

Application by Garth William Barrett for an off licence for the premises at 666 Forth Road, Forth to be known as the Forth Village Bottle Shop.

Decision: Licence granted	12 April 2016
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The application

The applicant seeks authority for the sale of liquor under an off licence from a premises at 666 Forth Road in Forth.

The applicant proposes to fit-out and use a currently vacant store as a bottle-shop. The store is located in a building in Forth that also offers Australia Post services, a general store and petrol facilities.

The applicant submits that it is in the public interest for the licence to be granted as it will provide a convenient dedicated bottle shop facility offering a range of liquor products that cannot be sourced in the immediate area. He also submits that the business will generate employment opportunities for “four full time/part time staff over a seven day roster”. He says that the fit-out cost will be approximately \$120 000. He says that he will stock a range of Tasmanian products and that the premises would cater for “the local community as well as offering tourists the opportunity to buy Tasmanian products as they travel to Sheffield, Barrington, Cradle Mountain and the West Coast.”

The applicant says that demand for a quality liquor outlet has increased as a result of nearby housing developments and that he has conducted doorknocks in the Forth and Turners Beach communities where he has received a positive response to his proposal.

I am satisfied that the applicant is qualified to be granted a liquor licence as set out in section 22 of the Act.

Representations

Two representation were received, one on behalf of the owners of the nearby Bridge Hotel and a second from Mr Best of the Goodstone Group, owners of a number of hotels and bottleshops in the northwest of the State.

The first representation asks that I refuse the application, or refer the application to the Tasmanian Liquor and Gaming Commission, the basis of this request is in summary that:

- The public notice advertised on 5 December 2015 is said to be defective with respect to the address given therein;
- The proposed use is said to be unlawful from a planning perspective due to the addressing on the planning permit;
- It is said that the proposed bottleshop would be in contravention of section 25A of the Act as the application is said to be “in connection with a supermarket”, and if 668 Forth Road is part of the premises, then the application would offend section 24A(2) as the sale of liquor would not be the principal activity being undertaken on the premises;
- The application is said to not be in the best interests of the community due to traffic, at a congested intersection and the impact on the Bridge Hotel’s future plans and capacity to sponsor sporting clubs. It is said that there is no necessity for a bottleshop given the service already provided by the nearby Bridge Hotel, that this

will lose trade for the hotel and prevent it from implementing its future plan to have an integrated facility that includes a separately identifiable bottle shop.

- It is not in the best interests of the community to have an oversupply of liquor sales facilities, particularly in such close proximity.

The second representation also asks that I refuse the application, on the basis that, broadly summarised:

- The applicant provides insufficient evidence to demonstrate that his application is in the best interests of the community;
- The proposed expenditure by the applicant is insufficient to improve the premises to the standard of a modern off-licence;
- There is insufficient evidence as to the premises layout, stocking, or point of difference with existing off-licence options for me to determine whether the applicant offers a useful service to the community;
- The sale of liquor will not be the principal activity of the business, thereby offending section 24A(2) of the Act.

Applicant's response to representations

In responding to the representations, the applicant has said, *inter alia*, that:

- “The principal activity to be carried out at the premises is the sale of liquor. The general store next door is on a separate Title, and the public cannot access the proposed bottle shop from the general store and vice versa. Both premises have separate public access from the front of the respective buildings.”
- “The costs of the fitout of the premises will be approximately \$120,000.00. Much of that amount will be spent within the local community and as such will benefit the community.”
- “Although the Applicant cannot provide tourist numbers that pass through the Forth area, it is common knowledge that a regular access route to the Cradle Mountain Lake St Clair National Park, and many other tourist attractions in the area, is via the Wilmot Road. The junction of Wilmot Road and Forth Main Road is in the immediate vicinity of the proposed bottle shop. The tourist public will benefit by having the opportunity to purchase takeaway alcohol, without entering the public bar of the Bridge Hotel or having to travel to off licence premises at either Ulverstone or Devonport. It is also likely to attract customers who would not otherwise stop and enter the Bridge Hotel to purchase alcohol in the township of Forth. This is in line with modern notions of service delivery, particularly for women.”
- “The reference by Mr Best to previous decisions of the “Licensing Board (eg Latrobe)”, presumably refers to the Gilbert Street Latrobe decision of 2006. It is clearly distinguishable upon its facts because in that matter the Applicant wished to combine the sale of motor vehicle fuel with the sale of liquor, from service station premises in Gilbert Street Latrobe. Whereas, the premises at 666 Forth Road Forth have previously been used to conduct stand-alone businesses such as a Butchery and later a Fruit and Vegetable business. And the premises at 668 Forth Road Forth have for many years been utilised as premises used to conduct a general business including the sale of motor vehicle fuel, but has never utilised any part of the premises at 666 Forth Road in the conduct of that business.”
- “Currently there is no off-licence outlet in the township of Forth. Therefore members of the community and or tourists are required to enter the public bar or public lounge of the Bridge Hotel to purchase alcohol. The proposed bottle shop will

therefore add to or compliment what is already available in the township of Forth in this regard.”

