

Application by Anthony Charles Leybourne Smith for an Off-Licence for the premises at corner of York and Bathurst Streets Launceston, to be known as Dan Murphy's Launceston.

Decision: Licence granted

16 May 2016

The application

The applicant seeks authority for the sale of liquor under an off-licence from a premises at the corner of York and Bathurst Streets in Launceston that will trade as a Dan Murphy's store. The proposed store would have a retail trading area of 1 232 square metres and would stock a range of over 4 500 liquor products. The store would trade no earlier than nine am and close no later than nine pm. The construction and fit out cost is estimated by the applicant to be \$1.5 million.

King & Wood Mallesons (KWM), on behalf of the applicant, advises that all staff who are involved in the selling of liquor, or in the supervision of liquor sales, will undergo extensive Responsible Service of Alcohol (RSA) training and includes Woolworths' liquor charter to evidence the organisation's commitment to minimising liquor harms. KWM also includes a copy of the Woolworths responsible buying charter which sets out the organisation's approach to ensuring that their product range does not include irresponsible liquor products that might encourage underage, excessive or anti-social consumption of alcohol.

KWM describes a comprehensive CCTV system that is planned for the premises and states that there will usually be no fewer than six staff on duty at any one time, allowing for monitoring and control of staff and customer activity.

With respect to the best interests of the community, KWM submits that grant of the application would be in the community's best interests as:

- Safety and the responsible service of alcohol would at all times be the paramount consideration.
- There would be positive impacts on the amenity of the area in that the proposed off-licence would: offer a comprehensive range of quality liquor and associated products and services; be a new, modern, safe and clean store; offer a stock range that would include an extensive range of Tasmanian wines; provide increased choice, prices favourable to the consumer, and continuity of supply; increase competition and convenience; and provide a lighter more open and less threatening alternative to smaller stores and hotel walk-ins. The applicant submits that Woolworths' surveying has shown that Dan Murphy's stores attract an older and more affluent clientele than other liquor stores, with two thirds of their customers being over the age of 35 years, attracted by factors such as product range, ambience, safety, service, store layout and cleanliness.
- There would not be adverse parking or traffic impacts.
- The trade catchment area and demographic statistics support the proposition that there would be no adverse effects on persons living in Launceston or the surrounding areas. In this regard the applicant submits a range of demographic and socio-economic statistics and existing licensed premises numbers.

- Employment would be generated during the fit-out and the premises would employ 10 full time and up to 25 part-time/casual staff.
- The premises would utilise a currently vacant site and provide a service to the local community and the travelling public.
- The premises would continue to revitalise the surrounding area and increase the potential for further development and employment in the immediate surrounds.

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

Representations

Sixty-seven representations were received by the due date.

The representations can be broadly categorised into five groups, four of which have a template form:

- Representations from existing licensees (referred to as “liquor store owners letter” on some of the representations).
 1. Big Bargain Hadspen
 2. Australian Liquor Marketers (ALM)
 3. Inveresk Tavern
 4. Queens Head Inn Landlord (Axcia Pty Ltd)
 5. Queens Head Inn Management (Oakley Hotels Pty Ltd)
 6. The Village Inn
 7. TRC Pty Ltd (TRC Hotel, Kings Meadows Hotel, Liquor Stax Riverside, Liquor Stax Gunners Arms, Liquor Stax AYR and Liquor Stax Mowbray)
 8. Newstead Hotel (2 identical representations under separate signature)
 9. Deloraine Hotel
 10. Exeter Hotel
 11. The Olde Tudor Hotel
 12. Black Stallion Hotel
 13. Scottsdale Liquor Market
 14. Big Bargain Bottleshop Group
- Representations from clubs in a template form (“Club letter”):
 1. Member of the Scottsdale Squash Club
 2. Meander Valley Football Club
 3. Member of the Evandale Football Club
 4. Member of the Perth Cricket Club
 5. Member of the Launceston Soccer Club
 6. Member of the Village Inn Blue Ladies Dart Team
 7. Member of the Northern Tasmanian Social Darts Association
 8. President of the Launceston Soccer Club
 9. Member of the Longford Bowls Club
- Representations from employees in a template form (“employees template”):
 1. Seven representations from employees of the Queens Head Inn
 2. Nine representations from employees of the Kings Meadows Hotel

- Individual representations in a template form (“individuals template”):
 1. 20 representations were received from individuals resident in and around Launceston and across the north of the State.
- Individual representations:
 1. Tasmanian Hospitality Association (THA)
 2. Uniting Care Tasmania
 3. Mr Horton of Launceston
 4. Staff of the Deloraine Hotel
 5. Mr McGrath of Newstead
 6. Manager of the Crown Cellars
 7. Bottleshop Manager Newstead Hotel

Arguments made in the liquor store owners letter:

Representations from existing licensees argue that granting the licence applied for would lead to:

- “a concentration of ownership in the liquor retail sector that is not in the interests of the community”;
- “a significant turnover and employment losses in the off-licence liquor stores in Launceston”; and
- “less economic activity in Tasmania, because this business is not owned by [a] Tasmanian based corporation”.

The representations state that there will be negative social impacts on the Greater Launceston area from the increased sale of lower priced liquor, and note that the application “relates to a location” proximal (ie within a 10 minute drive) to the Ravenswood application that was refused by the Licensing Board of Tasmania (which determined liquor licence applications prior to August 2015) (the Board) in 2013. Representations refer to what is called the “multiplier effect”, a contention that locally owned businesses create economic benefits that are larger than those created by businesses that are not locally owned. Representations in this form give differing estimates of the impact of granting the application on their turnover and employment levels:

- Big Bargain Hadspen estimates 25 per cent to 30 per cent loss of income, or a 10-15 per cent drop in sales. They are concerned that ALM might close leading to increases to their costs.
- ALM estimate a 15 per cent reduction in turnover with resulting impact on staffing levels, but do not say they will close.
- Inveresk Tavern says that their turnover will drop by 20 per cent and they will therefore reduce employment in their liquor store by 15 per cent, I am not told what this equates to in terms of a figure such as fulltime equivalent employment (FTE) or hours lost.
- Queens Head Inn, Perth, expects a drop in turnover of 30 per cent, resulting in a staff reduction of 1.5 FTE were this drop to be realised.
- The Village Inn says that they will suffer a 30 per cent drop in turnover, resulting in a 50 per cent drop in staffing, I am not told what this equates to in terms of a figure such as FTE or hours lost.
- TRC Pty Ltd estimate a 30-40 per cent decrease in turnover resulting in a drop of 10 FTE across all their stores were the decrease to be realised.

- Deloraine Hotel expects a 5-10 per cent drop in turnover, which is estimated to result in a reduction of employment of two casual staff though I am not told what this equates to in terms of a figure such as FTE or hours lost.
- Newstead Hotel estimates the impact of granting the application to be 30 per cent of turnover resulting, if realised, in a reduction in employment of 80 hours per week, affecting three casuals.
- The Exeter Hotel estimates a reduction in turnover of 30 per cent resulting, if realised, in the loss of one to two casual staff, though I am not told what this equates to in terms of a figure such as FTE or hours lost.
- The Olde Tudor Hotel estimates a 30-40 per cent reduction in turnover with a reduction in employment of 60 hours per week or 1.5 FTE.
- The Black Stallion Hotel estimates a 30 per cent turnover reduction which is said to equate to a reduction in staffing of 30 per cent, though I am not told what this equates to in terms of a figure such as FTE or hours lost.
- The Scottsdale Liquor Market estimates a reduction in turnover of 25 per cent and in staffing of 50 per cent, though I am not told what this equates to in terms of a figure such as FTE or hours lost.

Arguments made in the club letter:

Representations made by members and officials of clubs state that they are supported in the form of cash or liquor donations by an existing liquor licensee. They state that their experience is that major chain supermarkets are “poor contributors to small community groups” and, by implication, that the granting of the licence applied for would lead, to the extent that it impacted existing licensees, to a reduction in donations to community groups and therefore a reduction overall as the reduction would not be made up by Dan Murphy’s based on the example of chain supermarkets.

The representations further express the concern of community groups such as sporting clubs about “the problems excessive liquor can cause in the community.” They state that “this new store is not in the community’s best interest because it will make it easier for some people to abuse alcohol more.”

Finally the representations note that an off-licence application was previously refused by the Board in Ravenswood “because the social impact on this suburb’s residents was considered to be too great”, and assert that the Dan Murphy’s application will similarly impact residents of Ravenswood due to its proximity to the suburb.

Arguments made in the employees template:

Representations by employees of the Kings Meadows Hotel and the Queens Head Inn assert that the granting of the application would not be in the best interests of the community as it would lead to significant turnover and employment loss in the existing off-licences in Launceston. The representations further argue that the scale is not in the best interests of the community, because it will lead to less economic activity because the business is not owned by a Tasmanian based corporation. It is said that Woolworths has 50 per cent of the off-licence liquor business in Launceston, and that increasing this market share will decrease the “multiplier effect” for the Tasmanian economy and effect the representor’s job. No evidence is provided to support these assertions.

