

Licensing Board of Tasmania	Decision
Legislation:	Liquor Licensing Act 1990
Applicant:	Louise Stone
Nature of application:	For an off licence
Premises: name	Strahan Cellars
Premises: address	8 Innes Street, Strahan
Name of decision:	Strahan Cellars
Date & place of hearing:	23 rd September 2010
Date of decision:	22 nd October.2010
Members of the Board:	PA Kimber (chairman), K Sarten and D Logie (members)

Reasons for Decision

Application

Louise Stone applies for an off licence for premises at 8 Innes Street, Strahan. Mrs Stone intends to construct a wall and shop fit out between the current mixed business she runs at West Strahan, dividing the existing premises. Her intended operating hours would be 10am to 8pm, and her aim is to provide a wide range of quality products at competitive prices, predominantly for tourists in the well known tourist centre of Strahan, and also to locals living in the vicinity.

The relevant area would be 75m² shop area, including internal cool room and receiving area for deliveries. The customer entrance would be from the main street, with no internal connection between the intended off licence and the adjacent/contiguous business premises.

Nearest liquor outlets are dotted along the Strahan waterfront from the hotel in the centre of the town, to the Regatta Point Tavern on the far side of the bay. There are also numerous licensed hospitality, tourist and accommodation venues – however the hotels are the only premises with wide capacity to service off premises consumption purchase needs. The hotel (Hamer’s Hotel) in the centre of the town does not have a dedicated off premises department, but rather a part of the main frontage, with service provided by the bar staff moving from the bar area to the bottle shop area.

The premises is at West Strahan, an isolated area, but with significant tourist infrastructure and businesses, a major contributor to the Tasmanian tourism economy, as well as a fishing town.

The applicant demonstrated to the Commissioner that she is qualified to hold a licence.

The adjacent business incorporates the Strahan Holiday Park reception, and activity booking office, a mixed shop offering food and associated items, and until recently included a fuel outlet. This has been decommissioned, and now allows additional off street parking.

There are approx 140 accommodation units in the park and 70 camping and caravan sites – all within walking distance.

There are no freestanding off licence bottle shops operating in Strahan. The closest, at “Hamer’s” carries a limited range, and no dedicated display area.

The Applicant holds a special (limited) licence entitling her to sell liquor to in house guests and their guests, and sees the opportunity to provide a service which the public have requested, and which will make some part of her premises more productive.

The Applicant tendered nine letters of support for the proposal, indicating from locals that they would enjoy the convenience and alternative venue to purchase their liquor requisites.

Objection

An objection was filed, and the objectors, Graham and Vicki Appleby from the Regatta Point Tavern and Holiday Villas business, attended the hearing.

Their objection may be summarised as follows:

- Strahan has a population of 680 many of whom are children. The town is well catered for, even during peak tourist season from the Regatta Point Tavern, Hamers Hotel and the Strahan Golf Club;
- Numerous other accommodation places also offer liquor to in house guests;
- Cruise boats hold liquor permits to supply liquor to their customers during cruises;
- Restaurants in the locality hold licences to supply patrons who dine;
- Outlet density;
- Business is seasonal;
- The premises and business is part of another and so do not comply with s 24A(2) of the Liquor Licensing Act;
- The letters in support do not carry any strength – commenting on car parking and distance to travel for alternatives, when the town is a small village;
- The Regatta Point Tavern premises have been refurbished and offers service, choice and drive through arrangements, with car parking for all sorts of vehicles;
- Reducing her hours in the winter indicates little need for the service;
- The West Coast is remote, combined population of approx 6,000 people, each town offers bottle shop sales from hotels;
- Proximity to the local primary school;
- Congestion in summer; and
- The needs of the community are well provided by existing outlets.