- “Confirmation has been received from the Central Coast Council planning department, that in excess of one hundred dwellings have been constructed in the Forth/Turners Beach area over the last five years.”

Reasons for Decision

Advertising and planning permit

Two matters are raised in the representations relating to the plan provided with the application that identifies the area of the proposed off licence premises. The plan, entitled 666 & 668 Forth Road shows the area of the proposed off licence encroaching onto the title at 668 Forth Road. The applicant says that the proposed off licence lies entirely on the 666 Forth Road title and that in fact the boundary between 668 and 666 Forth Road is the wall that separates the proposed off licence from the general store.

The application was initially advertised (in the Advocate on 5 December 2015) using “Main Road” rather than “Forth Road” within the address. As a consequence the application was readvertised with a correction on 16 January 2016. A public notice was affixed to the premises as required under section 23(4). The objection is made that the address should have been advertised as 666-668 Forth Road, rather than 666, as that is what is written on the plan provided by the applicant. The representor contends that the differences between the addresses renders the notice misleading and invalidates the advertising process. On the plan referred to the majority of the premises subject to application sits upon 666 Forth Road (the applicant says that all of the premises sits on 666 Forth Road), the application was advertised twice, and the premises was signposted with a notice setting out the required detail. I am not satisfied that a person, having an interest in the application, might have been misled, by the fact that a portion of the premises appears on the plan to sit on 668 Forth Road, to the extent that the process of advertising the application was invalid.

The second matter raised in representations and stemming from the plan provided in the application is that the planning permit issued by the Central Coast Council (numbered DA215065, dated 30 October 2015, and valid for two years) refers to the address for the permit as being 666 Forth Road. The permit has two plans attached, one showing the property 666 Forth Road and the other a more detailed plan on which the premises subject to the application is marked, including a portion over the 668 Forth Road. A representor says that to the extent that the premises encroaches on 668 Forth Road the proposed use is unlawful. As I say above, the applicant says that the proposed off licence lies entirely on the 666 Forth Road title and that in fact the boundary between 668 and 666 Forth Road is the wall that separates the proposed off licence from the general store. In any event there is a planning permit issued for the proposed use with a plan appended setting out the same area as is described in this application, I am therefore satisfied that the appropriate planning approval is in place, should I be wrong in this and it were to be the case that the planning permit is invalid then section 18 of the Act would act to ensure that the sale of liquor would not be authorised.

Act requirements

The Act sets out the following requirements for a licence:

24A. Requirements for licence

(1) 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.

(2) In considering an application for an off-licence, the Commissioner or the Commission must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on-licence for a restaurant, the Commissioner or the Commission must be satisfied that the premises are, or are intended to be, used as a restaurant.

Principal activity test

The question has been raised in objections as to whether the application meets the requirements of s.24A(2) of the Act; that being the requirement that an off-licence not be granted unless I am “satisfied that the principal activity to be carried on at the premises will be the sale of liquor.” The objection is that the premises for which the application is made includes the general store, and therefore the application should fail this test.

The definition of the term “premises” within the Act is broad and does not specifically answer whether the adjoining general store should as a matter of law be included as forming the premises of the application. A useful reference is, however, the matter of *Gaghan v LLC [2000] VCAT 1871 (30 September 2000)*, which considers an application for an on-licence where the premises was said to be part of an adjoining petrol station. Of relevance to consideration of this application, the Tribunal in *Gaghan* says that “it is our view that no help can be found in looking at whether or not the property is subdivided as distinct from there being one title. What must be looked at is how the property is used.”

I am satisfied that the premises applied for does not include the general store. The premises have separate entrances, the western wall dividing them is a solid wall such that customers cannot pass between the general store and the proposed premises. In the past the premises has been used for businesses that were separate activities to the general store, including a butcher and greengrocer, the use of the premises as an off-licence is of a similar nature to these other separate uses. The only activity within the area of the application will be the sale of liquor.