Arguments made in the individuals template:

Representations made by individuals on the individuals template letter argued that the granting of the licence applied for would “enable Woolworths to control the price of, and choice we have, for liquor products,” due to an alleged resulting “high concentration of ownership in the liquor retail sector in Launceston”. It is further argued that the size of the proposed store will lead to the closure of smaller liquor stores, which are convenient to the individual representing, and as a result to fewer jobs in Launceston.

The representations further express concern that Launceston has plenty of liquor stores already and plenty of social problems from the abuse of liquor. In the same terms as the club letter, they say that “this new store is not in the community’s best interest because it will make it easier for some people to abuse alcohol more.”

Finally, also as per the club letter, the representations note that an off-licence application was previously refused in Ravenswood “because the social impact on this suburb’s residents was considered to be too great”, and it is asserted that the Dan Murphy’s application will similarly impact residents of Ravenswood due to its proximity to the suburb.

Individual arguments:

The THA argues that:

- the assertion by the applicant that they would not stock drinks that appeal to young people is contradicted by the 27 lines of pre-mixed drinks that are advertised on-line at very competitive prices (the THA assert that young people buy on price);
- the application indicates an oversupply, in what is already a saturated market; that the application has limited benefits identified other than the safe service of alcohol and the employment;
- there will be loss of employment in other liquor businesses; and that Dan Murphy’s give little back to the community in comparison to hotels who are said to give generously in terms of sponsorship and in-kind support to community groups and local sports clubs; and
- the costs to the community in terms of loss of employment, reduced income to hospitality businesses and decreased sponsorship and community support are not sufficiently offset by the public benefits identified by the applicant.

Uniting Care Tasmania objects to the application on the grounds that:

- alcohol abuse is directly related to the availability of alcohol;
- the business model of Dan Murphy’s, said to be “deep discounted alcohol and very low priced home branded alcohol products”, will lead to a rise in consumption due to the relationship shown in research between price and consumption;
- the social cost of alcohol abuse is significant, affecting all social strata imposing financial, physical and psychological cost in the community;
- Launceston does not need another liquor store of the scale of the application and that granting a licence to Dan Murphy’s will lead to additional harms due to its size and accessible location; and
- the site of the application is a 10 minute drive from Ravenswood, where alcohol abuse remains a problem and it is not in the interests of the Ravenswood community to have more cheap liquor available.

Uniting Care included three research papers to evidence the matters raised by them relating to the harms associated with the misuse of alcohol.

Mr Horton of Launceston writes to assert that the area in which the applicant's premises is situated is one "already affected by alcohol related problems such as broken windows etc." Mr Horton goes on to enumerate the existing bottle shops and hotels in the area and suggests that further premises would add to the social harm caused by alcohol. He submits that additional competition will harm existing premises and that cheaper liquor outlets, which he understands Dan Murphy's to be, are particularly harmful to youth.

Staff of the Deloraine Hotel are concerned with the impact of competition from what they refer to as a "superstore" on their employer, their own livelihoods, and those of their colleagues in the hospitality industry in Launceston.

Mr McGrath of Newstead objects to the application on the following grounds: that the concentration of ownership that would result (considering the BWS stores along with the proposed Dan Murphy's store) is not in the best interests of the community as it would reduce competition; that the scale of the premises would lead to turnover loss at other off-licences; that turnover loss at other off-licences would lead to a reduction in employment at those premises thereby offsetting the applicant's additional employment; and that Dan Murphy's will employ fewer people per dollar of turnover than other licensees.

The manager of the Crown Cellars objects on grounds of:

- social impact, suggesting that Launceston faces significant challenges in regards to alcohol consumption and the misuse of alcohol by young people, and noting the SEIFA index for Launceston as an indicator that Launceston would not benefit from increased availability of bulk cheap liquor;
- economic impact on small businesses and loss of employment, it is said that the recent introduction of a new bulk discount liquor retailer to the market led to a reduction in Crown Cellars turnover of \$24 000 (relative to the same month in the previous year) and that a loss in employment of two full time and four casual positions would be expected by the Crown Cellars should the off-licence be granted; and
- impact on community sporting clubs and associations through the reduced ability of existing small businesses to provide support and sponsorship.

The bottle shop manager at the Newstead Hotel objects to the application. He states that granting the application would lead to the loss of over 100 jobs in the Launceston area. Additionally he states that since the opening of Steve's Liquor the Newstead Bottleshop has seen a reduction in turnover of 12.5 per cent, leading to the loss of two casuals (38 hours pw). Mr Linger states that "[wherever] a Dan Murphy's store opens there is a loss for all business [I assume liquor businesses] within a 20km radius of at the very least 25 per cent" and he suggests that would result in 3.5 casual positions being lost at his store. He raises the issue of sponsorship in similar terms to other applicants and makes comment regarding the future of two other liquor businesses that are also representors.

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, provided 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.

Abery Report

The Abery Report sets out the qualifications of Mr Abery, provides a summary of the application and its context, and addresses the substance of the representations.

Mr Abery submits that he is a Principal of Deep End Services, a Melbourne-based consulting firm which practices in market analysis and property economics; that he holds a Bachelor of Town and Regional Planning from the University of Melbourne, a Graduate Diploma Social Statistics from the Swinburne Institute and that he has 30 years' experience in retail and market analysis, property economic evaluation and turnover forecasting.

The Abery Report provides a summary of the application and its context in submitting, *inter alia*, that:

- Dan Murphy's is a national chain of large-format liquor stores operated by Woolworths; Dan Murphy's has a presence in all states and territories except the Northern Territory and Tasmania; and Woolworths operates Dan Murphy's nationally in conjunction with its BWS brand, which is a small-format, convenience brand with stores of 100-500 m² located with supermarkets in shopping centres, in strip-commercial areas, with pubs and in standalone locations.
- There are currently 33 BWS stores in Tasmania and seven in the Greater Launceston area.
- There is an average of one Dan Murphy's store for every 92 800 people in Melbourne and one for every 135 000 people in Sydney. Australia's 10 large regional cities with populations over 100 000 people have between two and nine stores each, averaging one Dan Murphy's for every 77 000 people.
- 80 per cent of the Dan Murphy's range is priced at over \$10 per bottle of wine. The proportion of the wine in the very low sub five dollar price range represents just four per cent of all wine products.
- Bathurst Street, upon which the applicant's proposed premises sits, is part of an important cross-city arterial road system which distributes traffic to and from the CBD and other major arterials including the Midland and Bass Highways (entering Launceston from the south and south-west) and the West and East Tamar Highways (approaching the city from the north).
- According to the traffic report submitted with the planning permit application, Bathurst Street carries 45 000 vehicles per day past the site.
- The intersection of Bathurst and York Streets and north to Brisbane Street is strategically significant as a gateway best described as a busy mixed-use precinct with large scale commercial and institutional uses and smaller main road based businesses, typical of a CBD fringe area.
- With an urban population of approximately 80 000 people, Launceston is the second largest city in Tasmania behind Hobart (165 000) and is ranked 23rd largest city in Australia. The city is the commercial and administrative centre for a broad region extending through the Tamar Valley and across the North-East coast, Northern Midlands and Meander Valley.
- Launceston is the commercial hub for Northern Tasmania with a broad economic base. Tourism plays a significant part in the local economy with Launceston Airport

serving over one million passengers per annum with direct flights between Melbourne, Sydney and Brisbane.

- Dan Murphy's is a large-format, destination liquor store which typically draws on a wide regional catchment because of its differentiated offer, range and pricing. The central, main road location on the edge of the Launceston CBD will give the store a high profile and attract custom from a broad range of consumers working or living in the city and wider region or passing through the area.
- A local or primary catchment for the proposed store extends over the urban area of Launceston, similar to other national or large-format retailers situated in, or close to, the CBD. The city-wide catchment is not suggesting a dominant position but rather a location where a large proportion of residents, if they choose, can access the store within a reasonable drive-time.
- A secondary catchment for the proposed store is an elongated region extending north along the Tamar Valley and south along the Midland Highway to Campbelltown and Ross. The catchment stops short of Deloraine and Scottsdale where there are major supermarkets and liquor stores, although low levels of custom could still be expected from these areas.
- The site's central location close to the outer highway connections, and the strong employment base of central Launceston are key factors in Dan Murphy's drawing on a regional catchment. Approximately 42 per cent of all jobs in the City of Launceston are located in the CBD and central area which emphasises the strong economic role of the inner area and large number of people passing through the area daily. The influx of people to central and other parts of Launceston from the wider region to work on a daily basis is underlined by ABS Journey to Work data showing that 25 per cent of all jobs in the City of Launceston are filled by people living outside the municipal boundary.
- The total catchment is approximately 125 000 people.
- The Dan Murphy's location is close to inner area accommodation and visitor attractions and has good exposure to through-traffic connecting to the five highways converging on Launceston.
- In 2014-15, 363 873 people stayed overnight in Launceston with an average stay of 3.4 nights per person or 1.25 million visitor nights. While the visitor nights in 2014-15 were consistent with the previous year, there has been a 25-30 per cent increase in overnight stays compared to 2011-12 and 2012-13.
- Launceston has a slightly lower income and socio-economic profile than Hobart. Individual income levels in Launceston are less than one per cent below the State average while Hobart is 8.8 per cent higher.
- Launceston's profile is slightly skewed by a larger population of university students and others in technical courses which shows up in higher proportions in the 18-25 year population group, more rental housing and more group households.
- The average SEIFA (Socio-economic Index for Areas) score across Australia is 1 000. Tasmania has an average score of 948 with Launceston slightly lower at 942. Launceston's secondary catchment of towns and rural areas has an average SEIFA score of 949.
- Typical of most large regional cities, Launceston has a spread of SEIFA scores ranging from very high to very low. For example, six SA2 areas (West Launceston, Launceston, Riverside, Norwood and Trevallyn) are above the national average and within the top quintile of advantaged areas in the State, a further six SA2 areas have

small variations in their SEIFA score from the State average, while the area of Ravenswood in Launceston's east is one of the most disadvantaged areas in the State. The SA2 areas of Mowbray, Newnham-Mayfield, Invermay and Waverley-St Leonards are also well below the State average.

