

Application by Michael Frederick Langdon at the premises Evandale Providore, 16 Russell Street, EVANDALE, 7212.

Decision: Licence refused

Date: 13 May 2021

The application

The applicant seeks authority for the sale of liquor under a Special licence limited to Tasmanian liquor products for consumption off the premises.

With respect to best interests of the community the applicant submits the grant of the liquor licence will provide a venue to showcase Tasmanian fine foods and liquor not currently available locally or near Evandale; will provide additional employment; will provide a further point of interest to tourists and create another drawcard to visit the town; will assist to promote Tasmanian products, entrepreneurs and the economic viability of locals, the region and the state; and will provide a venue to enable tourists to purchase packaged alcohol to enjoy at their accommodation with their meal.

In addition, the applicant submits there would be no potential adverse effect on Evandale's public amenity as it is the intent for Evandale Providore to work in the best interests of the community where there is a reliance on tourism as a major contributor to the local economy.

The applicant states that:

- Evandale General Store is currently being converted into Evandale Providore, to enable it to provide as broad a range of Tasmania products as possible to showcase and sell to both locals and the tourists.
- The Providore will have a small Café where customers will be able to purchase hot drinks, such as tea and coffee and soft drinks with pastries, cakes, sandwiches, tasting plates and hampers.
- There will be screens around the Providore featuring the farming families who produce these products as well as audio-visuals of the farm or the local people playing.
- The Providore is also home to Evandale's Post Office.
- As a National Trust-classified village, Evandale is very popular with tourists,
- There are a large number of bed & breakfast and holiday house type of accommodation in Evandale, catering for tourists.
- There are a large number of Bed & Breakfast houses and holiday units in Evandale catering for the large tourist population. The sale of alcohol at Evandale Providore will enable these tourists to be able to purchase packaged alcohol, such as a bottle of wine, to enjoy at their residence with their meal.
- The National Trust-listed estates of Clarendon, Brickendon and Woolmers are all within 15 minutes of Evandale, therefore, adding to the flow of tourists through the town.
- By showcasing the liquor produced in the region and more broadly in Tasmania, the Providore will provide something else of interest for the tourist who is already visiting Evandale, it will also create a drawcard and another purpose for tourists to visit the town.

The applicant provided me with architectural drawings of the proposed refurbishment and extension and stated that the work is budgeted to cost \$300,000. The applicant estimates that the expanded Providore will double the number of people currently employed – from 5 staff to 10 employees. These roles will be in customer service and hospitality.

Representations

I did not receive any written representations in relation to this application.

Legislative considerations

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

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 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:

- l) 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 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 premises is not a supermarket.

General considerations

In balancing the general costs and benefits to the community, it is relevant to consider previous decisions of the Licensing Board, the Tasmanian Liquor and Gaming Commission and myself regarding special licence applications for the sale of liquor for consumption off the premises. In its recent decision on an application appealing my decision regarding the Log Cabin General Store (2021), the Commission wrote:

49. As the Commissioner, the Commission and the Licensing Board have stated on many occasions, the community’s best interests are not served by retail outlets adding liquor to their collateral as a matter of convenience or to increase revenue. There must exist some special circumstances to allow the granting of a liquor licence to these outlets.

To be granted a licence of this type, an applicant must demonstrate that the premises is 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 the 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, which is (at the time of application) a general store, lottery agent and post office, selling a typical range of items found in a small community general store. Consequently, special conditions must exist that place it in the best interests of the community to grant the special licence. The onus is on the applicant to satisfy me of this.

The applicant relies on the existence of a tourist industry in Evandale to support his claim that special circumstances exist justifying the granting of the licence. In this regard he states that the store will provide tourists staying nearby a place to purchase liquor to consume at their accommodation, and that showcasing Tasmanian wine not available elsewhere may provide a drawcard for tourists to visit and support the Tasmanian liquor industry.

The Commission has recently considered (on appeal) an application (Log Cabin General Store) that argued similar special circumstances. The Commission made the following remarks of relevance to this application:

23. The Commission has made previous determinations (for example, Asian Town 2020) regarding the availability (or lack) of the full range of liquor products, and that it does not accept that every individual demand for different types (or brands) of products needs to be satisfied. As explained in that decision, the Commission's strong view is that the system of licensing in Tasmania does not contemplate a regime where individual demand for a particular type or brand of product that is not currently available at a particular outlet or outlets will result in a special licence being granted for that product to a new entrant.

