

Tasmanian Liquor and Gaming Commission

Appeal against a determination of the Commissioner for Licensing made 8 December 2020

Tracey Skeet

V

Commissioner for Licensing

Appellant

Respondent

Background

1. The Appellant applied to the Commissioner for Licensing for a special licence seeking authority for the sale of Tasmanian liquor products for consumption from the premises at 59 Burgess Street, Bicheno, trading as The Log Cabin General Store.
2. The Log Cabin is a store providing a range of items required by locals and visitors passing through or staying in the east coast region. It is described by the appellant as a general and hardware convenience store with a focus on providing specialist products from the east coast and Tasmania generally.
3. The appellant seeks to make available Tasmanian wine, beer and spirits to enhance the customer experience. She submits that liquor suppliers in the immediate area are limited.
4. The Commissioner determined on 8 December 2020 to refuse the application for a special licence for the premises with a written decision containing a statement of reasons sent to the applicant (the appellant).
5. On 11 January 2021, the appellant appealed in writing to the Commission pursuant to section 211 of the *Liquor Licensing Act* 1990 (Tas) ("the Act").

The appeal

6. The Commission determined that the appeal would be heard on 2 February 2021 solely on the basis of written evidence pursuant to section 213 (4A) of the Act. The written evidence considered is set out in attachment A to this decision.
7. The appellant was advised on 12 January 2021 that any further documentation was to be provided to the Commission by 26 January 2021.
8. On 25 January 2021, the appellant's legal representative sought to have the current hearing date deferred for a period of at least one month in order that his client might have further time for the provision of additional submissions and evidence in writing. The Commission agreed and determined to hold the hearing with the same conditions as outlined above on 1 March 2021 with any additional documentation to be provided by 19 February 2021.

9. On 19 February 2021, the appellant's legal representative sought a further (second) extension for the provision of additional materials as his client was still obtaining further submissions and documents to support her appeal. He requested this extension until 26 February 2012. The Commission determined to hear the appeal on the date advised (1 March 2021) but granted the extension of time to receive the documentation until midday on Friday 26 February.
10. At 11.15 a.m. on 26 February 2021, the appellant's legal representative sought a third extension of the hearing date until 12 April 2012. The Commission declined to do this but allowed the legal representative to submit any final documentation by 10.00 a.m. on 1 March 2021.
11. This documentation was subsequently provided (at 10.05 a.m.) but the Commission determined that, due to its length, it was not possible to hear the matter that day and determined to hear the appeal on 12 April 2012. All additional documentation is included in attachment A.
12. After hearing an appeal, the Commission may under section 214 (1) (c) of the Act confirm the Commissioner's determination, or alternatively revoke the determination, or alternatively direct the Commissioner to take such action as the Commission considers appropriate.
13. The Commission considered the appeal on 12 April 2021.

Grounds of appeal

14. The appellant raises the following grounds:
 - 14.1 That the Commissioner erred in stating that there are Tasmanian liquor products accessible in the vicinity of the premises and that the two premises with similar licences do not stock the Tasmanian liquor products which the applicant intends to sell;
 - 14.2 The Commissioner erred in his assessment of the best interests of the community being satisfied and that the additional submissions provided by the applicant were not given sufficient weight;
 - 14.3 The Commissioner erred in placing excessive weight on the lack of submissions from relevant parties and did not place sufficient weight on the lack of submissions against the application being granted;
 - 14.4 The Commissioner erred in determining that sufficient restrictions could not be placed in accordance with section 84(2) of the Act given the nature of the store; and
 - 14.5 The Commissioner erred in not placing sufficient conditions on the licence to allow for the sale of Tasmanian liquor products not readily available in the local area.

Legislation

15. Section 24(A) of the Act provides that:

“(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.”

16. The term “best interests of the community” is defined in section 3 of the Act, and the prescribed interests are in Regulation 4 of the Liquor Licensing Regulations 2016 and are:

“(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.”

17. The Commissioner was satisfied that the premises is not a supermarket for the purposes of section 25A of the Act. The Commissioner further was of the view, and the Commission agrees, that the relevant consideration in this particular case, is the balance between the general costs and benefits to the community of the proposed supply of liquor products as outlined in the application.

18. It has long been recognised that alcohol consumption in Australia is a serious health issue. The Tasmanian drug strategy 2013-2018 records that about half the Tasmanian population exceeds the single occasion risk guideline for consuming alcohol (more than four standard drinks on any one occasion), and this rate has not changed significantly over the last six years (ABS 2019).

19. The National Alcohol Strategy 2019-2028 identifies that:

- one quarter of Australians are drinking at risky levels;
- 10 – 15% of emergency department presentations are alcohol related;
- 25% of all frontline police officers’ time is taken by alcohol-related crime;
- 25% of all road fatalities can be attributed to drink=driving;
- alcohol was involved in 34% of intimate partner violence incidents and 29% of family violence incidents;
- alcohol is a leading cause of drug-related death, with more than 4000 deaths estimated to be attributed to alcohol in any year; and
- alcohol was the most common form of drug of concern for people accessing specialist treatment in 2017-2018, accounting for 35 % of episodes.

