

Licensing Board of Tasmania: Decision

Application

Applicant: Mr Stuart Cowen, Cygnet Bottleshop, 58 Mary Street, Cygnet

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

Hearing: 19 February 2015

Decision: 11 March 2015

Background

Appearing before the Board were the applicant, Mr Stuart Cowen accompanied by Mr Douglas Cowen (his father) and his legal representative, Mr Phillip Kimber; and objectors: a number of residents of Cygnet and the owner and licensee of The Cygnet Hotel, Mr Scott Turnbull.

A total of thirteen objectors were present at the hearing, which was held in Hobart.

Seventeen written submissions were received: six in support of the application (two of whom are employees of the applicant's family at the Dover bottle shop) and eleven objecting to the application.

Of those who made written submissions, the following made verbal submissions in support of their written submissions (all objecting):

- Ms Rosemary Jones –resident and business owner
- Mr Scott Turnbull, owner and licensee of The Cygnet Hotel
- Mr David Mills – resident

Additionally, a further three verbal submissions (all objecting) were received from:

- Mr Colin Rick
- Ms Cherie Fyfe
- Mr Jim Halton

The applicant tabled further material on the day of the hearing in support of his application. The Board accepted this and gave the objectors (who received copies) 7 days to provide any further comment on this material. No comments were received.

This further material contained two additional letters of support for the application, one from a local resident, and the other from the Mayor of the Huon Valley Council.

The applicant sought leave from the Board for his legal representative, Mr Phillip Kimber, to appear on his behalf. 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.

There were no objections and the Board was satisfied that it was appropriate in the circumstances to grant leave for Mr Kimber to appear.

The applicant seeks an off licence to sell liquor from a bottleshop to be housed within the fire damaged and now derelict former Cygnet Central Hotel that was burned down in 2012. The building is on the corner of Mary Street (the section of the Channel Highway running through Cygnet) and a side street, Frederick Street, in Cygnet. The proposed bottle shop would be accessed from Frederick Street (the same as the former Hotel's bottleshop).

There are a number of licensed premises in Cygnet offering takeaway liquor, including the two hotels (general licences) and the RSL Club (club licence). These premises are within 500 metres of each other.

The applicant's submission

The applicant seeks to establish a new retail liquor outlet in Cygnet 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 is no standalone off licensed premises in Cygnet. The proposed outlet would operate 7 days a week with opening hours proposed from 10.00 a.m. to 8.00 p.m. (10.00 p.m. Friday and Saturday). The range (approximately 1500 different lines) of liquor would increase the choice available in the area. He estimates that, in comparison, the current level of different liquor lines available in Cygnet licensed premises would be around 500 lines.

The proposed outlet would present alcohol for sale in well-lit, inviting and spacious modern premises with good access for both cars, with some undercover parking, and pedestrians including those with a physical disability.

A new outlet would add value to the appearance of the Cygnet township in general rather than having a fire-damaged building sitting idle (as it has done for over two years) with an unattractive appearance.

The applicant submits that the proposed outlet would offer employment to two full time employees initially, potentially up to three in the future. He submits that employment at the Hotel would not necessarily be diminished as he expects some of his clientele to be different from that of the Hotel – for example, residents who purchase their takeaway alcohol from outlets in Huonville in particular.

He submits that the current operators within the Cygnet region are not providing the service, range and breadth that the community expects from takeaway liquor stores. He submits that the bottle shop areas of both hotel venues are small and cramped, offering little choice and

neither has disabled access to the bottle shop. He posits that many people would be obtaining liquor in other places (such as Kingston or Huonville) at some inconvenience.

The applicant submits that the over-riding objection in relation to there being sufficient need in the community is an anti-competitive argument. The main objectors are the licensees of the hotels or their employees. The proposed bottle shop is a potential competitor to these.

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.

The applicant submits that many new sub-divisions have opened up in the Cygnet area with plenty of land for sale and this is evidence of the expansion and growth in the area. He submits Tasmanian Government regional population growth data which indicates that the Huon Valley Local Government area has one of the strongest yearly growth rates (up 1.0% over a twelve month period (2012-13) (representing 153 people)).

He submits that, on the basis of ABS Socio-economic Indexes for Areas data (2011) that he tabled at the hearing, Cygnet scores in the normal range index of economic resources indicating, he submits, that it is not “unusually poor”. Similarly for the index of education and occupation levels of the community, Cygnet falls within the normal range.