Further:

29. The Commission acknowledges that Bicheno is located on the attractive Tasmanian east coast. It accepts that tourists might see it as a destination and it is certainly true that they would pass through it on their way to more well-known tourist destinations such Freycinet National Park or points further north like the Bay of Fires. However, location in a "tourist town" is not a determinative factor alone in the granting of a special licence.

and

50. The Log Cabin General Store is situated in a town that is frequented by tourists, not all of whom are from outside Tasmania. That visitors stay or pass through the town and visit this store cannot in the Commission's view provide the special circumstances referred to above. The purchase of alcohol would appear to be incidental, made for convenience rather than a "wine experience" when the specialty The Farm Shed East Coast Wine Centre is very close by and the area is served by many local destination vineyards.

51. That this store offers for sale a small range of Tasmanian products and services amongst other general products does not make it a specialty Tasmanian produce store.

The sale of Tasmanian liquor in and of itself does not constitute a special circumstance requiring the granting of a licence such as this. Careful consideration must be given balancing benefits that might accrue to local industry against the risk of offending competition and free trade principles¹ and restricting community access to a broad range of liquor products.

There are two general licensed premises nearby, one of which provides off sales. I am therefore satisfied that liquor products are accessible in the vicinity of the premises, such that

¹ For example, restricting the sale of wine in Canadian grocery stores to locally produced wine is the subject of a current trade dispute between Australia and Canada
https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds537_e.htm

convenience or lack of access to particular liquor products is not a strong argument to grant the licence.

There may be private benefits to the applicant as a result of incorporating Tasmanian liquor products into his stock, as well as to a small number of producers in having an additional outlet for their products. These, however, are private rather than community benefits. I am not satisfied that the additional employment suggested by the applicant is entirely contingent on the sale of liquor, rather it seems to be predominantly a result of the expansion of the general store into a providore with café.

The applicant did not provide me with evidence in support of his application, such as submissions from consumers, visitors or local producers.

Costs to the community accrue through increasing the ease of access to alcohol which is known to lead to increased consumption and alcohol-related harm. In this regard the Commission's considerations in the Log Cabin General Store decision are relevant here:

18. It has long been recognised that alcohol consumption in Australia is a serious health issue. The Tasmanian drug strategy 2013-2018 records that about half the Tasmanian population exceeds the single occasion risk guideline for consuming alcohol (more than four standard drinks on any one occasion), and this rate has not changed significantly over the last six years (ABS 2019).

19. The National Alcohol Strategy 2019-2028 identifies that:

- one quarter of Australians are drinking at risky levels;
- 10 – 15% of emergency department presentations are alcohol related;
- 25% of all frontline police officers' time is taken by alcohol-related crime;
- 25% of all road fatalities can be attributed to drink driving;
- alcohol was involved in 34% of intimate partner violence incidents and 29% of family violence incidents;
- alcohol is a leading cause of drug-related death, with more than 4000 deaths estimated to be attributed to alcohol in any year; and
- alcohol was the most common form of drug of concern for people accessing specialist treatment in 2017-2018, accounting for 35 % of episodes.

20. The Commission notes these publicly available statistics to demonstrate one part of the "general costs" aspect of the "best interests" test. This also is a very good reason why the supply of alcohol in Tasmania is regulated in the manner it is. The Commission mentions this to re-enforce that it is not just the benefit to the specific community that must be factored into this balancing exercise, and also that alcohol is not just another product in a retailer's lines.

The normalisation of community use of alcohol, in particular through increasing the exposure of children to alcohol products, contributes to harmful outcomes. I note in the latter regard that it would not be practical, because of the nature of the store, to designate the premises restricted in accordance with section 84(2) of the Act as is normal practice for off licence premises, consequently particular care needs to be taken in granting special licences such as that applied for.

Taking into account the arguments presented by the applicant and the matters discussed above, I am not satisfied that special conditions exist to support the grant of the licence.

Decision

The special licence is refused.

A handwritten signature in black ink, appearing to read 'JC Root', with a horizontal line drawn through it.

JC Root
Commissioner for Licensing

13 May 2021