

Application by Shannon Mark Umgeher at the premises Murdunna Roadhouse, 4050 Arthur Highway, MURDUNNA, 7178.

Decision: Licence refused

Date: 24 June 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.

The applicant states that:

- the premises is convenience store, a small local business within the Tasman Municipality serving the community of Murdunna, the Tasman Peninsula and a high volume of travelling and overnight tourists as it is situated on one of Tasmanian's premier tourist highways;
- the users of the Port Arthur Historic Site, Pennicott's Tasman Peninsula Ocean Adventures, the Stewart's Bay Holiday Homes, Fortescue Bay Camping Grounds, Three Capes Tracks and many short-stay accommodation premises present as frequent consumers of his goods and services;
- the purpose of applying for the licence is to provide a safe and convenient means for members of the local community and tourists to purchase Tasmanian liquor from the premises;
- the granting of a special licence would be in the interests of the public in that it will meet the need of tourists and locals wishing to purchase a limited range of Tasmanian liquor products;
- liquor would be a minor component of the business, approximately 1 to 2 per cent of total sales revenue, and would be sold with an emphasis and focus on Tasmanian produce;
- the premises would provide the public with an alternate choice for the purchasing of alcohol by providing a safe, easily accessible non-hotel environment, backed by a strong commitment to the responsible service of alcohol;
- he has made a considerable investment in improving the business such that where there were only four employees, and now there are fourteen full time and casual employees;
- local producers would like to sell their product in the store; and
- the business is within an isolated community, away from schools and heavy concentrations of housing thereby minimising the risk associated with annoyance, disturbance or inconvenience.

The applicant describes Murdunna and surrounding districts as having gradually evolved as a retirees and shack lifestyle choice and travelling working professional people have relocated to the area. He states that the supporters of this application argue that there is a need locally for more convenient access to liquor rather than a round trip to either Eaglehawk Neck or Dunalley.

The applicant believes that the business conducted at the premises is very focussed on catering for the travelling and tourist public, to such a degree that it is outside of the description of another convenience store or retail grocery store, and requests that I take into consideration that the store is remote, and that a general store or convenience store in the country is appropriate for the granting of a limited liquor licence.

Letters of support

The applicant provided five letters of support, one from the operator of an ecotourism business active in the area, two from local liquor producers, one from a local short-stay accommodation provider and one from two local residents.

These letters stated that the store has developed greatly in recent years to provide a broader range of goods and an improved service to the local community, and that the sale of liquor would assist the business, reduce the amount of travel required by locals and by tourists visiting the area, and provide an additional outlet on a busy tourist route for local producers to sell their wares, including, but not limited to, the two producers who provided letters of support.

Representations

I received one representation in relation to this application. The resresenter objects to the application on the following grounds:

- the site is more appropriately considered a major branded Caltex fuel retailing site than a small country store.
- there is no evidence to show this is a remote area in regards to liquor availability, specifically there is no evidence to show there is a shortage of Tasmanian liquor products within the area, and indeed, the applicant himself admits there are venues nearby at Dunalley and Eagle Hawk Neck and there are 23 licensed premises south of Murdunna.
- the SEIFA report does not support the application, suggesting the area is very significantly disadvantaged.
- the placement of the liquor section exposes minors to liquor, who might not normally be exposed in such a close up manner.
- the application fails to de-lineate and keep a certain degree of separation between the liquor display and other areas within the mixed premises.
- the applicant states on their own advertising that they are running a "supermarket".

The resresenter also compared this application with other decisions made by myself and the Liquor Board/Tasmanian Liquor and Gaming Commission and considers that the application, fails to provide enough special considerations, to allow me to issue a licence for special reasons. The resresenter stated that whilst there may be some limited support from locals etc, overall, there does not appear to be enough significant separation of the liquor section, to maintain the integrity of the licensing regime, and the need to keep each of the licence categories aligned to their special purpose.

Applicant's response to representation

Responding to the representation, the applicant noted the letters of support he had provided; that the store stocked fifty Tasmanian products; that conversations he had with the Lufra and Dunalley Hotels demonstrated that those premises had no objection to his application, and in

any event the opening hours and stock at those premises were limited; and that he had provided an option for the liquor section near to the counter and office that would move it from the general area of the store. The applicant further noted that the number of pump handles at his store (18) was only six more than at Middleton (12) (though I note there were only 4 pump handles at Middleton at the time of the Middleton decision).