The application is similar to other small bottleshops in rural areas, such as that at South Riana, where a Big Bargain Bottleshop is part of the building that has an IGA, Australia Post facility and petrol station, and shares a single frontage with those activities, a situation that reflects strongly the services that would be provided at the 666-668 Forth Road building. There are facilities within the building, such as offices and toilets that are shared between the general store and the premises subject to the application, however this is not probative of there being a single premises, any more than the presence of shared facilities in a shopping mall would require that all business therein be considered a single premises for the purposes of the Act. I am not satisfied that common ownership of the proposed off licence and the general store is sufficient to join premises that on all other facts are separate.

Reference is made in representations to the Latrobe decision of the Board, I assume referring to an application in 2004 for an off licence at 191 Gilbert St, Latrobe, that decision sets out relevant tests for considering principal activity, however in my view a more closely related decision would be one such as *Strahan Cellars (2010)* where the Board found that on practical, reasonable person and purposive tests, the principal activities of the premises were separate from the activities of the adjacent business. The same reasoning applies here.

Connection with a supermarket

Section 25A of the Act says that “A liquor licence must not be granted in connection with the activities of a supermarket.” As discussed above, I am satisfied that the premises subject to the application and the premises of the general store are separate premises, consequently the activities undertaken in the applicant premises could not be said to be connected to the activities in the adjacent general store. I have not made a determination as to whether the general store in this case is a supermarket for the purposes of the Act, however as I am satisfied that the application is not connected to the activities of the general store it is not necessary for me to do so.

Best interests of the community

The application relates to a premises that lies within the Turner’s Beach-Forth statistical area. The ABS puts the population of this area at 3 270 persons in 2015. There has been moderate population growth in the area, with the population having grown from 2 937 in 2005. There are five licensed premises within the area, comprising three special licenses relating to cafes, one club licence for the Turner’s Beach Bowls Club and one general licence, that being the Bridge Hotel. Of these licences the general licence authorises the sale of liquor for consumption off the premises, while one of the special licences authorises off-sales but of Tasmanian produced liquor only.

On considering the information provided in the application, representations and applicant’s response, I accept the applicant’s contention that the proposed off licence would be beneficial through giving both the local community and passing tourists the option of a stand-alone bottle shop with the benefit of competitive choice and a broadening of the range of products available. The Bridge Hotel does not offer a dedicated bottle-shop facility, though it is said in their representation that they intend to construct a separate identifiable bottleshop, suggesting that there is a market for such a facility within the area.

The investment in renovations (the applicant provided me with a quotation to substantiate his cost estimate) and employment will have a positive impact in the area, though these alone are not sufficient arguments as no doubt the vacant premises would ultimately find some other use were the application not to be granted.

I am not satisfied that the granting of this licence application would result in an excessive concentration of liquor outlets in the area. The population density in the area is not high but the number of licenced premises is also relatively low and what research is available into this question in Australia¹ suggests that higher liquor outlet concentrations than would result from the granting of this licence are required before there is a clear risk of escalating harm.

Traffic issues are raised; these are generally matters for Council and would have been properly considered in granting the planning permit. I have not been provided with any evidence to suggest that the Council’s assessment has been wrong; *prima facie* it seems to me that the presence of an off-licence would lead to no more parking or traffic issues than the commercial use of the premises as a butcher and greengrocer in the past, or for some other commercial purpose in the future.

I have not been provided with any evidence to allow me to determine whether the granting of this licence would negatively impact local sporting clubs and the Lions Club, due to, it is suggested, it leading to a reduction in sponsorship from Bridge Hotel. There is no doubt

¹ See for example NSW Bureau of Crime Statistics and Research, *Contemporary issues in Crime and Justice* Number 181, December 2014, “The effect of liquor licence concentrations in local areas on rates of assault in NSW”

that sporting clubs, particularly in rural areas, rely on sponsorship from the hospitality industry for financial support², but were the Bridge Hotel to reduce sponsorship I have not been provided with any basis to conclude that sponsorship could not be found elsewhere, or such reduction otherwise accommodated through alternative fundraising. I did not receive any representations from representatives or members of any clubs in the area.

Decision

Having considered the evidence provided I am satisfied that, on balance, it is in the best interests of the community to grant the licence.

² Hughes, C. (2012). The paradoxical place of alcohol in rural community sporting clubs: An Australian case study. *The Journal of Rural and Community Development*, 7(2), 142-151