20. The Commission notes these publicly available statistics to demonstrate one part of the “general costs” aspect of the “best interests” test. This also is a very good reason why the supply of alcohol in Tasmania is regulated in the manner it is. The Commission mentions this to re-enforce that it is not just the benefit to the specific community that must be factored into this balancing exercise, and also that alcohol is not just another product in a retailer’s lines.
21. The Commission notes that the appellant was asked by the Commissioner to consider making further submissions related to relevant matters raised in previous decisions of the Commissioner, namely Augustus Chocolates and Gifts 2018, Mount Nelson General Store 2019, TCM Market 2019 and Caltex Moonah 2019. These decisions outlined pertinent points regarding the best interests of the community test to be applied to applications, and were determinations by the Commissioner that the best interests of the community are not served by all retail outlets adding liquor to their stock as a matter of convenience or to increase revenue. This same determination has been made in earlier decisions of this Commission and previously by the Licensing Board.

Consideration of grounds for appeal

Ground 1

22. In Bicheno, the Commission is satisfied that there is access to Tasmanian liquor products, particularly east coast wine varieties, most of which are available at the licenced premises (The Farm Shed East Coast Wine Centre) very close to the subject premises. Both the Commissioner and the appellant indicate that a small selection of broader Tasmanian liquor products is available at the nearby bottle shop.
23. The Commission has made previous determinations (for example, Asian Town 2020) regarding the availability (or lack) of the full range of liquor products, and that it does not accept that every individual demand for different types (or brands) of products needs to be satisfied. As explained in that decision, the Commission’s strong view is that the system of licensing in Tasmania does not contemplate a regime where individual demand for a particular type or brand of product that is not currently available at a particular outlet or outlets will result in a special licence being granted for that product to a new entrant.
24. Bicheno is on the east coast of Tasmania and if the argument of its attraction to tourists is relevant, it is logically east coast liquor products that are the most sought after. These are available in licensed premises in Bicheno, as indicated above and as the Commission is aware, from many cellar doors of vineyards in the local area forming part of the East Coast Wine Trail to which the appellant has directed the Commission’s attention.
25. Ground 1 is not made out.

Ground 2

26. The Commission notes that the Commissioner particularly drew to the attention of the appellant numerous previous decisions where the Commissioner made clear that the community's best interests are not served by all retail outlets adding liquor to the collateral as a matter of convenience or to increase their revenue base.
27. In the additional submissions provided, the appellant asserts that the circumstances in each of these decisions are such that they can be distinguished from the application for a special licence in Bicheno because each is close to a large number of other suppliers and none are in tourist towns.
28. The appellant's argument here is that the "special circumstances" that differentiate this application from others – that Bicheno is a tourist destination in its own right as well as being on the popular east coast of Tasmania and the famed wine trail – were not given sufficient weight by the Commissioner in his decision.
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 as 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.
30. The Commission also accepts that tourists travelling to Bicheno would pass by cellar door outlets at many vineyards on the East Coast Wine Trail.
31. The Commission has visited the store in question (on 27/01/21) and notes it sells a vast array of products including, *inter alia*, homewares, beach items (for example, spades, sunscreen, hats, sandals), garden produce, hardware and camping items and toiletries. Some of these could be made in Tasmania but the Commission does not find anything particularly "Tasmanian" in the store's collateral. Whilst tourists might visit the shop so too would locals and other Tasmanian visitors.
32. While the Commission notes that the subject premises is different in location from those in previous decisions, it agrees with the Commissioner's finding – as outlined also in the previous decisions - that the community's best interests are not served by retail outlets being granted special licences to add liquor to their product line unless special conditions are present. The appellant has not demonstrated special conditions to the satisfaction of the Commission and ground 2 is not made out.

Ground 3

33. This ground deals with the issue of community support – or lack of it – for the application in question.

34. The Commissioner writes one sentence on the lack of support for the application which is factually true – the applicant did not provide any documentary evidence of support.
35. The appellant has subsequently provided one written endorsement from a CEO of a Tasmanian craft spirits distillery located north of Launceston. The appellant lists three others who “can” provide submissions in support but no documents accompany the appeal. It is not up to the Commission to contact these people.
36. The appellant asserts that the lack of opposition to an application could be an indicator that it could be considered in the best interests of the community. The Commission does not accept this; rather it considers that fact to be neutral in its balancing exercise. It is up to the applicant to demonstrate that her application is in the best interests of the community. The absence of community response does not determine the outcome.
37. This ground is not made out.

Ground 4

38. The Commission notes the appellant’s assertion that the fit-out of the store has recently been amended with liquor proposed to be displayed in shelving behind a counter with limited general access. In this regard, the Commission is satisfied that a suitable restricted designation could be achieved provided that the area is staffed at all times. It notes that such a restricted designation area is an area that any children visiting the store would pass by.
39. With regard to the Commissioner’s other comments in the second to last paragraph of his decision, the Commission considers his reference to the ease of access to alcohol being not intended to refer to the physical accessibility but rather to the general increase in availability of alcohol in the community that results from an increase in licensed premises.
40. Section 84 (2) only has relevance to a licensed premises. It carries little, if any, weight in determining whether a licence should be granted.
41. This ground is not made out.