In response the Applicants gave evidence that:

- In addition to locals, there are 166,000 tourists annually. Most come to Strahan over an 8 month period;
- The number of special permits in the area is irrelevant, as they do not serve the locals;
- The Golf Club is for members only;
- The Primary School Council met to discuss the issue, and were unanimous not to object as they did not believe there were grounds for concern;
- The location is not inappropriate, and not conducive to increased traffic movements, noise, vandalism and nuisance behaviour as asserted;
- Noise, vandalism and nuisance is more a matter for the on and general licensed establishments to review and remedy;
- The Strahan Police station is 50 m away from the proposed shop;
- Being 'family friendly' as to the existing business adjacent to the proposed shop should not be a bar to grant of the licence. There is logical synergy;

- The in house guests permit is restricted to in house guests, and consequently does not permit sales to locals;
- The individual businesses are conducted, structured and divided such that if the licence is granted, the new business will be separate business and 'the principal activity to be carried on at the premises will be the sale of liquor' – s 24A(2); and
- The Strahan Holiday Park is operated by on site managers. The principal activity of the adjacent mixed business is supply of takeaway food and convenience products to locals and tourists. Separate accounting and management will apply and there will be no connection between the premises so far as customers are concerned.

At the hearing of the 23rd September in Launceston, the Applicant re-iterated that the door at the rear of the premises in the plan, although it would allow access into the balance property, is only intended to permit staff access to toilets.

Mr Appleby confirmed his view that the principal activity would be accommodation with bottleshop attached.

The Applicant agreed that the accommodation business would 'take' more money than the bottleshop business.

The Applicant stated that the door access to toilets could be removed if it was important to the application, and that she would have a separate ABN relevant to the new business, separate accounting and separate bank accounts. She said that as constructed any customer would consider it to be a separate business. It would be 'branded' relevant to a particular liquor buying group, and distinct from the other businesses.

Consideration of evidence

On the basis of the evidence before the Board there is nothing to indicate that the premises will exacerbate the harm associated with the consumption of liquor. There is evidence that the people in the locality would welcome the service, and nothing to indicate they would not, in the nature of any evidence from people in the community, or community groups, indicating concern. That is, except for the owners and operators of the Regatta Tavern.

It was apparent that the current use of that part of the premises intended to be turned over to the bottle shop is not efficient or sought after, and the change will make the premises more viable.

The premises are nearer to the point where locals live than other licensed premises further around the foreshore.

On balance there is little to indicate a licence should not be granted.

However, s 24A(2) requires the Board be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

We have dealt with this issue in a number of prior decisions.

Ferry Road Store (March 2008) was rejected.

Arthur's Lake (2007) was approved. An isolated area.

Tony Jackson Latrobe Off Licence (Feb 2006) was refused.

Unlike the Ferry Road Store matter, the applicant will staff this intended business separately. Like the Arthur's Lake matter, the area is a remote area.

The intended 'look and feel', and separation of access, services, staff, cashier and 'badging' indicate that the grant will not breach s 24A(2) 'principal activity' test.

The only activity within the area which will be the liquor store will be the sale of liquor.

This is not like the Latrobe matter, where both businesses were run together and it was asserted that the principal activity was sale of liquor because the sale of petrol produced significantly less net income return.

The relevant tests as set out in the Latrobe matter, may be stated and commented upon as follows:

- Practical test: practically the aspects of the businesses, although adjacent, can be considered separate.
- Reasonable person test: a reasonable person would – in the circumstances indicated by the Applicant's evidence, conclude that the businesses are separate.
- Purposive test: taking account of the legislation and context: it seems that the legislation is designed in this regard to prevent ready access to alcohol in mixed businesses.

It is apparent that the community are not opposed to the grant, and they implicitly or explicitly would welcome the additional services, and do not have concerns as to the possibility of adverse impact from sale of liquor from the new business.

We are cognisant that the Strahan area has a low local population but also that it has a quite significant tourist population, and that swells dramatically during the summer months, and falls off during the middle of winter.

We accept that many local businesses, reliant on tourism, provide through permits or special licences the capacity to serve their customers. That is acceptable and does not indicate, in the circumstances, that this application should be rejected. It will provide an additional service, of some utility, and which will not apparently detract from the community.

For these reasons the Board have determined that in the absence of apparent risks of problems and in the context of some support from the community that the grant of the licence will be in the best interests of the community.

Decision

We direct the grant of the licence.

PA Kimber - Chairman. K Sarten – Member. D Logie - Member