With respect to the representations, Mr Abery submits that many are of a pro-forma nature and have come from proprietors, leaseholders, hotel managers or staff of hotels in the region. Of the 13 hotels or bottle shops whose owners and/or staff submitted objections to the application, Mr Abery states that three are from the inner Launceston area; six are from other parts of Launceston, four are from locations including Perth (18 km by road south of the application site), Exeter (24 km north), Deloraine (50 km west) and Scottsdale (63 km north-east). Mr Abery further submits that nine of the 13 submissions are connected with hotels or bottle shops associated with the Big Bargain bottle shop chain who have the largest number of bannered bottle shops in the region.

Mr Abery notes the submissions from welfare and community groups, THA, members of sporting clubs and private citizens. In respect of all representations he states that where he is qualified to do so, he has addressed the main issues raised in the submissions and categorises these issues as:

- those relating to the sale of cheap liquor;
- the concentration of ownership; the closure of liquor stores and loss of employment;
- multiplier effects;
- social impacts; and
- community sponsorship.

Mr Abery's evidence with respect to each of these categories is as follows:

Sale of cheap liquor

Mr Abery submits that this argument is addressed by those submissions that argue Dan Murphy's will sell "cheap" or "deep discounted" alcohol and very low priced home-branded alcohol products (which will induce higher levels of consumption with associated health and social impacts, particularly in disadvantaged communities). He states that this claim partly goes to the question of pricing and whether Dan Murphy's sells its products at competitive prices or at significantly lower 'deep discount' prices than its competitors. Mr Abery states that he has been advised by Woolworths that the normal practice of each Dan Murphy's store is to review the local market on a daily basis and aim to beat competitors' prices by approximately five to 10 cents on all stocked items.

Mr Abery submits that with eight liquor banner groups operating in the Launceston region, liquor prices on top selling lines are generally competitive. He provides a table giving a comparison of advertised prices on selected products in the Launceston area against the advertised price of one Dan Murphy's store at Brighton in Victoria. He states that this comparison shows that, in some instances, Dan Murphy's prices at one selected store were slightly higher on some products compared to the banner group specials in Tasmania but cheaper on others. Mr Abery concludes that this analysis shows that the market is highly competitive and there are small differences between existing groups on common lines. He states that he has been advised that Dan Murphy's will beat competing lines by a small price variation but will not aggressively discount to the extent that consumers would perceive a significant price differential.

Ownership concentration

Mr Abery submits that a common argument through the submissions is the claim that Woolworths' existing market share from its BWS outlets is 50 per cent of sales in the region and (para-phrasing from numerous objections) that further concentration of sales by one owner "...is not in the best interests of the community because it enables Woolworths to control the price of, and choice we have, for liquor products".

In response to this argument Mr Abery submits that the submissions provide no evidence of the claim that Woolworths has a 50 per cent market share of liquor sales. He states that several submissions have come from interests associated with hotels as far as Exeter, Scottsdale and Deloraine. When the broader region out to a 40km radius from Launceston is considered – including these areas Mr Abery states that the claim of 50 per cent market share to Woolworths through its BWS brand is hard to substantiate given:

- BWS is not a dominant force and competes with seven other banner groups in the region.
- BWS has 29 per cent of the bannered outlets in Launceston and 22 per cent of bannered outlets across the region, out to 40km.
- Steve's Bottle-O outlet has recently opened and is the largest operator in the region and potentially largest by sales volume.
- In addition to the bannered outlets, packaged liquor sales are also carried out through bars and hotels, wineries, specialist wine shops, Boag's Brewery and various clubs. Together, these different premises types inflate the size of the market such that a simple analysis of bannered bottle shop numbers does not properly reflect Woolworths' share of the packaged liquor market.

Mr Abery argues that the issue of Woolworths' current or projected market share is irrelevant to this application and an assessment of the community interest because:

- The community is not disadvantaged by Woolworths' market share provided that it continues to operate professionally run, well-stocked and competitive liquor stores which can educate the consumer and enhance their enjoyment of shopping and adhere to the responsible service of alcohol.
- BWS is a well-known, trusted and professionally run liquor brand in which Woolworths has invested heavily in and around Launceston. The seven stores in Launceston are not a dominant force but instead have probably raised the standard of other operators to the benefit of the community.
- Launceston is a significant market (and much larger than many regional locations where Dan Murphy's has established on the mainland) where various liquor stores and banner groups will continue to thrive provided they meet the needs of the consumer.
- The range, choice and price competitiveness of liquor products available in the Launceston area will in fact improve after the establishment of Dan Murphy's.

Finally, Mr Abery argues that under the heading "Domination" the pro-forma submissions conclude that "*It is not in the best interests of Launceston community for **most** of the off licence liquor stores to be owned by one company*". He states that this is an incorrect claim as BWS currently operates only nine of the 41 packaged liquor outlets within 40 km of the site (excluding hotels without bottle shops and other licensed venues selling packaged liquor).

Closure of liquor stores and loss of employment

Mr Abery submits that many pro-forma submissions have adopted the argument that Dan Murphy's will result in the loss of trade at existing businesses leading to their closure, lost jobs and higher levels of unemployment. On the question of competition, Mr Abery notes that past decisions of the Board make it clear that the prospect of increased competition is not a ground for refusal of a new application.

Mr Abery provides case studies of the competition outcomes from two cities of a similar size to Launceston, being Albury-Wodonga (pop. 84 000) and Bendigo (pop. 90 000), and a case study of Coffs Harbour (pop. 48 000) which is smaller in population. He bases these case studies on data provided to him by Woolworths. As these case studies are short, I will include them verbatim:

Albury-Wodonga

Dan Murphy's opened a store on 26 June 2004 located at 428-432 Dean St, Albury NSW. At the time of opening there were 26 Licences (including the Dan Murphy's licence) with the ability to sell liquor for consumption off the premises including 16 Packaged Liquor (VIC & NSW), four General (VIC) and six Hotel (NSW) licences.

Since Dan Murphy's opened, there have been a further 11 licences granted that have the ability to sell liquor for consumption off the licensed premises. All of the licences granted since Dan Murphy's opened are Packaged Liquor Licences.

Today there are 37 licences in Albury-Wodonga with the ability to sell liquor for consumption off the licensed premises. As far as Woolworths is aware there are no licences that have ceased trading since the Dan Murphy's store opened.

Bendigo

Dan Murphy's opened a store on 2 February 2006 at 21-35 Garsed St, Bendigo. At the time of opening there were 25 Licences (including the Dan Murphy's licence) with the ability to sell liquor for consumption off the premises including 13 Packaged Liquor licences and 12 General licences.

Since Dan Murphy's opened, a further 11 licences have been granted with the ability to sell liquor for consumption off the licensed premises. All licences granted since Dan Murphy's opened are Packaged Liquor Licences. Today there are 36 licences in Bendigo with the ability to sell liquor for consumption off the premises.

As far as Woolworths is aware there has been just one licence that has ceased trading since Dan Murphy's opened. That licence was trading as a Coles Liquorland store up until January 2009. It is unknown why this store closed however one of the 11 licences granted since Dan Murphy's opened was at the same address as the closed store and is not trading as a Liquorland.

Coffs Harbour

Coffs Harbour and the adjoining coastal area of Sawtell-Toormina is a smaller population centre than Launceston with about 48 000 people. Dan Murphy's opened a store on 18 May 2011 at 100-102 Grafton St (Pacific Highway), Coffs Harbour. On opening, there were 12 Licences (including the Dan Murphy's licence) with the ability to sell liquor for consumption off the premises including six Packaged Liquor, two Club and four Hotel licences.

Since Dan Murphy's opened a further two licences have been granted with the ability to sell liquor for consumption off the licensed premises. Both licences granted were Packaged Liquor Licences. Today there are 14 licences in Coffs Harbour with the ability to sell liquor for consumption off the licensed premises. As far as Woolworths is aware no licences have ceased since Dan Murphy's opened.