The applicant provides (Census 2011) ABS demographic data giving the population of Cygnet (1454) and surrounding areas at a total of 4,368 people. A Huon Valley Council document puts the population of the same area at 4,064. He provides further statistics for visitors to the area at 200,000 people visiting the Huon Valley annually, a significant number of whom, he submits, travel to and use facilities in Cygnet. From this, he deduces that the proposed bottle shop would provide an easily accessed location for these travellers plus locals.

Using an ABS Snapshot of Alcohol Consumption in Australia (2007-8), the applicant extrapolates that 2,660 people would consume alcohol on a weekly basis in the Cygnet region, a number that constitutes his target market.

After hearing the verbal objections, the applicant’s legal representative makes the following summation:

- The applicant hears the objections but rarely do the negatives outlined in situations like this come to pass in reality;
- A potential new customer base may be people who work in the area but don’t live there;
- The proposed bottle shop will offer an improved service and range and decreased prices;
- Cygnet will derive economic benefit from having a significant building utilised rather than falling into further dereliction when vacant;

- The premises will add to the streetscape and landscape of Cygnet;
- No evidence was produced in relation to increased harm to the community from the consumption of alcohol;
- The potential risks to the financial viability of other businesses is irrelevant and not of concern to the applicant;
- In answer to the submission of Ms Jones in relation to Section 24(2) A) of the *Licensing Act 2000*, the applicant has “no intention” of doing anything other than operating a bottle shop in the building.

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)).

Ms Rosemary Jones spoke to her written submission re-iterating her belief that there is currently an adequate number of licensed premises in Cygnet for the demographics of the district. In fact, she submits there is “saturation” of liquor outlets.

The addition of a licensed bottle shop in the town would place undue economic pressure and stress on the existing local licensed premises. She submits that the town, small business in particular, is in significant financial decline. In rebuttal of the applicant’s claim that there is growth in the Huon Valley, she submits that the land subdivisions remain unsold and the prospects are grim for future growth. Ms Cherie Fyfe submits the same point.

Ms Jones submits that the proposed bottle shop would not provide anything positive to the social fabric of the community. She submits that as the bottle shop would be on the side street, nothing positive would be added to the streetscape as claimed by the applicant.

She refutes the applicant’s submission that there would be net employment gain of two persons as this would be off-set by employment losses at the other licenced establishments.

Ms Jones questions the applicant’s letters of support and submits that one is from a boat marina that doesn’t exist and the other from a person operating the smallest caravan park.

Ms Jones also raises the legality of the bottle shop under Section 24 (2) (A) of the *Licensing Act 2000* which states that the principal activity to be carried out at the premises must be the sale of liquor; she submits that this would not be the case when the bottle shop will only occupy, by her estimation, 30% of the building. She asks the applicant to state what he intends to do with the rest of the building.

Mr Scott Turnbull, owner and licensee of The Cygnet Hotel, submits the proposed outlet would have an adverse impact on the Hotel’s business thus jeopardising its future sustainability. He submits he would lose every cent of net income to the proposed bottle shop.

Mr Turnbull submits that over any time period when three hotels existed in Cygnet, one of them always went broke. Agreeing with the applicant that the total population of Cygnet and

surrounds would be about 4000, he submits that, based on ABS census data, 1300 of these are below drinking age and of the remaining, 61% drink alcohol leaving a total of 1600 potential consumers in the demographic. He submits this as evidence of a far too small population to spread across 4 licensed premises which offer takeaway sales for there not to be a negative financial impact on some outlet/s.

Like others, he submits that the small community of Cygnet cannot sustain another licensed premises. If the Hotel suffers loss of patronage, this would have a detrimental effect on local jobs. He 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 Cygnet Hotel employs 9 people. None of these persons is a full-time employee of the takeaway side of the Hotel business but attend to this service as part of their other duties. If the income derived from takeaway sales is diminished as a result of a new bottle shop in the town, then clearly some persons would lose their employment at the hotels. Mr Turnbull acknowledges that there would be some new employment (minimal) created at the proposed new business but submits that the applicant fails to address the job losses that would occur at the existing establishments as a result.

He paints a grim financial picture of the town of Cygnet, which is not wealthy, and without major economic prospects. He submits that all businesses in the town are “doing it tough” and rely heavily on seasonal passing tourist trade to make ends meet.

