

# Tasmanian Liquor and Gaming Commission: Decision

## Application

Applicant: Mr James Scott-Mackenzie, 10 Warrawee Way, Pimpama, Queensland

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

The application was heard at 4 Salamanca Place, Hobart on 7 December 2021.

Decision: 25 January 2022

## Background

The application, made to the Commissioner for Licensing on 1 July 2021, seeks an off-licence to sell liquor from a proposed outlet at 476 & 488 South Arm Road, Lauderdale to be known as BWS Lauderdale.

There are 2 written submissions of objection to the application both received on 10 September 2021: one from the PGH Group (which owns and operates the Foreshore Hotel and the drive-through “Bottle-O” banner bottle shop at 464 South Arm Road, Lauderdale) containing a petition with 217 signatures and the other from the Tasmanian Hospitality Association (THA).

There are no submissions received in support of the application.

Pursuant to section 24(2)(b) of the *Liquor Licensing Act 1990* (the Act), on 24 September 2021, the Commissioner for Licensing referred the application to the Tasmanian Liquor and Gaming Commission (the Commission) for hearing. His reasons for referring the matter to the Commission are stated in the letter sent to the applicant on the same date. Essentially, he was of the view that, given the number and type of concerns raised in the representations against the application, it was in the public interest to refer the application to the Commission for a hearing.

The applicant made a further submission dated 10 November 2021 containing a commissioned report prepared by Mr Chris Abery, Deep End Services Pty Ltd (the Abery Report) addressing “all of the matters raised in the 2 representations”.

Due to the size of the Abery Report and the detailed analysis therein, the Commission forwarded it to the PGH Group and the THA on 17 November 2021 with an invitation to attend (remotely) the hearing set down for 7 December 2021 should they wish to address any new issues in the Report. At the same time, the applicant was advised of this and that the Commission wished him to attend the hearing (remotely) to specifically address two issues, namely:

1. The Commission's need to be satisfied that the applicant, Mr Scott-McKenzie, "will be able to exercise" effective control over the service of alcohol at the premises in Lauderdale, while apparently remaining in Queensland; and
2. Any questions concerning the Abery Report.

The Commission inspected the site on 12 October 2021.

At the hearing on 7 December 2021, the following persons were in attendance (remotely):

- Mr James Scott-Mackenzie (the applicant)
- Mr Murry Kellock and Ms Sarah Porritt (counsel representing the applicant)
- Mr Chris Abery, Principal, Deep End Services
- Mr Michael Kadziolka (counsel, Rae & Partners) on behalf of PGH Group; and
- Ms Mea Quartararo (counsel, Abetz Curtis) on behalf of the THA.

### **The applicant's submission**

The applicant has applied for an off-licence pursuant to section 9 of the *Liquor Licensing Act 1990* and submits that it is in the best interests of the community to have a liquor licence granted for the proposed premises at 476 & 488 South Arm road, Lauderdale (Section 24A(1)).

#### *The site*

The proposed site development will spread across two properties – the former service station building on the 476 property and the currently vacant adjacent 488 property. This latter site has dormant vehicle access to the South Arm Road.

The intention is to re-purpose the existing vacant service station into the proposed BWS premises. It will not operate as a drive through facility and customers would have to leave their vehicles to make purchases except if collecting them as a result of an online ordering system in which case the delivery would be brought directly to the parked vehicle without the need to get out of the vehicle. Ample car parking will be provided.

The retail trading area is proposed as approximately 140.04 m<sup>2</sup> with a further non-trading area of approximately 58.49m<sup>2</sup>.

The proposed operating hours are 9.00 a.m. to 9.00 p.m. Monday to Saturday and 10.00 a.m. to 7.00 p.m. on Sunday.

#### *Section 22 – qualifications for a liquor licence*

The applicant submits that the requirements to be granted a licence as outlined in section 22 of the Act are met by him (without any elaboration).

### Best interests of the community

This is the primary consideration for a licence to be granted – section 24A requires that the granting of the licence is in the best interests of the community.

The applicant submits that his application would be in the best interests of the community on the following bases:

- Safety and the responsible service of alcohol would at all times be a paramount consideration. He elaborates on this with details of staff training, the Endeavour Drinks liquor charter (BWS is operated by Endeavour Group Limited) including a responsible buying charter, and a comprehensive CCTV system;
- Positive amenity impacts including brand new store, comprehensive range of quality liquor products (over 1800 in total) and services leading to competitive pricing and greater choice for customers particularly those who do not wish to frequent hotels to purchase liquor;
- No adverse impacts on car-parking or traffic supported by the issuing of a planning permit and endorsed plans by the Clarence City Council which addressed these specific issues and affirmed on appeal to the Resource Management and Planning Appeal Tribunal;
- Generation of employment in the local community through fit-out of the premises estimated at \$500,000 and on-going employment of 2 full-time and up to 5 part-time/casual staff;
- On-going population growth, a favourable demographic profile and the low provision of licensed outlets in the catchment area indicating a need for a further liquor outlet in the centralised location of the Lauderdale shopping complex.

