

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Carlton Dixon, Campbell Town Bottleshop, 119 High Street, Campbell Town

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

Hearing: 19 March 2014

Decision: 11 April 2014

Background

Appearing before the Board were the applicant, Mr Carlton Dixon; and objectors: a number of residents of Campbell Town and Mr Travis Anderson, representing Deloitte, appointed receivers and managers of the Doherty Campbell Town Hotel.

Thirty-three persons were present at the hearing, which was held in Campbell Town.

Nine written submissions were received, all objecting to the application. At the hearing, the applicant tabled a letter from Ms Debbie Thomas withdrawing her submission.

Of those who made written submissions, the following made verbal submissions in support of their written submissions:

- Ms Claire Connan -resident
- Mr Travis Anderson of behalf of Mr Steven Allan Hernyk, Joint Receiver and Manager, Deloitte
- Ms Joanne Price – Manager, Campbell Town Hotel
- Mr Neville James – resident
- Ms Pauline Blyth – resident

Additionally, a further nine verbal submissions were received from:

- Mr Nathan James – licensee, Man O’Ross Hotel (in support)
- Mr Randall Russell – resident (in support)
- Mr Ken Reid – resident
- Mr Garry Douce – licensee, Campbell Town Golf Club
- Mr Len Haney – resident
- Ms Danielle Peak – Manager, Campbell Town Hotel Bistro
- Ms Kylie Jones
- Mr Brett Cashion – Bar Manager, Campbelltown Football Club
- Mr Len Fisher

Professor Ian Duncan sought leave from the Board to appear on behalf of his client, Mr Travis Anderson. Section 213(6) of the *Liquor Licensing Act 1990* states that:

A person is not entitled to be represented at a hearing unless the Board is satisfied that injustice could otherwise result.

The applicant indicated to the Board that he objected to Professor Duncan representing his client as he (the applicant) was unrepresented and felt that he would be disadvantaged should the Board allow the representation.

The Board conferred and did not grant leave for Professor Duncan to appear as we were not satisfied an injustice could result by Mr Anderson not being represented by legal counsel.

The applicant seeks an off licence to sell liquor from a proposed outlet, part of a small three shop complex at 119 High Street, Campbell Town. The proposed outlet, in an end shop, would offer a drive-through as well as walk-in access.

There are a number of licensed premises in Campbell Town including the Campbell Town Hotel (general licence) directly opposite.

The applicant's submission

The applicant seeks to establish a new retail liquor outlet in Campbell Town and 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*).

He bases his submission on the following arguments.

There are no off licensed premises in Campbell Town and a new outlet would offer an unprecedented convenience, range, service and value for money for Campbell Town residents and tourists. The extensive range (approximately 1 300-1 400 different lines) of quality liquor (stock level valued at \$150 000) would increase the choice available in the area. Prices would be competitive, offering value for money to the consumer.

The proposed outlet would present alcohol for sale in well lit, attractive modern premises, adding to the amenity of the surrounding area and do so efficiently and profitably thereby guaranteeing continuity of service, on-going refurbishment and a sustainable business and service. In answer to an objector, Mr Dixon submits that all liquor would be stored in a cool room inside the premises.

The estimated cost for construction and fit-out of the proposed premises is approximately \$250 000 which would inject funds into the local community.

The proposed outlet would operate 7 days a week with opening hours proposed from 10.00 a.m. to 9.00 p.m. Monday to Wednesday, 10.00 a.m. to 11.00 p.m. Thursday to Saturday and 10.00 a.m. to 8.00 p.m. on Sundays. The complex has 15 car parking spaces available as well as parking on High Street.

The applicant submits that there would be a net employment gain in that two full-time and two part-time staff would be employed. He submits that employment at the Hotel would not be necessarily diminished as he expects some of his clientele to be different from that of the

Hotel – passing travellers or residents who purchase their takeaway alcohol from outlets other than the Hotel.

He submits that the Campbell Town Hotel has a limited bottle shop range and the current set-up for purchases of off-sale liquor at the Hotel is not conducive to modern notions of service delivery, particularly for women. Patrons, with a direct line of sight and hearing, are some 3-4 metres away from the TOTE/bar area, within hearing distance of the voices of TOTE race callers and noisy bar patrons. He submits that customers deserve a better level of service than this.

A new liquor outlet would serve not just the residents of Campbell Town but also travellers passing through the town who could enjoy the convenience of the drive-through access. It is estimated two million vehicles pass through Campbell Town each year.