He refutes strongly any representation by the applicant that the current stock rate at his establishment (or others) is inadequate. He submits that if any customer requests a product not in stock he or his colleague licensee at the other Hotel organise to acquire that product for purchase the next day. This focus on individualised response to customer need is a hallmark of small community businesses and they have undertaken this collaborative practice for many years to the satisfaction of their customers.

Mr Turnbull rejects strongly the assertions of the applicant in relation to the environment of his Hotel’s bottle shop. He rejects the applicant’s claims that The Cygnet Hotel is “old fashioned” and has a limited service culture. He, along with Ms Jones, submits that, contrary to the applicant’s claim, there is disability access to both hotels.

Mr David Mills, a resident objector, submits that the demographics of the area mean that the applicant will be relying on an existing customer base for sales, as there will be no new customers. This must have a negative effect on the existing establishments to which he objects.

Mr Mills draws the Board’s attention to its decision on the application for a bottle shop in Hill Street, South Hobart, where the Board stated that “the wants and desires of the community are relevant” to its consideration of what is in the best interests of the community. The applicant’s legal representative submits this is “not relevant” to this application.

Other objectors present on the day and in written submissions submit that the existing liquor outlets in Cygnet are sufficient for the needs of a small community. They are satisfied with

the existing takeaway services within the town's hotels and club. They express concern at the effect a new bottle shop would have on the hotels which, they submit, provide great service to the community.

An over-riding theme of the objections is that Cygnet 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 Cygnet; 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 outlets. The Board heard evidence that the existing liquor outlets do not offer an extensive range which was not really disputed. Indeed, Mr Turnbull indicated a long-standing practice of the hoteliers 'getting wines in' if asked.

There was support for the development from the Huon Valley Council as well as the next door neighbours and others.

We cannot say whether there would be any net employment gain or loss but we tend to think it would be marginal either way.

The Board sees the objections of Mr Turnbull (and Ms Hunt in written submission) as basically anti-competitive arguments. We appreciate that a new bottle shop in town would be a potential competitor to one part of the hotels' operations but we discount it as not relevant to the Board's determination.

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 the existing establishments may well be negatively impacted and in a small town like Cygnet, it would be

a considerable loss of the community should either of the hotels go out of business. In this case, the community would lose iconic buildings of historical interest that contribute to the appeal of Cygnet as a tourist attraction.

However, the Board is not convinced that the proposed bottle shop would necessarily threaten these operations to this extent. There was no persuasive evidence put to the Board demonstrating that the hotels would cease to operate as a result of one part of their operation facing competition and we are not satisfied that this would necessarily eventuate.

Despite submissions that Cygnet is not a wealthy community and businesses are “doing it tough”, the Board accepts the applicant’s submission that Cygnet is not a particularly economically vulnerable community.

A concern was raised about the risk of antisocial behaviour. There was evidence that Cygnet is not a disadvantaged community and it could not therefore be maintained that the community would suffer increased levels of harm through this proposal.

Following the hearing, the Chair of the Board visited Cygnet to inspect the site of the proposed outlet. There is no doubt that the building is currently derelict and an “eye sore” as claimed. We are of the view that a new roof and rebuilt structure would be of significant positive benefit to the amenity of town.

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. 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.

The Board does acknowledge local community opposition to this application. There was a clear expression, by the 13 persons present and in written submissions, that they do not want or need the bottle shop. Whilst we accept this is a genuine view, we do not believe that any other sufficiently strong arguments have been submitted other than that the community is serviced adequately already by three outlets.

Taking a broader view of community, Cygnet forms part of the Huon Trail and is visited by many tourists throughout the year. It lies within the Huon Valley which, according to the Regional Population Growth statistics has the third highest growth rate in the State. Cygnet represents just over a quarter of the Huon Valley population. The Board’s view is that this broader community would benefit from the addition of a bottle shop in the town.

In relation to the issue raised regarding whether the principal activity of this bottle shop would be the sale of liquor, the applicant made clear he has no intention other than to establish a bottle shop. Any other future uses of other parts of the building are not the concern of the Board.

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 Stuart Cowen, Cygnet Bottleshop, as applied for.

Jenny Cranston (Chairperson)

David Logie (Member)

Ann Cunningham (Member)

11 March 2015