### **The representations**

As indicated, there are two representations from the PGH Group and the THA.

#### Section 22 – qualifications of applicant

Both submissions raise the issue of the applicant's qualification to be granted a licence pursuant to section 22 given the lack of any information available. They contend that the Commission cannot be satisfied that the necessary pre-conditions to qualify for the grant of a licence have been met by the applicant in the absence of any evidence of same.

#### Best interests of the community

Both submissions claim that the applicant has failed to demonstrate that the grant of this licence is in the best interests of the community (Section 24A(1)) and that the general cost to the community outweighs any benefit claimed by the applicant.

A number of common themes emerge through the submissions in support of this view. They include:

- the prevalence (or density) of licensed premises in proximity to the licence application;

- the demographics of the Lauderdale area in particular the at-risk suburbs of Rokeby and Clarendon Vale;
- the proximity of a clinic providing drug and alcohol rehabilitation services to the community, and a primary school, church, playground and aged care facility;
- no discernible increase in the range or choice of liquor to be offered to consumers; and
- no evidence of net employment benefits.

### Demographics

The THA submission puts forward a number of academic research studies that posit:

- the disproportionate harmful effects – including injury and assaults, alcohol related diseases, family violence and mental health issues - of alcohol consumption on lower socio-economic areas; and
- that disproportionate clustering of liquor outlets can lead to increases in alcohol consumption and alcohol related harms.

Using the SEIFA Advantage and Disadvantage Layer ListMap, the submission then argues that, while the SEIFA score from the 2016 Census characterises the immediate residential and commercial area at Lauderdale as being within the top 68% of disadvantage, the western neighbouring suburbs of Rokeby and Clarendon Vale are both within the top 2% of disadvantage in Tasmania and 1% of disadvantage in Australia. This, along with unemployment rates significantly above the Tasmanian average for both these suburbs, places them as communities particularly vulnerable to the harmful effects of alcohol.

Using the same SEIFA index, the PGH Group submission goes into greater detail concerning the relevant trade catchment area which in its opinion includes the suburbs of Rokeby, Clarendon Vale, Oakdowns and Lauderdale. These are in the bottom half percentile of the most disadvantaged areas nationwide and the interests of the people who live in these areas must be included in any proper determination of what is in the best interests of the community.

This submission also puts forward sales and health data from a number of academic and government sources and submits that granting this licence will increase ease of access and supply of liquor to persons living in some of the most disadvantaged areas of Tasmania leading to adverse impacts on their health and well-being and thus could not be in the best interests of the community.

It also questions the applicant's claims that his target demographic is young families and professionals working in central Hobart given that such people would have abundant access to a supply of liquor anywhere on their journey to and from work.

### Proximity of licensed bottle shops

The THA submits there are 3 licensed premises within 1 km of the proposed site of the subject application (the Bottle-O banner shop owned and operated by the PGH Group is less

than 180m), 12 bottle shops within 15 kms and more broadly 21 off and general licences in the Clarence municipality as a whole.

As a result of this, no claims of the applicant as to diversity of choice – in ease of service, convenience or range - for consumers can be substantiated:

- the products and services on offer in the existing licensed premises already cater to the needs of clients (the Bottle O stocks an extensive range of over 6000 liquor and other products compared to 1800 products by the proposed BWS);
- availability and continuity of supply will not be improved (the Bottle O is open 365 days/year, 7 day/week); and
- the hours of operation are essentially the same (or the one hour earlier opening proposed by the applicant (9.00 a.m.) will likely harm the community).

In essence, the THA submits that the effect of an additional licensed bottle shop in the area will add no benefit to the community and is more likely to create a price war which in the long term is not in the best interests of this community with its higher proportion of disadvantaged and unemployed inhabitants.

Alternatively, the PGH Group submits that the applicant has not demonstrated that the granting of the licence will actually result in pricing favourable to the consumer as this claim has not been made by the applicant.

#### Other issues

The THA and the PGH Group submit the applicant's references to staff training and responsible service of alcohol are not relevant matters as these are mandatory requirements of any licence holder. These statements merely repeat "the obligations and standards already imposed on and expected of sellers and servers of alcohol by existing regulatory schemes."

Similarly, it is submitted by the PGH group that the purported lack of adverse impacts on car parking or traffic are irrelevant considerations to the best interests of the community test. There is no evidence provided that the proposed premises would "revitalise" the area based, as it is, on the assumption that a vacant block of land is in need of revitalisation.