The addition of the proposed outlet would revitalise the liquor industry and increase the potential for further development by the Hotel and other licensed (club) premises.

The applicant submits that the over-riding objection in relation to there being insufficient need in the community is an anti-competitive argument. The main objectors are employees or patrons of the Campbell Town Hotel, which is currently being run under receivership. The proposed bottle shop is a potential competitor.

The applicant submits that the objection from the receiver of the Hotel (Deloitte) is not relevant to the Board as it exaggerates the likely impact of the competition of the intended premises and, in any case, the Board has no obligation to engage in trade protective activities to preserve businesses and financial returns to banks and liquidators.

He discounts the concerns of community members that the proposed bottle shop would have a negative impact on the services provided by the Hotel. The objectors present no evidence for this, he submits, other than a generalised expression of fear that competition in off sales would curtail the provision of these services. Much of this fear, he contends, is generated from scare tactics “drummed up” by the liquidator and Hotel management to protect the value of the asset.

The applicant submits that in other towns (for example Scottsdale, Georgetown and Longford) the fears of community members that a new bottle shop would pose a threat to a hotel’s continued operation have proved unfounded. In fact, in the face of competition, owners have re-invested in the hotels to everyone’s advantage. In support of the application, Mr Randall Russell submits that those who patronise the Hotel would continue to do so and would not desert the Hotel as a preferred liquor outlet.

The objectors’ submissions

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

Mr Travis Anderson, representing Deloitte, the receivers of the Campbell Town Hotel, spoke to the written submission of the receiver, Mr Steven Hernyk, outlining Deloitte's objections to the application. The Hotel has been in receivership since August 2013 and Deloitte has been marketing the sale of the property since then. The applicant made an unacceptable, below market offer.

He submits that there is currently an adequate number of licensed premises in Campbell Town for the demographics of the district.

In written submission, Mr Hernyk submits details of the Stenning Report, 2013 commissioned on behalf of the Tasmanian Alcohol Action Framework and accepted by Government in relation to potential changes to the *Liquor Licensing Act 1990*. Within this context, he submits that the proposed bottle shop would not provide anything positive to the social fabric of the community. Mr Hernyk submits that a new bottle shop would add to the volume of liquor available in the town thereby increasing the ability of those people with alcohol related issues to access liquor. While acknowledging the difficulties of establishing causal links, he further submits that the potential to exacerbate the harm in the community is a tangible factor for consideration by the Board.

The addition of a licensed bottle shop in the town would place undue economic pressure and stress on existing local community businesses and affect the profitability of the Hotel and therefore the chance of a favourable sale.

Deloitte refutes strongly any representation by the applicant that, under the receivership, the current stock rate is inadequate. Mr Anderson cites Deloitte's investment in the property that has increased the stock lines value from \$21 000 to \$72 000 with the bottle shop now carrying all major brands of local, national and imported products.

He rejects the applicant's claims that the Hotel is "old fashioned" and has a limited service culture. He submits that the service, safety and standards of the Campbell Town are vastly improved since the Deloitte take-over of the property.

He submits that an additional bottle shop in the town would lead to a loss of jobs. The Campbell Town Hotel employs 15 people whose livelihoods are threatened. Mr Anderson acknowledges that there would be new employment created at the proposed new business but submits that the applicant fails to address the job losses that would occur at the existing establishment as a result.

The Deloitte submission included a petition containing 175 signatures objecting to the application.

Ms Joanne Price, Manager Campbell Town Hotel, submits the granting of a licence would have an adverse impact on the current amenity of the area including a significant negative impact on the Hotel's business thus jeopardising its future sustainability.

Like others, she submits that the small community of Campbell Town cannot sustain another licensed premises. If the Hotel suffers loss of patronage, this would have a detrimental effect

on local jobs as well as local businesses. She submits that the Hotel would definitely lose trade and therefore its profitability would decrease affecting the employment of the staff; jobs would be lost.

The Hotel does more than just sell alcohol and is the only venue to offer gaming, keno and TOTE as well as budget accommodation, pub style bistro, conference facilities and is a popular meeting place for many generations of local families and visitors. Ms Price rejects strongly the assertions of the applicant in relation to the environment of the Hotel's bottle shop.

