is carried out in a way that is in the best interests of the community and does not, as far as practicable, detract from public amenity; and
    - (ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and
    - (iii) encouraging a culture of responsible consumption of liquor; and

- (b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the best interests of the community.

With respect to the objections raised in representations, the applicant is correct to note that the interests of the community considered under the Act are the interests of the broader Tasmanian community, rather than being restricted to a local community group, though it is important to note that local community interests are relevant to any evaluation of the broader Tasmanian community interest. It is also important to note that individual, or private, interests are not generally a relevant consideration. In this regard I am not satisfied that any financial impact on the medical practice that might occur is a relevant matter, nor is the fact that the expectations of the practice or its GPs as to the planned occupation of the applicant's premises (being that of a pharmacy) were not in accord with the proposal to operate an off licence.

With regard to objections relating to the proximity of a school (relevant to 4(b)(ii) of the Regulation) and of the University, no representation was provided by the neighbouring school, notwithstanding that the applicant brought the matter to the school's attention, and no representation was received by any parent of a child attending the school. Further, the University raised no objection, notwithstanding I brought the matter to their attention and sought comment.

I am satisfied that the proximity of the applicant's premises to the IPN practice, given that it is usual for such a practice to treat persons adversely affected by alcohol misuse, is a relevant matter. In this regard two matters are raised - that the presence of the off licence would send a confusing message to patients, and that persons specifically attending for the treatment of alcohol misuse may suffer unnecessary psychological distress.

The IPN practice accommodates up to 19 practitioners. The website at the time of making this determination listed 15 doctors practicing from the site. Four GPs practicing at the site and the IPN state manager objected to the proximity of the off licence. One GP practicing at the site did not consider that the proximity would cause any adverse effect.

The applicant, in rebutting the objections, gave eleven examples of GP practices in proximity to off licence premises, stating that the practices in the examples both pre-existed and followed the installation of the relevant off licence. The applicant contends that this evidences little concern by other GPs to the presence of an off licence in the proximity of their practices.

I have not been provided with any evidence, in this case or previously, of harm in relation to the proximity of GP practices to off licence premises. I note, however that this case is unusual to the extent that access to the IPN practice requires the patient to pass the proposed off licence, or, if entering the stairs or lift from the Hill St Grocer entrance, to pass near to the entry to the proposed off licence.

I received no representations from existing or prospective patients of the practice, or from any persons working at the site (for example in the grocer or the café) other than in the IPN practice.

Finally, the concerns raised by objectors relate directly to the presence of a stand-alone off licence, rather than to the sale of liquor in the building generally. In this regard the Hill St Grocer that is located beneath the IPN practice had previously applied for a liquor licence that was rejected as the premises was determined to be a supermarket - I received no objections to that application that related to the presence of the GP practice.

Section 24A of the Act states at (2) that:

“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.”

I am satisfied, on the evidence provided, that this will be the case.

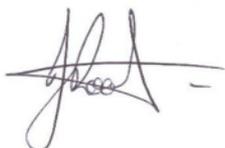
### **Section 25A**

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.” One of the representations objects to the granting of the licence applied for on the basis that it would offend section 25A of the Act. In this regard the representor alleges that the premises forms part of the Hill St Grocer. The applicant’s premises, while part of the same building as the Hill St Grocer, which I have previously (Hill St Sandy Bay 2019) determined to be a supermarket, is a separate premises to that of the Hill St Grocer. I have previously determined that merely being in the same building as a supermarket is not sufficient to bring section 25A into operation (see for example Forth Village Bottleshop 2016). Consequently I am satisfied that this application does not offend section 25A of the Act.

### **Decision**

In balancing the costs and benefits to the community of the application I have considered the evidence, including that provided by the applicant and the representors, as set out above. While it is clear that a number of the representors have genuine and strongly held views that the presence of an off licence in proximity to their practice would be detrimental, I am not satisfied on the evidence that any offence, annoyance, disturbance or inconvenience, given the nature of the premises, could be said to be undue, and consequently I am not satisfied that granting the licence applied for would offend section 4(b) of the regulation.

The off licence application is approved.

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

JC Root  
Commissioner for Licensing

22 June 2020