

Application by Tracey Skeet for a special licence for the premises The Log Cabin General Store, at 59 Burgess Street, Bicheno, 7215.

Decision: Licence refused

Date: 08 December 2020

The application

The applicant seeks authority to sell Tasmanian liquor products under a special licence for consumption off the premises.

The applicant describes the locality of the premises as a popular tourist destination for short-term accommodation, including camping. The current use of the premises is described as a general and hardware convenience store that provides a wide array of products, with a focus on providing items from the east coast and Tasmania generally. Opening hours are 9am to 3pm on weekdays and 10am to 2pm on weekends and public holidays. Off-street parking is available.

The applicant indicates that the use of the premises will be modified in order to provide a wider range of Tasmanian products, including Tasmanian wine, beer and spirits to further enhance the customer experience. Liquor products would be incorporated without the need for substantial modifications. The applicant indicates that in the immediate local area liquor suppliers are limited, with only The Farm Shed providing a similar service to her proposal.

The applicant states that the premises is more of a tourist and souvenir shop. Milk has only been stocked due to the coronavirus pandemic to meet local demand. Other than that she does not sell convenience store items. Online sites for the business confirm that stocks include homeware, souvenirs, hardware, art and garden supplies, camping and fishing products, gourmet goods and a few grocery items. The applicant states that she is not seeking to sell liquor online.

With regard to the best interests of the community, the applicant indicates that the premises will:

- provide a safe and convenient means for community members to purchase liquor;
- offer an alternative location for people who do not wish to attend a hotel;
- focus on, and increase the range of, Tasmanian products available to locals and tourists;
- offer competitive pricing on products within the Bicheno area;
- allow local producers and producers across the State to showcase their products;
- create employment for local residents; and
- enable visitors to immerse themselves in everything Tasmania has to offer, including locally produced liquor.

The applicant discusses six previous liquor licence decisions to support her application and position that granting the licence applied for would be in the best interests of the community. In relation to two (Middleton General Store 2016 and Port Sorell 2013) licences were granted and she highlights similarities with, and arguments in support of, her application. For the remainder (Augustus Chocolates & Gifts 2018, Mount Nelson General Store 2019, TCM Market 2019 and Caltex Moonah 2020), licences were refused and the applicant seeks

to separate the nature of her application from the circumstances in those applications. Her key points are that:

- the premises is more than just a convenience store, offering a wide range of Tasmanian products and having a particular focus on tourists;
- the premises is located in a well-known tourist area;
- competition is healthy and increased supply and access to Tasmanian liquor should be encouraged;
- liquor outlets in the area are generally limited, particularly those with a focus on Tasmanian products;
- she has no intention of applying for an off licence; and
- the trading hours of the business are limited.

In relation to exercising effective control over the sale of liquor on the premises, the applicant indicates that an employee with Responsible Service of Alcohol (RSA) certification will be working at all times, a record of RSA trained staff will be kept and only trained staff will conduct liquor transactions. It is the applicant's intention that all staff will be RSA trained. She will also stock all liquor products behind the service counter to control access. The applicant advises that the limited store opening hours will also support RSA.

The applicant argues that the premises is not a supermarket as it does not have the same layout, design or product lines as a supermarket, such as the Bicheno IGA or a Coles/Woolworths. She argues that it is classed more readily as a convenience or general store.

Site visit

I visited the premises on 1 September 2020 and met with the applicant. The premises is located in the main commercial area of Bicheno, which includes a supermarket, newsagency, pharmacy, real estate agencies, a bakery, cafes and other retail shops. The post office, library and primary school are also located close by.

The premises is quite large and offers a considerable range and volume of stock including gifts, homewares, hardware, nursery/garden items, grocery items, toiletries, recreational items and so on. To the immediate right of the entry is the service counter, behind which liquor products are proposed to be stored.

While the premises is in a tourist and holiday area and is visited by tourists it could not be said to have any particular tourist focus, or to focus to any great degree on Tasmanian goods, though it does stock a range of those. It is very much a general store, providing a broad range of goods to the local community. At the time of my visit the applicant was negotiating with the local council to provide visitor information services from the store and since my visit the premises has commenced to do that.

Existing licensed premises in Bicheno that are authorised to sell liquor for consumption off the premises include restaurants/cafes, a tavern and hotels. The Farm Shed East Coast Wine Centre is a few doors down from the applicant's premises. Vineyards located nearby are also authorised for off sales.

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:

- 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.

General considerations

In balancing the general costs and benefits to the community, it is relevant that previous decisions of the Licensing Board, the Tasmanian Liquor and Gaming Commission and the Commissioner for Licensing 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 (eg Augustus Chocolates & Gifts 2018, Mount Nelson General Store 2019, TCM Market 2019, QiE Asian Grocer 2019 and Caltex Moonah 2020).

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. 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 benefits identified by the applicant are primarily those of alternative and convenient access to liquor, greater competition, support for local liquor producers, promotion of tourism and local employment opportunities.

The premises is located in a popular tourist town and it does sell Tasmanian products and souvenirs. Although tourists may shop in the store, this does not make it a speciality tourist outlet.

There is a nearby bottle shop which has a selection, though not a large one, of Tasmanian liquor products. The nearby wine centre offers liquor products from the east coast, although

the applicant notes that it does not offer product from the State as a whole (as she proposes to do). I am therefore satisfied that Tasmanian liquor products are accessible in the vicinity of the premises, such that 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 her 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.

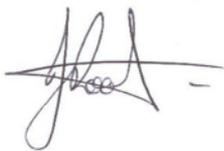
The applicant did not provide me with evidence in support of her application, such as submissions from consumers, visitors or local producers, or estimates of the positive impact on local employment and the State's brand.

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. 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 extending to the right.

JC Root
Commissioner for Licensing

08 December 2020