Many objectors submit that the existing liquor outlets in Campbell Town are sufficient for the needs of a small community. They are satisfied with the bottle shop within the Campbell Town Hotel. They express concern at the effect a new bottle shop would have on the Hotel which, they submit, provides great service to the community and the travelling public through its provision of reasonably priced meals, budget accommodation, gaming, keno and TOTE facilities. It provides business to other suppliers in the town, such as Banjos Bakery, the IGA supermarket and Butler's Butchery.

If the Hotel were negatively impacted by the proposed bottle shop, the loss of this "iconic establishment" would be keenly felt.

It is submitted that the Hotel provides sponsorship of activities, for example "The Robins" football team. Ms Price submits that the hotel is also supportive of local charities and community groups by raising money and awareness and by offering them facilities for fund raising events and helping to source sponsors and donations for such events. She submits that over \$10 600 has been raised in this way over 2013-14, the money directed to a range of listed charity groups. Mr Anderson submits that \$2 000 was raised for the Cancer Council in December 2013. He cites a recent decision of the Board (Rokeby 2013) as an analogous example.

Some objectors claim that the proposed bottle shop threatens the lifestyle of Campbell Town. Mr Len Haney submits that there is evidence that additional access to alcohol increases the incidence of alcohol related harm. The Hotel and other licensed premises provide adequate supply given the population. He submits that an additional outlet would lead to greater consumption of alcohol and therefore there is an increased risk of anti-social behaviour in sections of the community. He submits that Campbell Town has been free of the sort of unwelcome behaviours, such as vandalism, associated with youth drinking that other nearby towns have experienced due to an easier access to liquor. The Hotel, it is submitted, presents a regulated and controlled access that is beneficial to the community. Ms Connan, in her written submission submits that the proposed business hours of the bottle shop would contribute to increased vandalism, break-ins and general "hoonish" behaviour.

Some objectors also submit concerns about increased traffic problems with vehicles stopping on the highway and the safety of vehicles exiting the drive-through facility back onto the highway. Ms Price raises concerns about the extent of the car parking spaces that would be

shared by customers of the proposed bottle shop and elderly people who access the chemist shop through the back door.

Mr Ken Reid submits additional concerns about the location for the storage of beer pallets which he assumes would be external and therefore unacceptable.

An over-riding theme of the objections is that Campbell Town has enough licensed premises now and the community does not want another.

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.

The principal test for the granting of any licence is if it is the best interests of the community to do so.

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)).

The applicant makes a number of submissions as to why this proposed bottle shop would be in the best interests of the community.

Of relevance and accepted by the Board are the convenience factor – there is no stand alone bottle shop in Campbell Town and the drive-through access advantage; the possibility of competitive pricing of liquor, greater choice and potential access to a more diverse range of liquor products than that currently available from the other outlet.

The applicant is a successful owner of several licensed premises around Tasmania and the Board has no reason to doubt his claim that the premises would be run efficiently and professionally.

Whether there is any net employment gain or loss would depend on the success of the proposed bottle shop. The objectors claim that it would drain custom from the Hotel bottle shop such that some people would lose their jobs.

The applicant is confident that the overall customer base – and therefore sales of liquor – would be increased by the addition of a drive-through bottle shop on the highway accessed by some travellers in the two million cars passing through Campbell Town each year (a statistic not disputed by the objectors). The Board is inclined to think this a credible proposition, in which case the effect on the employment of the Hotel staff would be less than claimed by the objectors. At most, the Board suspects the overall impact on employment either way would be marginal.

However, the Board does acknowledge the significant community opposition to this application. As we have said previously (Dover 2013, New Norfolk District Football Club 2014), we do not place great weight on petitions which by their nature can be manipulated

and lack validity. Nevertheless, there were thirty people present at the hearing, who appear to be residents of Campbell Town, objecting to the proposed bottle shop, mainly because of its potential adverse impact on the operations of the Campbell Town Hotel.

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 competition between outlets to be compelling.

Having said that, the Board has some sympathy for the argument that a hotel has a role beyond the sale of liquor in some communities (as we have said before (Rokeby 2013)). In this case, the submissions settle mainly around the potential adverse impact the proposed bottle shop would have on the operation of an “iconic” establishment (the Campbell Town Hotel) and the businesses that supply to it (such as the butcher, bakery etc).

The community members fear the closure of the Hotel – or withdrawal of some services at least – and do not want to risk losing this. They are happy with the status quo and simply do not want another licensed premise – because, they submit, they do not need it.

Those with a more direct commercial interest (the Manager of the Hotel and Deloitte) indicate that the Hotel raises money for and supports in different ways various charities and a local football team. Whether this sponsorship and support would cease or be diminished as a result of a new bottle shop is debatable.

