

Application by James Scott-Mackenzie for an off-licence for the premises at 10 Percy Street Bellerive, to be known as Dan Murphy's Bellerive.

Decision: Licence granted

Date: 3 December 2021

The application

The applicant seeks authority for the sale of liquor under an off-licence from a premises at 10 Percy Street Bellerive that will trade as an Endeavour Group Dan Murphy's store.

King & Wood Mallesons (KWM), on behalf of the applicant, advises that the proposed store would occupy the tenancy previously operated as an indoor sports stadium. It would not include the adjoining tenancy currently operating as a health and fitness club. It would have a retail trading area of approximately 957 square metres and would trade no earlier than 9 am and close no later than 9 pm. The construction and fit out cost is estimated to be \$2 million to \$2.5 million.

KWM submits that the grant of the licence would be in the best interests of the community for the following reasons:

- **Safety** - All staff who are involved in the selling of liquor or in the supervision of liquor sales, would undergo extensive RSA training. Endeavour Group charters have a specific focus on minimising liquor harms. Copies of the charters were included as part of the licence application as evidence of the organisation's commitment in this regard.
- **Security** - A comprehensive CCTV system would operate. Usually no fewer than three staff would be on duty at any one time to provide customer service and customer monitoring activities.
- **Qualifications** - The applicant meets these requirements. If the licence is obtained, the intention is to transfer it to a store manager prior to the premises opening.
- **Amenity impacts and consumer experience** - The proposed off-licence would offer an extensive range of over 4 500 quality liquor products; be modern, safe and clean; provide increased choice, prices favourable to consumers and continuity of supply; provide increased competition and convenience; and provide a lighter more open and less threatening alternative to smaller stores and hotel walk-ins. KWM submits that a Woolworths Group survey has shown that Dan Murphy's stores attract older and more affluent customers than other liquor stores, with two thirds of customers being over the age of 35 years, attracted by factors such as product range, ambience, safety, service, store layout and cleanliness.
- **Car parking, traffic and planning permit** - No adverse or detrimental impacts on car parking or traffic are expected. Ample car parking would be provided (38 spaces). The Clarence City Council has granted a planning permit.
- **Trade catchment area and demographics** - Demographic and socio-economic statistics, and existing licensed premises numbers were submitted to support the proposition that there would be no adverse impact on people living in the area.

- **Business and employment** - The fit out of the premises would generate employment and when open approximately five full-time and up to 20 part-time/casual staff would be employed.
- **Site improvement** - The premises would utilise a currently vacant site and provide a service to the local community and the travelling public.
- **Potential flow-on effects** - The premises would continue to revitalise the surrounding area and increase the potential for further development and employment in the immediate surrounds.

Finally, KWM suggests that section 25A of the *Liquor Licensing Act 1990*, which requires that a licence not be granted in connection with the activities of a supermarket, is not relevant to the application.

Representations

Six representations were received, five from members of the public and one from the Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC). All opposed the grant of the licence. Individuals raised concerns relating to:

- already having sufficient (or too many) liquor outlets in the area;
- hours of operation being 5am until midnight;
- prominent advertising contributing to the normalisation of alcohol to children;
- location being inappropriate given its close proximity to residential dwellings;
- increased traffic on a street already busy with vehicle and pedestrian traffic (including children walking to and from school), without provisions made to improve safety on the street at the site;
- potential for alternative businesses in the space to provide a more positive community impact; and
- competition created for existing businesses in the area.

The ATDC's reasons for objecting to the proposal include the following additional points:

- more Tasmanians drink at risky levels than the Australian average (referencing the National Health and Medical Research Council's *Australian Guidelines to reduce health risks from drinking alcohol*);
- alcohol is the primary drug of concern for people who seek treatment and support in Tasmania;
- alcohol contributes to the ill health and premature death of many Tasmanians, a proportion of which could be prevented by sensible evidence-based public policy;
- given the size of the community and the number of existing bottle shops in the area, the chances of community harm would likely increase; and
- a substantial body of evidence claims that children are exposed to thousands of images of alcohol by the time they reach 18 years and that this exposure means that they drink earlier and drink at hazardous levels.

The ATDC raises concerns about the lack of a process to determine the 'tipping point' at which outlet density/alcohol availability in a given area has the potential to generate

community harm. It notes that restricting the availability of retailed alcohol is a cost effective intervention recommended by the World Health Organisation. The ATDC refers to a data modelling tool developed specifically in relation to forecasting alcohol harms in Tasmania. It recommends that I seek clarification from the Department of Health regarding the status of this work.

Applicant's response to representations

The applicant was given the opportunity to provide a written response to the representations. KWM, on behalf of the applicant, submitted a report (Abery Report) prepared by Mr Chris Abery (a consultant with expertise in market analysis and property economics) and a submission addressing both the Abery Report and the substance of the representations. Taking these together, the key points in response to the concerns raised in the representations are summarised below:

