

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Michael Williams, Dover Central Bottle Shop, 5 Station Road, Dover.

Type of Application: Off Licence (Section 9 *Liquor Licensing Act* 1990).

Decision: 1 October 2013

Background

Appearing before the Board was the applicant, Mr Michael Williams.

The Board also heard from the following Dover community members in support of the application:

- Ms Suzanne Hay (prospective manager)
- Ms Jennifer Hadaway

There were ten letters of support for the application including one from the Mayor of the Huon Valley Council. The applicant submitted a petition containing approximately 400 signatures.

There were two written objections to this application and four objectors were present at the hearing. The following people made verbal submissions either to back up their written submission or to make new submission:

- Mr Brenton Fraser and Ms Charmagne Thiessen (Post Office 6985)
- Mr Martin Wohlgemuth
- Ms Jan O'Connor

BACKGROUND

The applicant seeks an off licence for a bottle shop to be located at Station Road, Dover. The premises currently operates as the BP Dover Service Station of which the applicant is part owner and manager. The business also operates a towing service and trailer hire and is an agent for Origin Gas. The property is a large two acre centrally located corner block.

It is proposed that the existing premises would be renovated by building a solid dividing wall between the current mechanics workshop which would house the proposed bottle shop and the existing service station. The workshop would be re-built at the back of the building.

The town is serviced by a general licensed restaurant and bottle shop, the Dover RSL Club (club licence) and a special licence (Tasmanian wine and beer) granted for a grocery/newsagency.

The applicant's submission

The applicant submits that it is in the best interests of the community to have a liquor licence granted for these premises (Section 24A(1) *Liquor Licensing Act 1990*).

The arguments in support of this should be viewed in the context of the recent fire and closure of the Dover Hotel with no decision at this point as to its re-building. The applicant submits that the loss of the Dover Hotel has created a need in the community for a bottle shop so that community members and tourists alike can access takeaway liquor.

The proposed bottle shop would be 80 square metres and it is claimed would be totally separate from the BP service station and workshop with a separate entrance and car parking to the side. The BP Dover faces south-west and the bottle shop would face north-west. The entrance and exit to the petrol station land (the footprint) would remain the same but traffic bollards and pedestrian walkways would delineate the service station business and the bottle shop.

The applicant submits that, apart from the physical separation achieved through the construction of the solid wall between them, the businesses would be totally separate. The applicant would be primarily working in the bottle shop and an experienced full-time manager would be employed solely to work in the bottle shop with casual labour as needed. The applicant would continue to operate the tow truck business.

The applicant would manage the “paperwork” for both the bottle shop and service station businesses; there would be two separate sets of accounts and two separate tills.

The applicant claims that the nearest stand alone bottle shop is in Port Huon (approximately 20 - 25 minutes away). Post Office 6985 is a restaurant recently granted a general licence to establish a bottle shop as part of the venue. The applicant claims that its hours of operation are limited and irregular especially during the colder months. The restrictions on club membership make purchase of liquor from the RSL difficult – with the need for non-members to sign in and with delays experienced as the takeaway side is not core business. The grocery store has limited stock, is overpriced and is not popular.

The proposed bottle shop would provide a larger range of liquor products, not previously available in Dover. Its hours of operation would be for the convenience of all consumers – not just locals but tourists, seasonal workers and fisherman at port. These would be 11.00 a.m. – 7.00 p.m., extending to closure at 10.00 p.m. on Friday and Saturday in summer, 7 days a week. It would provide a more relaxed environment from which to make purchases without entering a restaurant or club with their other core business activities detracting from speed and focus of purchase.

The applicant submits that the capital investment for the bottle shop and relocation of the workshop would be \$130,000 and include clean-up and beautification of the site.

Ms Jennifer Hadaway, a member of the township development group, supported the application in the hope that claimed improvements to the site would enhance the aesthetics of the approach to Dover.

The objectors' submissions

As indicated, there were two written objections and four verbal submissions heard.

All of the objectors' submissions were claiming that the grant of this licence would not be in the best interests of the community (Section 24A (1)).

Mr Brenton Fraser and Ms Charmagne Thiessen, the owners of Post Office 6985, submit that another liquor licence is not justified in a town the size of Dover which they claim has a population of 763 (Census 2011). There are three existing outlets to serve a small community, one of which is their own establishment which has recently (June 2013) been granted a general licence.

They submit that there are other liquor outlets within reasonable distance from Dover – Port Huon (20-25 minutes away), Southport (20 minutes) and a BWS at Huonville (40 minutes).

Their establishment offers wine, spirits, a full range of beer and ciders. Mr Fraser indicated they do not really sell casks, coolers or cruisers. Having only gained the general licence in June this year, they are still in the process of building the shelving, signage and stock lines. He claims that this is an expensive exercise and they have made a significant capital investment.

The objectors question the suitability of liquor being sold in premises so close to the petrol station. Ms Thiessen submits that there is no precedent for alcohol being sold at petrol stations and expresses concern about the negative messages it portrays, linking the consumption of alcohol with driving. She submits there are also safety issues associated with entry to and egress from the site.

The objectors question the validity of the petition submitted on the grounds that some of the signatories were under-age.

Concerns were raised by Ms O'Connor and Mr Wohlgemuth about the potential breadth of the off-licence hours – from 5.00 a.m. to midnight. Despite verbal indications to the contrary by the applicant, the objectors fear an expansion of opening hours which would adversely affect the residential amenity of the area, particularly their own residence which is across the road from the service station. Despite this, Mr Wohlgemuth did express concern about the safety of young people wanting access to liquor driving to Huonville at night and in winter.