The applicant rebuts the representor's argument around SEIFA data relevant to the area by noting that the community to be considered in assessing an application such as this is not restricted to the local community, rather it includes the Tasmanian community as a whole, and saying that the Tasman Municipality has a high proportion of visitors relative to the permanent population, made up of tourists, shack owners and the travelling public. The applicant states that the premises is not a large service station, rather it is a general store with three pumps, asserting that the above-ground nature of the fuel storage tanks magnifies the visual impact of the fuel service.

The applicant reiterates that the special circumstances he believes support the application for a special licence are:

- broad local support;
- the application's purpose is not increased revenue or the introduction of another income stream;
- local producers would like to sell their product in the store; and
- convenience for the community, visiting tourists, retirees, shack owners and accommodation providers to purchase Tasmanian liquor products without having to drive too far away.

Site visit

I visited the premises on the 7th of May 2021. It sits on the corner of the Arthur Highway, the main route from Hobart to the Tasman Peninsula, and Sommers Bay Road, which is a quiet coastal road hosting a number of shacks and attractive beaches and coves.

The premises is a small, well stocked, general store selling, among other things, takeaway coffee, takeaway food, cigarettes, confectionary, ice-cream, fresh fruit and vegetables, some hardware and nursery items, frozen and dairy goods, fishing gear, dry goods, soft drinks, bakery items and so on. It has the sort of broad but shallow range of goods common to rural general stores. The premises sells a small range of Tasmanian goods, though these are ancillary to the general range of goods rather than being the focus of the store. The premises has a relatively large forecourt hosting petrol pumps that is set back off the road.

Returning toward Hobart, the premises is around five kilometres from the Dunalley Bay Distillery, around 7.5 km from the Bangor Vineyard Shed and 9-10 km from the Dunalley Hotel and the Cannery, all of which are licensed as to be able to conduct off sales of Tasmanian liquor products.

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:

- 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 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. While it does have a broad range of goods, the range is shallow and it lacks a number of the criteria that have been set out by the Commission and myself in previous decisions such as Sandy Bay Hill Street (2019), Salamanca Fresh Huonville and Kingston (2017) and Devonport Hill Street (2016).

General considerations

The Commission and I have considered a number of applications where small general stores have sought to add Tasmanian liquor to their range, most recently Evandale Providore (2021), Log Cabin General Store (2020), TCM Market (2020) and Mount Nelson General Store (2019). Many of the special conditions put forward by these applicants are the same or similar to those advanced by the applicant here: safe and convenient access to liquor for local residents and short stay accommodation guests, significant tourist interest in the area, an opportunity to showcase Tasmanian product, local support for the application and similar.

To be granted a special licence applicants need to demonstrate that their premises is not just any other retail store and that special conditions existed 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.

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.

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 a general store and fuel service, 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 location of his premises on a major tourist route to support his claim that special circumstances exist justifying the granting of the licence. In this regard he states that the store is very focussed on catering for the travelling and tourist public, to such a degree that it is outside of the description of another convenience store or retail grocery

store, that it will provide tourists staying nearby a place to purchase liquor to consume at their accommodation, and that showcasing Tasmanian wine will 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 premises nearby, and the highway between Murdunna and Dunalley is of good quality and easily driven. One of the premises provides off sales via a general licence and three have restrictions on off sales to various types of Tasmanian liquor. I am therefore satisfied that liquor products are accessible in the vicinity of the premises, such that convenience or

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

lack of access to particular liquor products is not a strong argument to grant the licence. Further, as the applicant has suggested a large amount of his custom is travelling through, I note that there are hotels at both Eaglehawk Neck and Dunalley. Limitations on supply at the Dunalley and Lufra Hotels mentioned by the applicant may indicate a lack of demand rather than any structural lack of supply.

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 have considered the representor's arguments and applicant's response and I have addressed a number of them above. With regard to the arguments around SEIFA scores and the fuel service at the site, I do accept the applicant's view that the large temporary populations in the area should be taken into account, and that the petrol offering is not sufficient to characterise the store as a service station with ancillary convenience store. I accept the applicant's view that it is a general store with an ancillary fuel service.

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, the representation, 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 be 'JC Root', written over a horizontal line.

JC Root
Commissioner for Licensing

24 June 2021