Mr Abery concludes that the raw licensing data for these regional city case studies suggests that the opening of Dan Murphy's has not had a significant effect on the overall provision of liquor licenses and packaged outlets available to the community.

Mr Abery acknowledges that some businesses will be impacted by the opening of Dan Murphy's which could result in a reduction of staff hours, shifts or even positions at some packaged outlets. However Mr Abery states that I should note the following points:

- Many of the objections originate from hotels with other sources of revenue, some of them significant. For example, the TRC Hotel which is close to the site has a two-lane drive through bottle shop but also offers accommodation options, sports bar with Tote and Keno services, large dining room, gaming machines and other entertainment facilities, a convenience store and service station. Hotels with multiple income streams will be better placed to withstand trading impacts on their bottle shops.
- Most packaged liquor outlets in the immediate vicinity of the site are servicing mobile, high-convenience liquor buyers or those with predetermined needs, often making relatively small purchases that are price competitive from one outlet to another. Four of the six bottle shops within three blocks of the site have drive-through services which Dan Murphy's does not offer. Most of these outlets will remain relevant and competitive for those convenience purchases.
- The introduction of Dan Murphy's is no different in potential competition and trading impacts to other large or specialised retailers that have established in Launceston over many years including Harvey Norman, Officeworks, Bunnings, Target, Spotlight and so on. There are many national retailers of all sizes throughout the CBD and suburban areas of Launceston. The introduction of market-leading retailers will inevitably have some disruptive effects to existing businesses, however the community is overall better-off with the improved competition, product range and service that comes with these businesses.
- The licensee of the recently opened 9-11 bottle shop at K Mart Plaza sought its off-licence and opened the store in full knowledge of the large format Steve's Liquor store across the road. The 9-11 licensee clearly felt there was a market for two differentiated liquor formats in close proximity to each other.
- Dan Murphy's will employ approximately 35 people in full and part-time positions which will result in a significant net increase in staff and hours employed in the industry.

Multiplier effects

Mr Abery summarises the 'multiplier effect' argument put by representors as suggesting that the flow-on effects to the Tasmanian economy will be lessened with profits from Woolworths liquor operations in Tasmania flowing to a business headquartered outside the state and "mainland shareholders" as opposed to local business owners.

Mr Abery states that representors have provided no evidence about the extent of any projected loss of revenue, profits or reduced money flowing into the State economy. He

submits that: Woolworths is an Australian company with shareholders in all states where profits are returned in the form of dividends; that the company has invested in Tasmania over many years through its supermarket and liquor business with state-based warehouses, local transport and maintenance contracts and supply contracts with Tasmanian producers; and that Dan Murphy's and other national retailers establishing in Tasmania or Launceston can often be the catalyst for other national (or international) retailers to extend their networks from the mainland which is ultimately beneficial to Tasmania consumers.

Social impacts

Mr Abery submits that the pro-forma social impact objections against the licence application follow a similar line of argument which can be summarised as follows:

1. Dan Murphy's is a supermarket-styled liquor store which does not already exist in Launceston.
2. It is focused on selling larger volumes of liquor than are normally purchased in a liquor store.
3. The impacts of the store will not be limited to the immediate area but the broader Launceston area because of its wide catchment.
4. The Board's rejection of a liquor application at Ravenswood in 2013 on the grounds that it would be detrimental to a disadvantaged local community is cited in many submissions. The submissions argue that Dan Murphy's will impact Ravenswood residents in the same way because of its marketing and location within a 10-minute drive of Ravenswood.

Mr Abery addresses these arguments by stating that Launceston does have an existing 'supermarket-style' liquor store, Steve's Liquor, which established in 2014 and trades under the 'Bottle-O' banner. Mr Abery submits that the store is significantly larger than any existing outlet in the region and its palletised storage and extensive racking display with trolley-based shopping classify it as a 'supermarket-style' liquor store. He further submits that it does not follow, and no evidence is presented, that social impacts of the proposed Dan Murphy's will be extended and amplified over a wide region. Rather, he submits that trading impacts on existing businesses would clearly dissipate with distance from the store; and that even where a change in liquor buying patterns for some consumers may be significant, it does not immediately follow that they purchase any more liquor overall or adversely change their consumption patterns.

In relation to the Board's refusal to grant off-licence applications at Ravenswood in 2010 and 2013 and the relevance of those decisions to the Dan Murphy's Off Licence application, Mr Abery states that:

- The 2013 Ravenswood application was to occupy a shop in the small Ravenswood commercial centre which is embedded within and acts as a community focus and gathering point for people of what has become the second most disadvantaged area in Tasmania (according to SEIFA scores).
- There were no existing bottle shops operating in Ravenswood at the time of the 2013 application. If approved, the 2013 application would have increased the local community's access to liquor.
- Since the Board's decision, the Sunnyhill Hotel (closed at the time of the Ravenswood application) has reopened with a bottle shop.
- The Board's 2013 decision noted that the next nearest liquor stores were at Newstead, Mowbray and St Leonards within approximately 3-4 kilometres of the

Ravenswood proposal. Since 2013, off-licences have been granted for Steve's Liquor on Racecourse Crescent and a 9-11 Bottle Shop at Launceston Plaza – both are now open and situated approximately 2.5 km by a direct road connection from the centre of Ravenswood. These outlets are closer to Ravenswood than any other licensed outlet outside Ravenswood. Residents of Ravenswood are now serviced by liquor outlets locally (Sunny Hill Hotel) and by a short drive west of the suburb, without having to pass through or around Launceston to access CBD outlets.

- The Board's decision to grant the off-licence application to Steve's Liquor in December 2014 was, in part, based on the definition of community which it found was much wider than the Ravenswood area. Specifically, *"The Board however does not consider that in this case "the community" is constituted by the residents of Ravenswood. The community surrounding the premise is much broader. The premise is situated in close proximity to the K Mart Plaza and other commercial development, with little residential development nearby"*.
- The style of operation of the proposed Dan Murphy's and its location characteristics suggest that it will operate with a regional catchment so that the defined community of interest is a region of well over 100 000 people.
- The particularly disadvantaged areas of Ravenswood and Rocherlea/Mayfield make up a small part of the Greater Launceston catchment (6 700 people or 5.3 per cent from the regional catchment of 125 000 people) and clearly have closer, more immediate access to other licensed outlets than the proposed Dan Murphy's.
- The Dan Murphy's site is six kilometres from the centre of Ravenswood. Residents of Ravenswood would need to drive a further 3.5 km past the only existing large format liquor store (Steve's Liquor) and then through or around the CBD to access Dan Murphy's. For small or convenience-based purchases there are closer outlets in Ravenswood, East Launceston, Newstead and Invermay than the Dan Murphy's site. Examining the pattern of licensed outlets (with bottle shops) between Ravenswood and the Dan Murphy's site, it is difficult to conclude that the availability of liquor is significantly increased to this vulnerable community by the opening of Dan Murphy's, six kilometres from the suburb. The same argument can be made for the similarly disadvantaged and potentially vulnerable community of Rocherlea on the northern outskirts of Launceston (nine kilometres from the Dan Murphy's site).
- Dan Murphy's is situated in a busy commercial area on the edge of the CBD where there is a limited local or 'walk up' population base. The population of the inner area is shown in the SEIFA pattern to be of generally higher incomes. The local area is not one that has a large low-income population and the site and surrounds with high traffic volumes and public surveillance would not seem to be a gathering place for youth or disadvantaged groups.

Community sponsorship

Mr Abery states that a "number of submissions have raised the prospect of Dan Murphy's impacting local businesses which they say will, in turn, affect sponsorship of local sporting and community groups. The submissions argue that the loss of sponsorship will not be made good by Dan Murphy's." In response Mr Abery argues that:

- in a more competitive market where hotels believe they have a marketing edge or potential advantage in generating local support through their community connections, then continuing sponsorships in areas of discounted food, liquor,

provision of free meeting rooms or the like are even more important for these businesses to maintain or even increase;

- as a public company and liquor retailer, Woolworths must take every care in the form of advertising and sponsorship it provides to local sporting clubs, including those with junior teams. The supply of discounted liquor to a local sporting club presents inherent risks where the on-sale of that product is made outside Woolworths' control and its strict adherence to RSA requirements;
- the applicant's submission outlines Woolworths' renewed commitment to harm minimisation including meeting community standards on advertising and avoiding the promotion of alcohol to young people such that for many, Dan Murphy's engagement with local sporting or community groups through the provision of products, money or other support could be seen as a clear breach of its own guidelines; and
- Woolworths aims to contribute the equivalent of at least one per cent of pre-tax profits to the communities in which it operates and while there is no specific program Dan Murphy's has to mandate individual stores' contributions to local community organisations, every store manager is able to make contributions upon request which is normally in the form of a gift card which can be redeemed at a range of Woolworths' stores.