- **Outlet density, consumption and harm** - No evidence is provided that either the local area or the catchment area has an excessive density of liquor stores; that the proposal will lead to an increase in the community's overall consumption of alcohol; or that the community has existing issues or is particularly vulnerable to harm from alcohol. Points include:
 - Based on the average population per existing licence by local government area, Clarence has a relatively low density compared with Glenorchy and Kingborough.
 - The theory that more supply in larger bulk outlets leads to more consumption due to cheaper prices and more harm, is unproven. If correct, no further liquor licences would be granted. Based on Australian Bureau of Statistics and Endeavour Group data, the number of liquor licences has little effect on the level of consumption.
 - Socio-economic data for Bellerive is positive relative to Greater Hobart and Tasmania.
 - Customers in the local area are well-educated and informed. They may change their behaviour by shopping at the proposed premises and taking advantage of the range/price compared to other outlets. However, if customers 'stock up', they generally buy more of a product per visit, but on a less frequent basis. Overall liquor sales on the Eastern Shore are unlikely to grow significantly.
 - The operating hours sought are less than those allowed under the planning permit or under an off-licence and support a retail style offering.
 - The proposed premises would focus on providing a wider range of products to enhance choice, rather than lower cost items.
- **Competition** - Existing premises and the proposed premises can viably co-exist given the catchment area and relative low density of existing licences. Previous liquor licence decisions indicate that the prospect of competition is not a ground for refusal of a new application. A wide product range and competitive pricing benefits consumers. No representations were received on the proposal from existing licensees.

- **Advertising/promotion and impact on children** - Education should be the focus for ensuring children make responsible choices. Endeavour Group has a specific and real focus on education, RSA and harm minimisation, evidenced in its community charters. The proposed external signage would not overtly promote liquor, but subtly and simply communicate the brand to adult customers. There would not be any external sign boards or display areas advertising specials or promotions. Store customers would blend into the busy area. No evidence is provided that the proposal or its signage would make it more difficult for parents to instil a responsible attitude towards alcohol in their children.
- **Area amenity and safety** - Any matters or potential amenity effects were properly considered by the Clarence City Council during the comprehensive permit application process and dealt with through conditions on the permit. Ample car parking would be provided. The conversion of the building would be no larger or more prominent than the existing structure and would be more visually appealing.
- **A sporting facility being replaced by a liquor shop** - The sports centre closed due to the coronavirus public health restrictions and consequent uncertainty around renewing a long-term lease. As an ageing and warehouse-style building its usage is limited, other than a conversion to retail use. Developing the vacant site would continue to revitalise the surrounding area and increase the potential for further development and employment.

Legislative considerations

The primary matters to be considered for a licence application of this type 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:

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.

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.

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

Section 25A

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.” I am satisfied that the proposed off-licence will not be operated in connection with the activities of a supermarket.

General considerations

A number of matters are raised in representations opposing the granting of the licence. The ATDC submission raises the matter of outlet density and alcohol availability:

“Of great concern is the lack of a process that takes into account Tasmanian jurisdictional information that would determine the tipping point at which outlet density/alcohol availability generally (e.g. opening hours) in a given area has the potential to generate harm for the community.”

Determination of such a tipping point is challenging and, as the ATDC submission suggests, there is no established process to do so. I have previously considered research on liquor licence concentrations and the occurrence of assaults¹ in relation to this question, and that research suggests that higher liquor outlet concentrations than would result from granting this licence are required before there is a clear risk of escalating harm.

In response to the ATDC's representation, I made inquiries with the Department of Health as to the status of the dynamic simulation model to reduce alcohol-related harms in Tasmania. Specifically I sought to understand whether it could predict any effect on the level of alcohol-related harm in Bellerive and the surrounding area, should the licence be granted. I was advised that this was not possible as the model does not contain that level of data. The model considers alcohol harm at a population level rather than a localised level and looks at reducing the rate of growth of general, on and off-licences. That reducing availability of liquor at a population-level has positive outcomes is clear, however that does not greatly assist in deciding an application at a particular premises in a particular local area.

The issue of competition with existing premises is raised. Both the Commission and myself have addressed this in other decisions (for example *Smithton Cellars 2019*, *Dan Murphy's Launceston 2016*), noting that the purpose of the Act is not to act as a barrier to competition, or to favour existing licensees over new ones.

Traffic issues are raised. These are generally matters for Council and would have been properly considered by Council in granting the planning permit. I have not been provided with any evidence to suggest that the Council's assessment has been wrong and I am not satisfied that the presence of an off-licence would lead to more parking or traffic issues than the use of the premises for some other commercial purpose.

A number of representations raised the issue of the proximity of the proposed premises to residences and schools. The premises is not unusual in that, many off-licence premises are located in shopping precincts within residential areas and I am not presented with any specific evidence as to why this premises, were the licence granted, would present a greater cost to the community than any similar premises currently operating, or indeed that particular off-licence premises currently operating have led to identifiable harms that might be relevant considerations in this matter. I have previously refused to grant an off-licence due to its location in a residential area of social disadvantage (*Chigwell 2016*) and considerable opposition from the local community, however I note in this regard the applicant's evidence that:


"The profile of the broad Bellerive catchment area is similar to Greater Hobart. Average household income levels are 13% above the Tasmania average (balance Hobart +11%) and unemployment levels are lower. The area is slightly older with residents having lived in their own homes for longer and the overseas born population is low at just 9% (other Hobart 16%). The SEIFA index for the Bellerive catchment is positive at 976 against the balance of Greater Hobart (973) and Tasmania (942)."

In considering the costs and benefits set out above, I am satisfied that granting of the licence is in the best interests of the community.

¹ NSW Bureau of Crime Statistics and Research, *Contemporary issues in Crime and Justice* Number 181, December 2014, "The effect of liquor licence concentrations in local areas on rates of assault in NSW"

Decision

The licence is granted.

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

3 December 2021