

Application by Terence Michael Bennett for a special licence for the premises Caltex Moonah, 200 Main Road, MOONAH, 7009.

Decision: Licence application refused

Date: 5 May 2020

The application

The applicant seeks authority for the sale of liquor limited to Tasmanian wine, spirits and liqueurs and Tasmanian made and brewed beer produced from Tasmanian owned breweries, as approved by the Commissioner for Licensing.

Mr Bennett initially applied for an off liquor licence however following discussion with the Liquor and Gaming Branch, Mr Bennett determined that the sale of liquor was not the principal activity at the premises and therefore section 24A(2) of the *Liquor Licensing Act 1990* could not be satisfied. Mr Bennett subsequently requested to change the category of licence applied for to a Special liquor licence and the application has proceeded accordingly.

The premises is a service station that operates 24 hours a day, seven days a week selling petrol, hot takeaway food, drinks and limited convenience goods along with various car accessories. Mr Bennett provides that the location of liquor will be at the rear of the store, against a wall that ensures a substantial separation from all confectionary and other products normally associated with minors. Mr Bennett states that there will be chilled lockable fridges and a lockable spirits cabinet will be utilised.

In regards to the best interests of the community, Mr Bennett submits that the application will support industry development and employment creation by adding another opportunity for local suppliers to retail their product in the northern suburbs of Hobart. Mr Bennett submits that there is no other retailer in the municipality of Glenorchy that is a retailer of Tasmanian only liquor.

Mr Bennett has stated that he wants to add Tasmanian alcohol only to promote Tasmanian producers and to assist them in getting market exposure they cannot afford to do through bottle shop chains. Mr Bennett also states that contingent on continued growth outcomes, there is significant potential for additional jobs at Caltex Moonah and that the responsible expansion of the Tasmanian liquor industry will have a positive impact on the economy.

Representations

In accordance with section 23(3) the applicant made a public notice of the application on 8 February 2020.

Three written representations to the Commissioner were made in respect of this application.

- I. A representation was received from Dr Adrian Reynolds, an addiction medicine specialist. Dr Reynolds is the Clinical Director of the Tasmanian state wide Alcohol and Drug Service and is the immediate Past President of the Chapter of Addiction Medicine, Royal Australasian College of Physicians. Dr Reynolds objected to the grant of the liquor licence and submits the following:
 - Tasmania faces serious public health and social problems related to dysfunctional, hazardous, harmful and unsanctioned drinking. In order to address this problem, per capita consumption should reduce, as should risky drinking among certain vulnerable groups such as adolescents, young adults and pregnant women and reduce drinking in risky contexts such as when driving and when at work.

- The sale of liquor as described in the application would create another barrier to improving public health and safety outcomes, and if granted, will add to a wrong directed and inexorable momentum towards ever increasing access to and consequential increased drinking in the community.
 - The proposal to sell liquor at the service station is of particular concern as it may create a precedent leading to a wave of service station applications seeking to profit off packaged liquor sales.
 - Making alcohol available for sale in a service station would take access and product promotion to another level. It is an entirely different matter in relation to human behaviour, having to intentionally travel in a car or by other means to a retail outlet designed specifically to sell alcohol, compared to entering a service station to purchase petrol or other related products and seeing alcohol products sitting there right in front of customers.
 - Product placement of alcohol sitting at the checkout or alongside sweets and pies and cigarettes and other goods in a service station, will encourage spontaneous alcohol purchases where purchases would not otherwise occur, once again emphasising the importance of access as one of the three key determinants of purchase and consumption decisions.
2. A representation was received from the CEO of the Tasmanian Hospitality Association (THA) objecting to the grant of the application on the following grounds:
- The liquor licence application is in direct conflict with the best interests of the community and will ultimately only serve to increase the revenue of the applicant, at a significant cost to the community with no identified or discernible benefit.
 - LIST Map identifies that in 2016 the second lowest socio-economically disadvantaged group of the Tasmanian population resides between Moonah and Claremont. Increasing accessibility to liquor in a socio-economically disadvantaged area with 24 hours a day, seven days a week accessibility is contrary to the best interests of the community particularly in circumstances where two of the only alcohol rehabilitation services in Southern Tasmania are within a two kilometre radius of the premises in the licence application.
 - The proposed licensed premises is located within close proximity of a number of rehabilitation services for alcohol abuse/alcoholism. The THA identifies that the Health Alcohol and Drug Service is located less than two kilometres away at St Johns Park, New Town which treats patients suffering from alcoholism, including intensive treatment required for patients withdrawing from prolonged alcohol abuse. The THA also states that the Salvation Army Bridge Treatment and Recovery Services Support and Specialist Care is located two kilometres away at 26 Creek Road New Town, and operates as a residential rehabilitation for alcoholics and drug addicts, providing holistic support to patients seeking to overcome addiction.
 - The possible adverse effect of relapse or exacerbation of alcohol abuse experienced by vulnerable members of the community due to the 24 hours a day, seven days a week availability of liquor in a very close proximity outweighs any possible benefit to the community from granting the applicant's licence application.