Ground 5

42. The Commissioner must make a decision as to whether an application for a liquor licence is in the best interests of the community. In granting a special licence, he can place conditions on it to ensure that the community’s best interests are met. He and the Licensing Board before him have placed, in the past, a condition on a special licence such that the sale of Tasmanian liquor is only permitted alongside the continued sale of specialist Tasmanian products and Tasmanian tourism services.

43. Such a condition should only be considered if the Commissioner is otherwise satisfied granting a special licence was in the best interests of the community.
44. In this case, the appellant asserts that such a condition would be appropriate due to the changed nature of the premises since the initial application and the Commissioner's visit in September 2020 – namely, an increased focus on tourism and showcasing Tasmanian products.
45. The Commission notes the retail agreement (dated September 2020) with Tasmanian Parks and Wildlife Service to allow the sale of national park passes from the premises. Also noted is a list of 16 Tasmanian craft and produce suppliers currently stocked on the premises.
46. The presence of these elements does not predominate in this large store with its wide variety of general, non-specific products. There might well be an *increased* focus on tourism services and Tasmanian products but there is nothing particularly "Tasmanian" in the look and feel of the store. The general sense is that it could be located anywhere near a coastline with camping facilities.
47. The Commission is not satisfied that special circumstances exist to warrant the grant of this licence even with conditions. This ground is not made out.

Conclusion

48. This appeal advances the basic argument that it is in the best interests of the community for a special licence to be granted for a general store because of its location in a tourist town and the lack of access to the full range of Tasmanian, and particularly east coast, liquor products.
49. As the Commissioner, the Commission and the Licensing Board have stated on many occasions, the community's best interests are not served by retail outlets adding liquor to their collateral as a matter of convenience or to increase revenue. There must exist some special circumstances to allow the granting of a liquor licence to these outlets.
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.
51. That this store offers for sale a small range of Tasmanian products and services amongst a large array of general products does not make it a specialty Tasmanian produce store.

52. The appellant has not convinced the Commission that special circumstances attach to these premises in this location to warrant the granting of a special licence.

Decision

53. The Commission confirms the decision of the Commissioner for Licensing (made 8 December 2020) to refuse the grant of a special licence to Ms Tracey Skeet for the Log Cabin General Store, Bicheno.

Decision made by the Commission on 12 April 2021.

Jenny Cranston (Chair), David Hudson (Member), Andrew Walker (Member)

ATTACHMENT A

TASMANIAN LIQUOR and GAMING COMMISSION Appeal hearing - The Log Cabin General Store

Monday, 12 April 2021

The Commission considered the following documentation:

1. The Special License submission (dated 15/05/2020) provided to the Commissioner from Ms Skeet, the Licensee of The Log Cabin General Store to determine its application;
2. Email from Licensing Operations (dated 10/06/2020) requesting further submissions on the best interests of the community;
3. The additional submission (dated 23/06/2020) provided to the Commissioner from Ms Skeet, the Licensee of The Log Cabin General Store to determine its application;
4. Reasons for Decision - Commissioner for Licensing - The Log Cabin General Store - dated 8 December 2020 (sent to the appellant on 14/12/2020);
5. Email dated 14 December 2020 from Licensing Operations to the appellant advising of right of appeal and providing 14 days from date of email to lodge an appeal;
6. Appeal lodged via email by the appellant's legal representative on 22 December 2020;
7. Extract – sections 213 and 214 of the *Liquor Licensing Act 1990*;
8. Letters from the Commission dated 12 January 2021 to the appellant advising of the date and time of the appeal hearing and allowing any further submissions by 26 January 2021;
9. Email dated 25 January 2021 from the appellant's legal representative, seeking a one month deferral of the appeal; and
10. Email dated 27 January 2021 from the Liquor and Gaming Branch advising the deferral of the appeal had been agreed to out of session by the Commission and allowing till 1 March 2021 for any further submissions.

11. Email dated 19 February 2021 from the appellant's legal representative requesting a further extension to provide additional materials until 26 February 2021; and
12. Email dated 22 February 2021 from the Liquor and Gaming Branch advising the appellant's legal representative that additional materials must be provided by 1 March 2021.

Supplementary material provided by appellant 1 March 2021:

1. The Liquor Licence Appeal submission from the appellant's legal representative;
2. A Wine Touring in Tasmania Article;
3. A list of Tasmanian Wine, Spirits and Beer stocked at the Spirits Bicheno Bottleshop;
4. A copy of the Wine Guide Tasmania 2021;
5. Letter from Justin Turner of Turner Stillhouse providing a reference for The Log Cabin General Store;
6. A copy of the Hill Street Cellars decision dated 20 July 2010;
7. A photo collage of The Log Cabin General Store; and
8. A copy of the Tasmanian Parks and Wildlife Service Retail Agent (Consignment) Agreement.