Nevertheless, the Board does acknowledge that the fear of the Hotel being adversely affected by competition from the proposed bottle shop is genuinely held by most of those present and is expressed also in written submissions.

However, the Board is not convinced that the proposed bottle shop would necessarily threaten the Hotel’s operations in the long run. 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.

There was no persuasive evidence put to us demonstrating this and we are not satisfied that this would necessarily eventuate. In any case, a community, appreciative of the good service that the Hotel purports to provide, would no doubt continue to support it through its purchasing power; this would be a sure way to ensure its on-going viability. This is the argument that Mr Randall Russell submits – those who patronise the Hotel would continue to do so for all of the attributes and services that it provides irrespective of the existence of a bottle shop.

The Board sees the objections of Deloitte –those of Mr Hernyk and Mr Anderson - as basically anti- competitive arguments. We appreciate that a new bottle shop in town would be a potential competitor to one part of the Hotel’s operation and thereby could make the sale of the property potentially more difficult, at least at a price the receivers would be hoping to realise. We understand Deloitte's objection on these grounds but we discount it as not

relevant to the Board's determination; Deloitte's relationship with the Hotel, its staff and the community is a commercial one.

Whether there is sufficient supply of alcohol in the area already – and therefore insufficient need for another liquor outlet - is an issue basically related to commercial interests.

At a broader level, some objections relate to the impact of the proposed bottle shop on the social fabric and general amenity of the town. While we agree that it is difficult to identify any specific social capacity building element to bottle shops by virtue of their definition, the Board's view on this is a general one: if this criterion were to be an over-riding one, no application for a bottle shop would ever succeed. This is clearly not the purpose of the Act or Parliament's intention in including this category of licence within it.

However, Mr Haney argues that the absence of easy access to alcohol in Campbell Town has seen the town devoid of many of the anti-social behaviours associated with its consumption that are evidenced elsewhere. He submits that while take-away liquor is available through the Hotel bottle shop, it is purchased in a somewhat controlled environment where problematic purchasers are known and witnessed and this factor has assisted in moderating purchases with a consequent lack of adverse impacts on the community.

The Board accepts the submission as plausible to the extent that a drive-through bottle shop could make it easier for some problematic consumers to purchase alcohol. But no persuasive evidence was put to us to convince us that this would lead, in the circumstances of this case, to increases in alcohol related harm or anti-social behaviour that would impact adversely on the community of Campbell Town.

Similarly, we reject the submission of Mr Hernyk of Deloitte that increased sales of alcohol would lead, in this case, to increases in alcohol related harm. He cites the Stenning Report, which may have been accepted by Government in 2013, but no changes to the *Liquor Licensing Act 1990* have been effected to date and the only test for the Board remains what is in the best interests of the community.

No parties mentioned, let alone submitted evidence to the effect, that Campbell Town is a community particularly vulnerable to social dysfunction such that the Board would need to assess the extent of the complex relationship between increased availability of liquor and increases in alcohol related harm. This is what distinguishes the submissions in this case from those in the Rokeby application in 2013.

The Board rejects as not relevant the submission relating to the potential safety issues of vehicles exiting the bottle shop onto the highway and parking on the highway, as these are rightly matters for the local Council in its consideration of approval for use of the site, which the applicant advises has been granted.

On the day of the hearing, the Board visited the car park to assess the access to the chemist shop for elderly people – it appears to us that the car park would be sufficient to accommodate the three shops and the Board assumes that this issue would have been addressed by the Council in its approval of the use of the site.

The Board has a broad remit to interpret “community”. As stated in previous decisions (Dickens Cider House 2013, BWS Port Sorrell 2013), 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.

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.

While the Board accepts that the vast majority of community members present at the hearing does not want this application to succeed, their reasons for so opining are not entirely convincing. We discount the anti-competitive arguments against this application and are not persuaded that the Hotel will be significantly negatively impacted by the presence of a competitor in a component part of its business. We do not believe that sufficiently strong arguments have been submitted such that would outweigh the advantages we believe would accrue to the community more generally, which extends beyond the residents of Campbell Town.

Having considered all issues, the Board is satisfied that, on balance, it would be in the best interests of the community to direct the grant of this licence.

Decision

The Board directs the Commissioner to grant the licence to Carlton Dixon, Campbell Town bottle shop as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)

11 April 2014