- Irrespective of the type of licence sought by the applicant, the exclusive sale of Tasmanian wines, spirits and liquors does not address the issues raised in this representation.
 - The application promotes undesirable liquor consumption. The THA considers that the application does not provide sufficient particulars of the site plan, the proposed location for the sale of liquor or any restriction on access to the area by young people or intoxicated people save for separation from confectionary without any reference to the actual distance. Given the applicant's principal business activity is the sale of petroleum and other goods, should the licence application be granted people under the age of 18 will have access to areas connected with the promotion, presence and sale of liquor. The THA submits that the accessibility of liquor and promotion of liquor is in direct opposition with promoting responsible alcohol consumption to young people and the community generally.
 - There are a high volume of off liquor licences within a five kilometre radius of the applicant's premises, namely:
 - BWS Moonah is located 280 metres from the applicant's premises;
 - 9/11 Bottleshop Valern is located one kilometre from the applicant's premises;
 - Cooleys Hotel Bottleshop is one kilometre from the applicant's premises;
 - Steve's Liquor Derwent Park is 1.2 kilometres from the applicant's premises; and
 - Dan Murphy's Bottle Shop is 2.1 kilometres from the applicant's premises.
3. The third representation was received from Dr Jackie Hallam, Acting CEO of the Alcohol, Tobacco and other Drugs Council (ATDC) against the grant of the liquor licence and submitting the following:
- Alcohol is, by a large margin, and both historically and currently, the primary drug of concern for people that seek treatment and support in Tasmania.
 - More Tasmanians drink at risky levels than the Australian average. Alcohol contributes to ill health and premature death of many Tasmanians and that a proportion of this can be prevented by sensible evidence based public policy.
 - The selling of alcohol and the advertising and promotion of the product in a service station will further increase the normalisation of alcohol use in the community and that this is a contributor to alcohol related harm as noted above. The ATDC questions if the selling of alcohol in a place where children (defined as under 18) frequent is appropriate and, as such, is in the 'best interests of the community'.
 - Of particular concern with this licence application is the exposure to alcohol advertising and marketing to children. A substantial body of evidence claims that children are exposed to thousands of images of alcohol by the time they reach 18 and that this exposure can lead to some drinking earlier and at hazardous levels.

Applicant's response to representations

Mr Bennett was provided a copy of the representations and offered the opportunity to respond to the concerns raised. In response to the representations, Mr Bennett responded that:

- The liquor licence category applied for has been changed from an Off Licence to a Special licence, as the primary activity of the premises is the sale of petroleum and not liquor.
- Between 12:00 a.m. and 5:00 a.m. liquor is not be sold, but rather stored away in lockable fridges and cabinets.
- The distance between the rear wall liquor location and confectionary will be a minimum of six metres.
- Caltex Moonah employees and senior management of Bennett's Petroleum Pty Ltd will have access to live CCTV, both on and offsite.
- The intention is to only sell Tasmanian liquor for consumption off the premises, to the Northern suburbs of Hobart.
- It is Mr Bennett's main priority to ensure the safety of employees, customers and the local community - while supporting the responsible expansion of the Tasmanian liquor industry.

Mr Bennett has been notified of section 65 of the Act which holds that outside of the hours authorised under the liquor licence, customers would not be allowed to enter or remain on the premises at Caltex Moonah for any purpose, even if the liquor is stored away and not available for sale. Mr Bennett responded acknowledging that he understood the requirements of section 65 and would like to sell liquor 24 hours a day, seven days a week, in accordance with the service station trading hours.

Legislative considerations

The primary matters to be considered for this licence application are to be found in sections 22, and 24A of the *Liquor Licensing Act 1990*.

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 relevant consideration is that of the balance between the general cost and benefits to the community of the proposed supply of liquor. The context for this consideration 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.

In balancing the general costs and benefits to the community it is relevant that previous Board and Commissioner decisions (eg Fresco, Sandy Bay 2011, Salamanca Fresh Davey Street 2013, Augustus Chocolates 2018, Mount Nelson General Store 2019 and TCM Market 2019) regarding special licence applications have been clear: the community's best interests are not served by all retail outlets adding liquor to their collateral as a matter of convenience or to increase their revenue base.

To be granted a special licence of this type an applicant must demonstrate that the premises are not just any other retail store and that special conditions exist that make it in the best interests of the community that a special licence be granted. Integral to this is a requirement to ensure that the structure of licence categories is not subverted by the artificial use of the special licence category to overcome limitations or prohibitions attached to the other categories, and thereby to defeat the purpose of Parliament in establishing the categories.

The Parliament has expressed its requirement for premises that provide off sales of liquor in section 24A(2) of the Act:

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.

This requirement is clearly not met by the premises that is the subject of this application, with the result that the applicant changed the licence type applied for from an off licence to a special licence once it became apparent to him that his proposed business model offended the Act.

Avoiding the legislated requirement for a licence for the sale of liquor for consumption off the premises in fact requires that special conditions exist such that it is in the best interests

of the community to allow for such a thing (see for example Salamanca Fresh 2005, Mount Nelson General Store 2019, TCM Market 2019). I am not satisfied that any special conditions apply in this case. There is no evidence that Tasmanian liquor is not available in the local area, or that there will be any community benefit from the granting of the licence applied for. The Glenorchy Municipality has 20 premises that are either off or general licensed premises, and there are a further three premises that are special licensed premises that allow for either the exclusive sale of Tasmanian liquor (Kosta's Fresh Produce, Austins Ferry Store), or of Tasmanian and Polish liquor (Ziggy's).

In determining that the applicant has failed to satisfy me that special conditions exist to support the granting of the licence applied for (the onus is on the applicant to satisfy me of this) I have taken in to account the relevant matters raised in representations objecting to the application as set out above. Further, I have considered the costs to the community of allowing the sale of liquor 24 hours a day, 7 days per week. In my decision of THETAH Bottle Shop (2019), in the adjacent suburb of New Town (with similar proximity to sensitive community facilities), I considered the community costs of expanding the accessibility of liquor in such a way (ie to 24x7), and I am satisfied that the concerns identified in that decision, which led to my refusal of the application for a 24x7 bottle shop, are relevant here.

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. As I have determined not to grant the licence as I am not satisfied that it is in the best interests of the community to do so, I have not determined whether the applicant is qualified in accordance with section 22.

Decision

The special licence application is refused.

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

JC Root
Commissioner for Licensing

5 May 2020