Abery Report Conclusions

Mr Abery concludes his report by submitting that, in his view:

- The site is ideally located being a 'gateway' or entry point to the Launceston CBD. It is positioned on the arterial road system which carries high levels of local and regional traffic including tourists and other visitors to the city.
- The proposal to adapt and occupy an existing vacant building has been issued with a planning permit. No adverse amenity impacts were identified by Council on the operation of the road network or surrounding uses.
- The plan details a well-laid out site with good access, parking, lighting, security and public surveillance. All loading movements and deliveries will be contained on the site.
- In an Australian-wide context, Launceston is a significant urban and regional market with a city-wide population of 80 000 people and a further regional catchment of 45 000 people. Based on Dan Murphy's existing network of stores, Launceston compares favourably with the largest regional cities on the mainland. The market is clearly large enough to comfortably support Dan Murphy's and support a wide range of other liquor stores catering to the convenience / drive through, neighbourhood shopping, specialised and extended-range formats.
- The evidence of other regional cities of a similar size shows there has not been a significant impact on licence numbers (and therefore the provision of liquor products to the community) after the establishment of a Dan Murphy's store.
- The Greater Launceston catchment should be the properly defined community of interest for the application – a region with a broad economic base where the vibrant Launceston CBD is the primary centre for retailing, professional services, government administration and other functions.

- The region is not in decline and will continue to grow at low rates of population growth, reflecting the wider trends and economic fortunes of the State.
- The Greater Launceston area has 66 General and off-licences including 27 packaged liquor outlets. In a broad region with the current levels of supply, Dan Murphy's will increase the range and choice of products and style of retailing but not increase the general availability of liquor to the community of interest.
- While areas of Launceston's northern and eastern suburbs have areas of high social and economic disadvantage and potential vulnerability to liquor, they represent about eight per cent of Launceston's population and 3.5 per cent of the total region.
- In relation to the nearest and often referenced area of Ravenswood, a packaged liquor outlet has been re-established in the suburb and another two at a relatively close point in East Launceston since the last off-licence application was refused. The Dan Murphy's site is another 3.5 km around or through the CBD from these outlets at East Launceston and nine km from the sensitive areas of the outer northern suburbs. Given the pattern and distribution of other outlets, Dan Murphy's should not increase the risk of harm to residents of these areas.
- Dan Murphy's will increase competition, range and choice of outlets and liquor products in the local market and will not result in an overall loss of services to the community.
- The proposal will increase employment and support local schools and service clubs, where appropriate.

Follow-up submission by King & Wood Mallesons

In addition to bringing my attention to the Abery Report and including Mr Abery's conclusion, KWM provides some additional detail on the benefits to the community that the applicant perceives will accrue from the granting of the licence. KWM also addresses the representations.

With respect to the additional detail on benefits to the community, KWM states that:

- the proposed premises will be conveniently located and readily accessible to residents, CBD shoppers, tourists and workers due to its location at the busy, high-profile intersection of Bathurst and York Streets in central Launceston, close to the geographic centre of Launceston, which is a strategically significant gateway to enter and exit the CBD and is a major distribution point for traffic entering or passing through Launceston;
- the location of a Dan Murphy's will help to reinvigorate the west end of the Launceston CBD as a food and grocery destination and will help consolidate the Launceston CBD as the pre-eminent retail and commercial focus for Northern Tasmania;
- the construction of the proposed premises will improve the amenity of the local area by refurbishing an existing building which is currently vacant, and restoring active use to the site with a long-term lease. The building will also be slightly modified with new awnings and a more sympathetic colour scheme to surrounding heritage buildings than the former Officeworks' store;

- the store will contain a “Local Heroes” section which will highlight wines and other products from Tasmania;
- the standard range in a Dan Murphy’s store has 50 Tasmanian products and the Dan Murphy’s buying teams will be specifically looking to add extra Tasmanian products into this store including wines, whiskies, beer and cider;
- the store will employ up to 35 people, which creates employment opportunities in the Launceston community;
- the estimated cost for the construction and fit out of the proposed Dan Murphy’s is \$1.5 million, which will inject funds into the local community as Woolworths has indicated its intention to tender the construction works with local builders or contractors which will support the Launceston building and construction industry;
- the introduction of a Dan Murphy’s will benefit the local community by introducing a new and distinctive offering and significantly increase the range and quality of packaged liquor products available to a market currently made up of mostly small drive-through outlets associated with hotels or small speciality shops. Additionally, Dan Murphy’s will provide new and convenient services to the Launceston community, such as its “click & collect” service which allows customers to select products online and then collect their order in-store;
- customers’ shopping experience will be enhanced due to the high quality of Dan Murphy’s store design and customer service. The store will have polished concrete and timber flooring and a dark ceiling with spot and pendant lighting. The instore departments will have customised displays and cabinets for premium wines, vintage and rare champagnes, premium and international whiskeys and a wine discovery section. A permanent tasting area will also be installed for local and other wine makers to present their products. Dan Murphy’s seeks staff with industry experience and trains them extensively in product knowledge to assist customers;
- Woolworths is a market leader in the responsible service of alcohol, goes well and truly beyond legal compliance in this space, and is 100 per cent committed to the principle of harm minimisation;
- the proposed Dan Murphy’s will have a comprehensive CCTV system, including approximately 24 camera locations (including external cameras) with a mix of digital IP and infrared cameras and two 40 inch LED monitors highlighting CCTV coverage to customers. The system will have remote access to Woolworths’s head office for review by compliance and security teams and includes software to allow the transfer of footage to CDR or USB;
- the proposed Dan Murphy’s will employ 10 full-time staff and up to 25 staff in permanent part-time and casual positions, which will provide opportunities for employment to the Launceston community. Additionally, maintenance and cleaning services will be contracted to local suppliers; and
- Dan Murphy’s supports its local communities, and requests for community support or funding for school or club fundraising events are considered by each store manager. Additionally, all Woolworths’ liquor group stores support Jawun (an indigenous support and leadership program) and White Ribbon (a male led campaign to end men’s violence against women). Over the past 12 months Woolworths has

raised in excess of \$1.6 million in Tasmania for both local and national charities and organisations. These include several Tasmanian hospitals, Give Me 5 for Kids (which supports both the Hobart Hospital and the Launceston Hospital), Guide Dogs Tasmania, Kids with Cancer, St Giles and a number of other charities. Non-financial donations and activities include Food Bank and donating food each week to local school breakfast programs which help children get the best start to their school day.

With respect to the representations, KWM submits the following:

High concentration of ownership

KWM submits that significant competition is already present in the Launceston liquor market. They argue that:

- Launceston's regional population is a significant market which supports a large number of packaged liquor outlets;
- 17 of the 27 bottle shops in Launceston are associated with hotels, while the remaining 10 are made up of outlets associated with neighbourhood shopping and large destination-style formats;
- 24 of the 27 bottle shops in Launceston operate under well-known banners of buying groups;
- another 17 bannered bottle shops operate in the wider region out to a 40 km radius of Launceston, bringing the total to 41.

Further, KWM note that Big Bargain is the largest banner group in that region (10 outlets), followed by BWS (nine outlets), Thirsty Camel (seven outlets), Liquor Stax (four outlets), Duncan's (four outlets), 9-11 (three outlets) and Cellarbrations (three outlets). They conclude that this diverse range of banner groups across the hotel and bottle shop sector promotes relatively strong competition between outlets. KWM support this conclusion by referring to the Abery Report which found this was particularly the case in relation to beer, RTDs and lower-priced products.

KWM submits that 28 of 67 total representations (42 per cent) appear to have been lodged by hotels or pubs, employees of, or members of sporting clubs sponsored by, liquor licences that are part of the Big Bargain group. KWM asserts that these representations are therefore more accurately understood as one large banner group seeking to prevent increasing competition in a market in which they are currently a major player. Otherwise with respect to this argument KWM reiterates the points made by Mr Abery.

Economic impact and viability of existing licences premise

With respect to representations arguing that the opening of a Dan Murphy's will lead to the closure of smaller liquor stores in Launceston and the greater region, KWM bring to my attention past decisions of the Board. KWM assert that these previous decisions make clear that the prospect of increased competition is not a ground for refusal of a new application. KWM provides the following examples from past Board decisions:

- in relation to the application for an off-licence at the Bicheno IGA Everyday (2014), the Board stated:

"The Board does not give much weight to the THA's submission that there are sufficient licences already in Bicheno and the related impact on other businesses of

a new licence. This is an anti-competitive argument that we have discounted on many occasions in previous decisions.”

- the Board has repeatedly stated (for example, in relation to the application by Woolworths for an off-licence at the BWS in Port Sorell (2013), the application for an off-licence at the Campbell Town Bottleshop (2014) and the application for an off-licence at the Cygnet Bottleshop (2015)):

“While it is true that any new business can negatively affect those already established, consumers decide where they wish to spend their money and it is not up to the Board to manage competitive market forces. Generally, the Board has not found arguments focussed on the commercial interests of competitors compelling.”

KWM argue that the application under consideration is not a case where there are fears that the introduction of a new off-licence premise in a town will compete with one individual “iconic” premise (such as the Campbell Town Hotel or the historic hotels in Cygnet); instead, KWM argue, the representations relate to the current operators in a large regional city market seeking to prevent additional competition and customer choice and note that the Board has previously accepted the “*competitive pricing of liquor and potential access to a more diverse range of liquor products than that currently available from other outlets*” as positive benefits which would be in the best interests of the community (in the decision of BWS Port Sorell 2013).

