

Application by Glenn William Haas for a Special licence for the premises The Horny Cray, 14 Franklin Street, Swansea, 7190.

Decision: Licence application refused

Date: 27 May 2022

The application

The applicant seeks authority for the sale of liquor to a person having a meal on the premises.

The applicant submits that:

- the granting of the licence would support economic growth for the Horny Cray as a business, and the surrounding areas of the East Coast, through increased employment and purchase of produce from local vineyards surrounding Swansea;
- the premises currently employs ten staff all of whom have a current RSA certificates and have recently had the opportunity to trial their skills in serving alcohol at the recent Dark Mofo event held in July under a liquor permit;
- the sale of alcohol would enable the business to grow necessitating the employment of approximately two additional staff, creating jobs for those living within the local community;
- the premises predominately supplies a large variety of fresh seafood to either be purchased to take away, or dine in;
- the premises is a well-known and reputable eatery that has expanded its products to offer the customer food, drinks and a unique brand of merchandise;
- customers often request to purchase local and state-wide wines and beers with their food; and that
- customers consist of local residents and tourists that stay within the township or are travelling through which allows them to stop at the premises as a preferred "half way" stop over.

Site Visit

I visited the premises on 28 January 2022 and met with the applicant. The premises has the look and feel of a traditional takeaway store rather than a restaurant. It is of moderate size for a takeaway. There is a short forecourt at the front where there are stools fixed at benches with four on either side of the entrance allowing customers to sit overlooking the bay. The premises has a typical fit-out for a takeaway store: counter, bain-marie displaying heated food, fridges, including one displaying fresh fish, others with drinks etc., a coffee machine for takeaway coffee, beverages, and confectionary, and a range of "Horny Cray" branded merchandise such as caps, stubby holders, t-shirts, hoodies and the like. There is no room within the premises for tables and chairs - it is restricted to the bench seating along the front window with stools in a similar configuration to the forecourt.

The menu comprises the types of foods that are generally available at takeaway stores throughout Tasmania, including burgers, rolls and sandwiches, fish and chips, and snacks such as dim sims, dagwood dogs, potato cakes etc.

Pre-prepared meals, sweets and catering such as seafood and sandwich platters are available and I was advised by the applicant that pizzas would also be available in the near future. I was advised that while purchases were generally served in takeaway containers, crockery and cutlery could be provided on request.

Representations

In accordance with section 23(3) of the *Liquor Licensing Act 1990*, the applicant made a public notice of the application. I did not receive any representations in relation to the application.

Considerations

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

Section 22

Section 22 of the Act sets out the criteria that a person must meet in order to be qualified to be granted a liquor licence. I am satisfied that the applicant is qualified in accordance with section 22.

Section 24A

Section 24A of the Act states at (1) that:

“In considering an application for a liquor licence, the Commissioner or the Commission must make a decision which, in the opinion of the Commissioner or the Commission, is in the best interests of the community.”

The term “best interests of the community” has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*).

Regulation 4 provides:

4. Best interests of the community

For the purposes of the definition of *best interests of the community* in section 3 of the Act, the following interests are prescribed:

- (a) the general costs and benefits to the community of the supply, or proposed supply, of liquor;
- (b) whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –
 - (i) reside or work; or
 - (ii) attend schools or other facilities frequented by children; or
 - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
 - (iv) attend places of worship;
- (c) possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor.

I am satisfied on the evidence provided that the relevant consideration is that of the balance between the general costs and benefits to the community of the proposed supply of liquor. The context for this consideration is provided by the Object of the Act which is defined at section 2A in the following terms:

- I) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –
 - (a) minimise harm arising from the misuse of liquor by –
 - (i) ensuring that the supply of liquor is carried out in a way that is in the best interests of the community and does not, as far as practicable, detract from public amenity; and
 - (ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and
 - (iii) encouraging a culture of responsible consumption of liquor; and

(b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the best interests of the community.

It is a matter for the applicant to make the case that their application meets the requirements of the Act.

I have considered the application and have determined to refuse to grant the liquor licence applied for.

In making this determination I have taken into account:

- The application for a special licence (restaurant);
- The submission made by the applicant in support of his application;
- The inspection of the premises that I undertook, and the information provided to me by the applicant while I undertook the inspection.

The *Liquor Licensing Act 1990* defines a *restaurant* as a premises in which the principal activity is serving food for consumption on the premises. With respect to the Horny Cray, it is clear that the principal activity is the sale of food, confectionary, soft drinks and so on, to local and transient customers for consumption off the premises and that on premises dining is ancillary to that activity. I considered similar matters in my decisions regarding Bes Mudi (2016) and Norwood Cafe & Takeaway (2018), where I determined to refuse the applications. With respect to Bes Mudi, I noted:

“This is a small premises with limited parking, a take-away focus and limited scope for in-house dining. In-house dining appears to be a minor adjunct to selling of take-away food and packaged meals...”

The Act requires that to grant any licence I must be of the opinion that it will serve the best interests of the community to do so. The submission provided by the applicant in support of his application is not compelling in this regard. He did not provide sufficient evidence to convince me that the sale of Tasmanian liquor products from the premises would provide noteworthy flow-on benefits to local producers or the economy.

The community’s best interests are not met by all takeaway stores being licensed to sell liquor. This was recognised by the Licensing Board (which had previous responsibility for determining licences) in its decision regarding the Port Sorell Snack Bar (2011). It found that:

“...it is not the intention of the legislation or this Board that every corner shop or retail venture be also licensed to sell liquor.”

The Board also found that:

“... the mixed business/corner shop plus minor addition of seating space for consuming food does not of itself justify the grant of a liquor licence. In the best interests of the community the provision of liquor in the restaurant type of designation dictates that the premises offer something more, either exclusively...or more closely resembling a restaurant in ‘look and feel’...”

The premises does not have the look and feel of a restaurant and the applicant has not demonstrated that it is distinguished in any way from other unlicensed takeaway stores throughout the State.

I accept that Swansea has a component of tourism to its economy. The Commission has recently considered (on appeal) an application (Log Cabin General Store) that argued similar special circumstances. The Commission made the following remarks of relevance to this application:

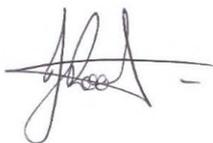
29. The Commission acknowledges that Bicheno is located on the attractive Tasmanian east coast. It accepts that tourists might see it as a destination and it is certainly true that they would pass through it on their way to more well-known tourist destinations such Freycinet National Park or points further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

and

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

Decision

I find that the business related to the application is a typical takeaway with stools and benches for the convenience of customers who wish to consume their food on the premises. The provision of such is not unusual for a takeaway business and the premises is not distinct from other takeaway stores in Tasmania. I have not been provided with evidence sufficient to demonstrate that the best interest of the community would be served by granting the licence and as this is the case, I am bound by section 24A(1) of the Act not to grant the licence.



J C Root
Commissioner for Licensing

27 May 2022