Ms O'Connor's submission relates to her concern about the sale of alcohol and petrol so close together; she points out that the premises on which the two business would operate are on the one land title and questions the Board's interpretation of "premises" under Section 24A(2) of the Act. She submits that it is not in the community's best interest to mix cars, petrol and alcohol and like other objectors submits this is an unhealthy association that sends

the wrong messages. She raised safety issues with people smoking outside the bottle shop with litres of petrol stored underground close by; and potential anti-social behaviour of groups frequenting the bottle shop.

A written submission expressed concern for the proposed bottle shop's proximity to the school (100 metres from the high school) and the negative impacts on children of the advertising of alcohol; and the potential danger to an increased number of patrons due to the petrol pumps and underground fuel tanks and gas bottles stored in close proximity to the bottle shop where people would be free to congregate, smoke and use mobile phones.

This submission further claimed that there is adequate supply of venues from which to purchase liquor.

Considerations by the Liquor Licensing Board

The Liquor Licensing Board of Tasmania is called upon to determine this application for an Off Licence (Section 9) authorizing the sale of liquor for consumption off the premises.

This application faces two legislative tests to succeed: is it in the best interests of the community (section 24(A) 1) and is the principal activity to be carried on at the premises the sale of liquor (section 24(A) 2)?

In relation to the community interest test, the *Liquor Licensing Act 1990* states:

In considering an application for a liquor licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community (24(A) (1)).

However, before considering this section, the Board must apply section 24A (2):

In considering an application for an off-licence, the Board must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

A relevant consideration in the application of this provision is whether the proposed bottle shop is a sufficiently separate business from the service station. The Board has considered a range of issues in this regard.

There is no doubt that the premises housing both businesses are owned by the applicant (jointly with his business partner). They are on the same piece of land and on the same legal title. The applicant would undertake the "paperwork" for both businesses, although we are told that the accounts would be managed separately.

The bottle shop would have a full-time manager who would not be employed in the service station. However, she is the partner of the other owner/operator of the service station, the applicant's business partner. The applicant would work part-time in the bottle shop and would continue to run the towing business and help out at the service station. This is not a clear delineation of roles.

A solid wall would separate the two businesses with no through access. The entrances would be completely separate and face in different directions.

However, the premises would be housed under a common structural roof with common corrugated iron external walls. The re-built workshop would run along the back of both businesses with a 1.2 metre separation between it and the proposed bottle shop which would be surrounded on two sides by the service station.

The entrance to both businesses would be from the same street (Station Road) although investigation is being undertaken by the applicant to ascertain if access to the proposed bottle shop could come from a new driveway off a private road. There is no guarantee that this would be allowed.

On the concrete footprint, the proposed installation of traffic bollards and pedestrian walkways make some attempt to delineate the service station business and the bottle shop. The Board does not consider this attempt at physical delineation to be convincing; the bollards can be easily stepped through by pedestrians going in either direction between the service station and the proposed bottle shops and cars could easily manoeuvre around them.

The BP livery and signage is the usual associated with service stations and is quite prominent, particularly the large advertising sign on the corner of the site next to the entrance to both the service station and what would be the bottle shop. The petrol bowsers would be in front of the petrol station facing Station Road which is the entrance to both businesses.

The Board was told by the applicant that the service station is only profitable for two days/week. The applicant divulged that he envisages that the earnings from both businesses would be 70% from the service station and 30% from the bottle shop. The applicant informed the Board that he expects that the bottle shop customers would be the same customers who purchase fuel from his service station. This strengthens the argument about the connectedness of the two enterprises.

The common owners and operators, the common account management, the common roadway entrance and exit, the BP livery and presentation, the proximity of the petrol pumps, the proposed workshop and service station surrounding the bottle shop on two sides, and some cross operational roles for the applicant all persuade us that, for practical purposes, they are the same premises, both physically and legally.

Another important consideration is what a disinterested observer would think is relation to the separateness of these two businesses. Following an inspection by the Board on 23 September 2013, we are of the view that such a person would gain the impression, should the application be successful, that this is one site containing one building in which is housed both the bottle shop and service station with, despite the different orientations, very little separation between the two.

Despite their view that the other options are not entirely convenient, the community of Dover has access in three locations in the town to off licensed sales of liquor: one across the road,

another just up Station Road and the third about 500 metres away. In this respect, this application is different from that of Arthur's Lake Road House, 2007.

Additionally, a larger centre containing the Kermandie Hotel is not too far way (20-25 minutes).

The Board considers that the insertion of section 24A(2) in the *Liquor Licensing Act 1990* reflects Parliament's intention that liquor should not be available from a proliferation of types of premises, particularly to prevent off sales from a range of mixed businesses.

In terms of our broader remit to consider what is in the best interests of the whole Tasmanian community, we confirm many previous decisions of the Board that it would not be in their best interests if all manner of business could separate a section of their premises and set up a licensed bottle shop. The Board does not believe that Parliament intended this to happen in the enactment of the legislation.

For all of these reasons, the Board is not satisfied that this application meets the criterion regarding principal activity as outlined in section 24A(2). The evidence as outlined above clearly establishes that the principal activity carried on at the premises would not be the sale of liquor but activities associated with the service station, namely the mechanics workshop and the supply of petrol.

In making its determination on this matter, the Board has referred to previous decisions, particularly The Ferry Road Store 2008, Arthur's Lake Road House 2007, and Gilbert's Street, Latrobe 2006. We have also considered the decision of *Gaghan V LLC (2000) VCAT 1871* for a description of what would be separate premises and how a property is used.

Decision

The Board directs the Commissioner to reject the application as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)

1 October 2013