KWM repeat some material from the Abery report regarding case studies of regional cities, and alternative income sources for the objecting businesses (though in this regard KWM bring my attention to comments of the Board in the Campbell Town Bottleshop decision (2014): “*The proposed outlet by definition would provide takeaway sales only; the Board does not believe that the Hotel would cease to operate as a result of one part of its operation facing competition*”). Further, KWM also submit that the representations by liquor retailers stating how much they believe their turnover will fall appear to be completely arbitrary and unsubstantiated. KWM states that examples of the numerous issues which suggest that some of the estimated likely effect of the proposed Dan Murphy’s are overstated and most unlikely to eventuate include the following:

- four of the 12 hotels or bottleshops that have objected are large distances from the proposed Dan Murphy’s (specifically, Perth (18 km by road south), Exeter (24 km north), Deloraine (50 km west) and Scottsdale (63 km north-east)). Trading impacts on existing businesses would clearly dissipate with distance from the proposed Dan Murphy’s, yet the Exeter Hotel estimates that their revenue will fall by 30 per cent;
- the Deloraine and Scottsdale premises are not even within the wide secondary catchment of the proposed Dan Murphy’s and yet the Scottsdale Liquor Market estimates that their turnover will fall by 25 per cent if the premises open, and they will consequently reduce staffing by 50 per cent; and
- a representation from the manager of the Newstead Hotel states that “*Where ever a Dan Murphy’s store opens there is a loss for all business within a 20km radius of at the very least 25 per cent.*” without any apparent basis or foundation. He then goes on to assert that “*ALM will close its doors losing 25 more jobs*”, even though ALM do not suggest they will need to close in their own representation. The representor makes a similar assertion in relation to the Gunners Arms Bottleshop, however T.R.C. Pty Ltd. (who own the Gunners Arms) make no such claim in their own representation.

In relation to the outlets that only provide packaged liquor, KWM add to Mr Abery's submission by arguing that the fact that Woolworths intends to continue to trade their own BWS store located less than 200 metres away from the proposed site supports the contention that there is sufficient demand in the market for the varying types of offers.

Multiplier effect and non-Tasmanian business

KWM submits that the argument that only Tasmanian based corporations should be granted liquor licenses is parochial and anti-competitive. In this regard KWM note the following:

- the introduction of the Dan Murphy's is similar to the impact of other large or specialised national retailers that have established themselves throughout the CBD and suburban areas of Launceston, including Harvey Norman, Officeworks, Bunnings, Target and Spotlight;
- the introduction of market-leading national retailers is in fact beneficial to the Launceston community as it provides improved competition, new infrastructure, as well as a better product range and service; and
- the claim that Woolworth's will own **most** of the off-licence liquor stores is also unfounded.

KWM draws my attention to the decision of the Board in the matter of BWS Deloraine from 2011. KWM quotes the Board as stating (in response to the objectors' statements that they would have preferred a local business and local shops not owned by large public companies) that:

"We however do not see it as one of the relevant factors we may take into account ..."

"We do not make our decision on the basis of a comparison between the benefit of a locally owned business compared to a business owned by a national public company. We consider that would be an irrelevant consideration in the present context."

KWM goes on to submit that:

- even if such an argument were to be considered relevant, the representations have provided no evidence as to the actual projected loss of revenue or money flowing back into the State economy;
- the applicant has identified economic benefits from the proposal;
- Woolworths is an Australian company who returns profits to shareholders in all States, including Tasmania, in the form of dividends;
- Woolworths' supermarket and liquor businesses have invested in Tasmania over the years through the use of local transport, State based warehouses and maintenance and supply contracts with Tasmanian producers; and
- suggestions that the introduction of a large national retailer to Launceston will lead to "less economic activity in Tasmania" should be rejected.

Potential loss of employment

KWM submits, with respect to representations from staff of the Queens Head Inn and Kings Meadows Hotel, that the Queens Head Inn is located in Perth, Tasmania - 18 km by road from the proposed Dan Murphy's and is an on premise pub with Keno, TOTE agency, gaming, restaurant facilities and attached motel style accommodation in addition to its bottle shop. The introduction of a packaged liquor store almost 20 km from the pub and motel is argued by KWM to be unlikely to have a significant or material effect on the current revenue of this business which is vastly different to that of the proposed Dan Murphy's and

which caters primarily for the Perth community (rather than central Launceston). Further, KWM states that the representation by the Queens Head Inn that their turnover will decrease by 30 per cent if the new Dan Murphy's opens seems implausible. KWM submits that the Kings Meadow Hotel, in addition to its off-licence (Liquor Stax), also has a public bar, lounge bar, dining room, gaming lounge with 30 machines, Keno, TOTE agency, a drive-in bottle-shop, seven accommodation rooms and carpark for 135 vehicles. KWM concludes from this diversity that, despite being closer to the proposed Dan Murphy's than the Queens Head Inn, it is also unlikely to suffer significant or material staffing reductions following the introduction of the proposed Dan Murphy's. This is because it will only compete with one component of what Dan Murphy's will be doing, as opposed to the rest of its very substantial gaming and accommodation business.

Increased risks of alcohol related harm & sale of cheap liquor

KWM submits that a number of representations have objected to the proposed Dan Murphy's on the basis that the introduction of a large volume retailer of alcohol selling "bulk cheap liquor" will make it easier for some people to abuse alcohol. With respect to this argument KWM states that:

- The purpose of Dan Murphy's "Lowest Liquor Price Guarantee" is to beat competing common lines by a small price variation, say 5 to 10 cents, to ensure that customers know their prices are competitive. However, Dan Murphy's does not provide alcohol at an aggressive price discount to the extent that customers would perceive a significant price differential. KWM draw my attention to the analysis by Mr Abery of relative prices for a selection of lines.
- No evidence has been provided by the objectors that the relevant community suffers from particular issues or is particularly vulnerable to the abuse of alcohol.
- Very general evidence in relation to the use and abuse of alcohol in Tasmania as a whole is provided by only one objector, while several others assert that it is an issue in Launceston (for example, "*Launceston has plenty of liquor stores already and plenty of social problems from the abuse of liquor*"). However, the objectors do not provide any specific evidence of alcohol related issues in the relevant community.
- The community which is relevant to the application is comprised of the primary and secondary catchments defined in the Abery report and this community shows no particular vulnerability to alcohol related issues.
- The theory that more supply of alcohol, in larger bulk outlets, leads to more consumption due to cheaper prices, and additional consumption then leads to more harm is not agreed to by KWM. Rather, KWM assert that it is a theory unproven by any probative evidence, and if it were correct and taken to its logical conclusion, no further liquor licences would be granted as to do so would be to encourage the misuse or abuse of alcohol. KWM draws my attention to the previous statement of the Board that: "*The mere prospect that a liquor licence may lead to harm by supply of liquor which may be misused is not of itself a justification to refuse the licence.*" KWM state that, despite the significant growth in the number of liquor licences nationally, the Australian population is consuming less alcohol overall than at any time over the past 50 years and provide ABS statistics to support this contention. KWM submit that their client's experience is that customers may change their shopping patterns and begin to shop at Dan Murphy's, but the overall Launceston liquor "sales pie" will

remain the same. Some customers may choose to “stock up” where they find the range or price particularly appealing, or if they only shop in Launceston occasionally. However, where this occurs, customers generally simply purchase more of their product of choice per visit but on a less frequent basis.

- The proposed operating hours do not suggest a licensed premise where people will gather to drink late at night and engage in anti-social behaviour. Instead, they support a retail style offering, where people may purchase their groceries, liquor and other products during the day as they pass through the Launceston CBD.

The refusal of a licence application at Ravenswood

KWM make submissions regarding the refusal of a licence application at Ravenswood. KWM states that the application for this Dan Murphy’s off-licence is vastly different to the application for the Ravenswood Duncan’s in 2013. In this regard KWM provide the following points:

- The relevant “community” in relation to this application is not Ravenswood. The most relevant community is its catchment area outlined in the Aberly Report.
- The Board repeatedly noted in past decisions that it has a broad remit to interpret “community” and that it is *“not just the local community whose interests must be served but also those of “society” in general - the broader Tasmanian populace, including future populations.”* The Board also stated that *“A community can be defined in a number of ways - the immediate neighbours of a proposed outlet, the residents of a town/community, or the broader community of Tasmania both now and into the future.”*
- In considering whether the proposed Dan Murphy’s would be in the best interests of the community, Dan Murphy’s would be the first in Tasmania and would be a significant benefit not only for Launceston but for the wider Tasmanian community in establishing a store which would give customers access to a wider range and choice of products, competitive pricing and great quality service.
- The fact that Ravenswood should not be considered to be the relevant “community” for the purposes of this application is confirmed by the decision of the Board to grant an off-licence to Steve’s Liquor in December 2014. The application was opposed by a number of objectors on the basis of the proposed store’s proximity to Ravenswood and the fact that it was situated on one of the major road routes that services Ravenswood. Similar to this application, the objectors drew attention to the potential vulnerability of the Ravenswood community and sought to rely on the 2013 Ravenswood Duncan’s decision to refuse the application for a licence. KWM quote the Board in this matter as saying: *“The Board however does not consider that in this case “the community” is constituted by the residents of Ravenswood. The community surrounding the premise is much broader. The premise is situated in close proximity to the K Mart Plaza and other commercial development, with little residential development nearby. The employment of between six and eight people and the proposed \$500 000 renovation of the property have the potential to contribute positively to the local community as a whole.*
- While each application must be considered individually, the Board’s decision in relation to Steve’s Liquor is clear authority for the proposition that the relevant community for considering the proposed Dan Murphy’s is not Ravenswood, but the wider Launceston area.

- The Ravenswood community has more immediate access to licensed outlets other than the proposed Dan Murphy's. Since 2013, the Sunnyhill Hotel has reopened with a bottle shop and off-licences have been granted for Steve's Liquor on Racecourse Crescent and a 9-11 bottle shop at Launceston Plaza. The Sunnyhill Hotel is in Ravenswood itself and Steve's Liquor and the 9-11 Bottle Shop are approximately 2.5km by direct road connection from the centre of Ravenswood (closer than any other licensed outlet outside Ravenswood).
- The proposed Ravenswood Duncan's would have been in the centre of the shopping centre in Ravenswood, which was described as "quite confronting already on a Saturday afternoon with people "hanging around" behaving inappropriately." There was serious concern that the opening of the bottleshop would be a magnet for further gathering such people. By contrast, the site of the proposed Dan Murphy's is such that there is very minimal risk that the proposed Dan Murphy's would become a gathering point for anti-social behaviour and in Woolworths' experience, the extensive surveillance and staffing at Dan Murphy's stores strongly discourages any such behaviour.

Loss of donations and support for community sporting clubs

KWM notes that several members of community sporting groups have lodged pro-forma representations on the basis that they receive donations in the form of liquor and cash from liquor suppliers and that if the proposed Dan Murphy's licence is granted, such donations will decrease. KWM submits that these concerns are not well founded and should not be regarded as a reason to refuse the licence application on the following basis:

- The introduction of increasing competition to a market should actually encourage smaller businesses to support their local community groups in order to encourage customer loyalty. Continuing to provide sponsorship through cash, discounted liquor, provision of free meeting rooms and the like will be even more important for businesses to encourage their community connections. KWM brings to my attention a 2013 decision of the Board in the matter of BWS Port Sorell, where the Board stated that:
"a community, appreciative of the good corporate citizen role that the Resort in particular plays, would no doubt continue to support it through its purchasing power; this would be a sure way to ensure the on-going community support the Resort provides."
- All Woolworths liquor group stores support a number of charities including Jawun and White Ribbon and every store manager is able to make contribution upon request (which are normally in the form of a gift card which can be redeemed at a range of Woolworths' stores).
- The introduction of the proposed Dan Murphy's should not lead to a reduction in the support provided to local community sporting groups. Instead, the opening of the store will provide additional support and encourage local liquor providers to continue to provide support to community sporting groups to ensure their ongoing customer support.

Further information from representors

In order to make proper consideration of the representations regarding the impact of the proposal on existing businesses and employment levels, I sought further evidence regarding

the methods used by representors to calculate their estimated reductions in revenue and consequent employment reductions. I received responses from the following:

- Big Bargain Bottleshop Hadspen who submitted that their estimation of a 25 per cent to 30 per cent loss of income is based on the fact that as Hadspen is only approximately eight km from Launceston, a large number of their customers are employed in Launceston, and the overall buying power, and as such ability to sell liquor cheaper, a Dan Murphy's would have would likely result in this loss of sales and income. With regard to employment the representor stated that he operated the venue alone.
- Newstead Bottle Shop submitted that the estimate of lost revenue was based upon the impact felt when Steve's Liquor opened. With respect to the statement that "[wherever] a Dan Murphy's store opens there is a loss for all business within a 20km radius of at the very least 25 per cent", the representor states that this was also based on an estimate of the losses from the opening of Steve's Liquor and increased to account for his assessment of the buying power of Dan Murphy's. The estimate was also based on the experience of the previous owner of the Newstead Hotel, James McGrath, when a Dan Murphy's store opened up 2km from a bottle shop owned by Mr McGrath in Queensland. The representor estimates the employment loss from his venue as the equivalent of 30-45 hrs per week.
- ALM submit that they operate in all states of Australia servicing the independent liquor trade in both Off Premise and On Premise. As a consequence, ALM state that they have first-hand experience of the impact Dan Murphy's has on the independent liquor trade in regional areas. ALM provided me with a table (below) detailing examples of impacts in similar regional cities and towns. ALM state that they base their estimates for the impact of the proposed Dan Murphy's on this information and on further examples that they have. ALM predict a significant impact on local businesses and employment in Launceston if Dan Murphy's proceed with their retail offer. ALM expects not only to lose volume out of the Independent Off-premise market but also the On-premise market, as experiences in other states shows a trend for restaurants and bars to purchase their liquor needs via Dan Murphy's. ALM expect that if their volumes drop as expected they will need to review staffing levels.

Store name	CBN Jacks	CBN Nardi's	CBN Superstore
Town/Suburb	Ballarat VIC	Newcombe VIC	Tamworth NSW
Distance from Dan Murphy's	1.5km	50 metres (same shopping centre)	2.0km
Drop in sales per cent/time period	50 per cent loss (first 2 mths), 30 per cent drop post	30 per cent-40 per cent loss (first 2 months), 20 per cent drop post	28.5 per cent loss (first 2 mths), 20 per cent drop post
Remained trading/store closure	Remained trading	Remained trading	Remained trading
Reduction in store head count	-1 full time	- 2 full time	- 1.8 full time

- Crown Cellars submitted that their estimates were based on the impact of Steve's Liquor opening, increased slightly due to the closer proximity of the Dan Murphy's. Employment loss is estimated as four FTE.
- Mr Quarry from the Big Bargain Group provided a table showing his estimates, based on his experience within the industry, of turnover loss and employment reduction for 25 venues across the Launceston area. The estimated turnover loss ranges between 20 and 60 per cent, and staff reductions totalling 28 FTE. Some of Mr Quarry's estimates did not tally with those provided by the venues themselves.
- The Olde Tudor Hotel, part of EBC Leisure Ltd, submitted that their estimates of losses and employment reductions that might result from the competition from a Dan Murphy's were based upon the experiences of three of their properties. Case studies were provided (including financial evidence) of their experience with the Olde Tudor Hotel when the Prospect BWS opened; the Ophir Tavern in Orange NSW when a BWS and then a Dan Murphy's opened; and the Bayside Inn St Helens when a BWS opened. Turnover reduced in these properties by between 31 per cent and 39 per cent and gross profit by 38 per cent to 50 per cent with reductions in employment from 0.75 to 2 FTE and delays in capital investments.

I did not receive responses from the remaining representors from whom I sought clarification.

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 granted a liquor licence. I am satisfied that the applicant in this case is qualified in accordance with section 22.

Section 25A

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.” I am satisfied on the basis of the evidence provided that the proposed off-licence will not be operated in connection with the activities of a supermarket. In this regard I note the comments of the Board in the decisions of BWS Kingston (2005) and BWS Bridgewater (2005) and particularly in 9-11 New Town Plaza (2013) where the Board stated that:

... the Board is guided by the decision of the Full Court of the Supreme Court in *Australian Hotels Association (Tasmanian Branch) v Licensing Board (2006) TASSC 91*. Slicer J referred to the Second Reading Speech of the Minister who introduced the Bill for the Liquor and Accommodation Amendment Act 1995 which emphasised the Government’s opposition to the sale of liquor **in** supermarkets.

Of relevance is Justice Evans’ statement in paragraph 28 where he said:

A liquor licence authorises the sale of liquor from specified premises and a defining activity of a supermarket is the sale of food and other domestic items from premises. This common matter confirms for me that the connection between the grant of a liquor licence and the activities of a supermarket that is prohibited by s25A relates to the sale of liquor from the premises of a supermarket.

Section 24A

Section 24A is as follows:

24A. Requirements for licence

- (1)** 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.
- (2)** 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.
- (3)** In considering an application for an on-licence for a restaurant, the Commissioner or the Commission must be satisfied that the premises are, or are intended to be, used as a restaurant.

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

Section 24A(3) is not relevant to this application as it applies only to an application for an on-licence for a restaurant.

Section 24A (1) – best interests of the community

Section 24A(1) requires that I must make a decision which, in my opinion, **is** in the best interests of the community. That is to say, I cannot make a decision that I think *may be*, *appears to be*, or *is likely to be*, in the best interests of the community. Rather, my opinion must be that it **is** in the best interests of the community. The onus falls upon the applicant to put forward a credible case, the onus is on objectors to evidence the assertions they make.

The concept of the best interests of the community is similar to that of the public interest, which has received considerable judicial consideration. *Smith v Commissioner of Police NSW Police Force & NSW Fair Trading* [2014] NSWCATAD 184 provides a useful summary of the key authorities:

42. The Courts and the Tribunal have held that the concept of the 'public interest' is designed to give the broader interests of the community priority over private interests. In *Comalco Aluminium (Bell Bay) Ltd v O'Connor and Others* (1995) 131 ALR 657 at 681 the Wilcox CJ and Keely J said:

The purpose of the reference to public interest is to ensure that private interests are not the only matters taken into account: to make clear that the interests of the whole community are matters for the Commissioner's consideration. The effect of the reference is to amplify the 'scope and purpose' of the legislation.

43. Discretion to make a decision "in the public interest" is not confined except by the scope and purpose of the legislation itself: *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210 at 216 per Mason CJ, Brennan, Dawson Gaudron JJ. Applying a public interest test is a question of fact and degree: *Re Queensland Electricity Commission and Ors; Ex parte Electrical Trades Union of Australia* [1987] HCA 27; (1987) 72 ALR 1 at 5.

44. In *Director of Public Prosecutions v Smith* [1991] VicRp 6; (1991) 1 VR 63 the Court held:

"The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals"

45. In *Commissioner of Police v Toleafoa* [1999] NSWADTAP 9 at paragraph [25] the Tribunal's Appeal Panel said:

The "public interest" is an inherently broad concept giving the appellant the ability to have regard to a wide range of factors in choosing whether to exercise a discretion adversely to an individual"

The meaning of the term community is not defined in the Act, however it has been considered on numerous occasions by the Board. In *Hill St Cellars* (2010) the Board considered that:

"Community may mean those living and working in the locality, or may mean the broader Tasmanian community. It means, we think, in the context of the present legislation, a composite of both. Neither should, when relevant to the issue, be ignored.

The general community has an interest in seeing the orderly development of liquor facilities, and the control of grant, suspension and cancellation of licences. The wishes of the local community ought not to be determinative, necessarily, but will most likely be relevant."

In this case, the application relates to a premises that sits on the edge of the Launceston CBD at what is called a 'gateway' or entry point to the Launceston CBD by Mr Abery, who says that it is positioned on the arterial road system which carries high levels of local and regional traffic including tourists and other visitors to the city. Given its location, scale and large target catchment, I am satisfied that my considerations with respect to community for

this application should encompass the Greater Launceston area, rather than being restricted to the immediate area of the premises or to any individual suburb. While there is opposition from the general community, it is not strong. Further, there is some support as evidenced by the position of Alderman van Zetten, Mayor of Launceston, who is quoted in the Examiner newspaper on 2 November 2015 as stating that the proposed store would assist the city's economy and that it was positive that mainland companies want to be in Launceston. The majority of the objections come through representations from potential competitors, their employees and organisations sponsored by them. The arguments of all representors against the application can be broadly summarised as being:

1. that granting would result in a concentration of ownership that would not be in the best interests of the community because it would allow the Woolworths Group to control price and range;
2. that there would be turnover and employment loss in competing off-licences that would outweigh the benefits of the proposal;
3. that there would be less economic activity due to the mainland ownership of the proposed premises;
4. that lower prices and increased availability of alcohol would lead to increased social harms;
5. that there would be a decrease in sponsorship for community organisations and sporting clubs; and
6. that granting the licence would be contradictory to the rationale used by the Board in refusing two off-licence applications in Ravenswood.

Applicant submissions regarding best interests of the community

Considering the applicant's submissions first, in seeking to demonstrate that the granting of the application is in the best interests of the community, the applicant has provided a range of reasons, best summarised in the follow up submission by KVM detailed above. In short the applicant submits that the proposed premises would:

- provide employment in the fit-out (including opportunities for the Launceston construction sector) and ongoing operation;
- reinvigorate the west end of the Launceston CBD;
- improve amenity in the area by refurbishing a currently vacant store under a long-term lease and providing a more sympathetic colour scheme;
- provide a large range of competitively priced alcohol products, with Tasmanian products highlighted, available in a high quality, secure, light and clean store and also through an online order and collect service;
- be managed to a high standard as regards RSA and obligations under the Act; and
- provide sponsorship for the local community.

Considerable evidence was provided by the applicant and I am satisfied that the applicant has put forward a credible case and that the matters submitted in the application are relevant to the consideration of the best interests of the community. The applicant has planning authority for the use of the premises in the manner applied for.

Representations objecting to the application

I have summarised the arguments made by the representations in the numbered points above and I will address them in that order. They are similar in many ways to arguments that have been considered by the Board in detail in past off-licence applications, and have

not generally been sufficient to support an argument against the granting of an application. KWM have provided a number of relevant examples of the Board's deliberations of such arguments, though this application is distinguished by its size, both in terms of physical extent and range of products, and the fact that it is the first application of its type in Tasmania.

1. I am not satisfied that such a concentration of ownership would result from the granting of the application that it would be against the best interests of the community to do so. Nor am I satisfied that were such a concentration to emerge the result would be an adverse impact on the price and range of alcohol products available to the community. The liquor industry in Launceston is a very competitive one, and liquor is available from a range of types of premises, not just off-licences. The arguments made of the likely market share that might result to Woolworths were not supported by objective evidence. Were anti-competitive behaviour to result from this application then there are regulatory agencies who are able to deal with that.
2. The purpose of the Act is not to act as a barrier to competition, or to favour existing licensees over new ones. The Act requires decisions that are in the best interests of the community rather than merely benefitting private interests. Whilst many of the estimates of turnover and employment loss have not been evidenced, and seem to be high, some have been based on a careful and realistic assessment by the representor based on their experiences in the industry. I am satisfied that there will be an impact on existing licensees, however the question is whether those impacts would be of such a scale that they move from the realm of affecting private interests to having a negative impact on the broader community. The balance of the evidence is that they would not.
3. The argument that the geographic location of the ownership of an off-licence will have a material effect on the secondary economic impacts of the enterprise is not a strong one. The majority of secondary economic impacts would most likely relate to the spending locally of the salaries of those employed (either directly or by providers of services such as cleaning, transport etc), and the economic activity generated by the need for services to support the business (through payments for rents, power, water, cleaning, transport, security etc) – these would occur regardless of the location of the owners. The secondary economic impacts that result from the expenditure of the profits accruing to the owners would most likely be at the margin (I am provided with no evidence to the contrary), and in any event such an argument would be highly contingent on the expenditure choices of those owners. In the absence of objective evidence to support this argument, I am not satisfied that it is a relevant matter in considering the best interest of the community. I note that this is the same position as that taken by the Board in BWS Deloraine (2011).
4. The argument that lower prices and increased availability of alcohol would lead to increased social harms is a general one. Specific to this application it seems that the argument relies on the assumption that Dan Murphy's would engage in such deep discounting that it would materially change customers' consumption habits. I am not satisfied, on the basis of the evidence provided, that this deep discounting would occur. I note in regard to availability that I am told both that there is an over-supply of liquor in Launceston and also that the granting of this licence would cause other stores to close. I note the Board's comments in Hill St Cellars (2010) where the

Board found that *“in the absence of particular issues, the mere prospect that a licence may lead to harm by the supply of liquor which might be misused is not of itself a justification to refuse the licence.”* I am not satisfied that there is anything specific to this application that would justify refusal – the premises is in a CBD location, it is not in a vulnerable community; the proposed store seeks to service a broad catchment, including tourists, CBD workers and CBD shoppers; and the liquor market is very competitive in Launceston.

5. I have not been provided with any objective evidence to allow me to determine that the granting of this licence would negatively impact local sporting and community clubs, due to it leading to a reduction in sponsorship from existing licensees. There are real concerns expressed by the clubs that have made representations to me, and there is no doubt that sporting and community clubs rely on sponsorship from the hospitality industry for financial support. I also accept that, as the THA’s submission states, the hospitality industry has been very generous in that community support, but were existing premises to reduce sponsorship I have not been provided with any basis to conclude that sponsorship could not be found elsewhere, or such reduction could not otherwise be accommodated through alternative fundraising. I also concur with the view of the Board in BWS Port Sorell (2013) when similar arguments were considered (summarised above as argued by KWM).
6. I am not satisfied that the previous Board decisions relating to off-licence applications in the suburb of Ravenswood are relevant to this application in the manner argued. The local community of Ravenswood is only a small part of the Greater Launceston area that is the catchment for the Dan Murphy’s premises, and while I am satisfied that it is a community that is more vulnerable to the harms that can result from the misuse of alcohol, the balance of the evidence provided to me is such that I am not satisfied that the granting of this licence would materially increase the occurrence of those harms in the Ravenswood community.

In determining the best interests of the community in respect of this matter, I have weighed the submissions of the applicant and representors, and, where relevant I have obtained additional information to assist me to evaluate those submissions. In weighing the above evidence I am satisfied that granting the application is in the best interests of the community.

Decision

On the basis of the considerations above the application is granted.



J C Root
Commissioner for Licensing
16 May 2016