The purported business employment benefits to the community are disputed by the PGH Group; the approximately 2 full-time and up to 5 part-time/casual jobs submitted by the applicant would make a nominal difference to the community which, in any case, would be off-set by potential losses of staff at the Foreshore Hotel due to a likely drop in turnover revenue from its bottle shop.

Any benefit to the community by the construction and fit-out of the premises would be a one-off investment outweighed by general community costs over time. In any case, there is no guarantee given that local trades people would be employed to carry out this work.

### Benefits to the community of existing outlet (the Foreshore Hotel)

The PGH Group submits that the applicant has failed to offer any demonstrable benefits to the community that outweigh the costs (as described above). In comparison, it is submitted that the long-standing Foreshore Hotel offers a number of benefits to the growing community that exceed the responsible supply and service of alcohol. These include:

- being a hub for community events and activities;
- capital upgrades and renovations to the premises;
- provision of support to local community and sports groups through the provision of cash sponsorships and discounted facilities use; and
- provision of an array of dining, gaming and accommodation options.

It is submitted that it is likely the continuation of these in their current form would be jeopardised to some extent due to the reduction in turnover revenue should the subject application be granted.

Additionally, the PGH Group submits a petition with 217 signatures against the application for a new bottle shop for the reasons that:

- the existing bottle shop provides convenience and benefits to the community;
- no additional community benefit from a Woolworths national chain bottle shop operating 50 metres away; and
- jeopardy to existing bottle shop and putting local jobs at risk.

### **Applicant's response to representations**

The applicant was given the opportunity to provide a written response to the representations. This was provided on 10 November 2021 along with a report (Abery Report) prepared by Mr Chris Abery (a consultant with expertise in market analysis and property economics). This submission and the Abery Report, taken together, address the issues of concern raised in the representations and are summarised below:

#### Enhancement of the amenity of the area by improvement and utilisation of the site

The current site is vacant and presents as an unused former petrol station. The conditions of the planning permit issued by the local Council require the site to be landscaped in conjunction with the refurbishment of the unused building. It is submitted that this will form one component of the benefit to the community.

#### Competition, pricing and convenience

The Foreshore Hotel is a direct competitor to the proposed application. It has been made very clear in numerous previous decisions of the Licensing Board and the Commissioner for Licensing that anti-competitive arguments that support private interests hold no weight in statutory decision making. To this end, the PGH Group submission casts its objection in

terms of the effects of the presence of a competitor on revenue and the flow-on impacts on issues such as cash sponsorships and use of facilities by members of the community.

The Abery Report questions the PGH Group information that the level of revenue provided by the bottle shop is 65% of total revenue given it is one component within a large integrated hospitality and accommodation venue. This level of revenue does not line up with its staffing levels for the bottle shop (25%). In any case, despite some likely impact on overall Hotel revenue should the licence be granted, there is no evidence provided that the Hotel would be unable to provide the outlined sponsorships/contributions. It is submitted that it is ultimately a matter for the Hotel to decide how it manages its business in the face of additional competition to one of its income streams.

Additionally, it is submitted that the benefits of competition accrue primarily to the consumer in the form of greater choice including new/exclusive to BWS products, lower prices on some items (although on average 5.6% cheaper) and greater convenience through a modest increase in opening hours and the capacity for one-stop shopping for local retail needs and liquor from the shopping centre car park. The comparative differences in the volume of product lines are based on differences in the methodology of counting stock. It is the applicant's submission this makes the PGH Group statements of offering a range of 6000 liquor and other products invalid.

#### *Benefits of a net increase in employment and short-term stimulus to local economy*

Using analysis of staffing levels at the BWS Eastlands (the nearest BWS drive-through bottle shop) which trades at similar hours to the Foreshore Hotel's Bottle-O, there would be similar staffing levels at these two venues (190 hours per week, give or take 10%). Allowing for the 20-30% loss of trade which the PGH Group asserts would occur if the licence is granted, this would amount to the loss of approximately one full-time employee from the Bottle-O outlet set against the net gain of approximately 4 full-time employees at the proposed BWS outlet at Lauderdale.

#### *Demographics – analysis of at-risk areas*

The applicant agrees that unquestionably Clarendon Vale and most of Rokeby are areas of high socio-economic disadvantage. He submits, using SEIFA data, that all other suburbs and localities on the lower eastern shore and across the South Arm have SEIFA scores exceeding the averages of the City of Clarence, Greater Hobart and Tasmania. Seven localities including Lauderdale have SEIFA scores exceeding the Australian average while Oakdowns is slightly below. Lauderdale and Oakdowns are neutral or positively rated on the SEIFA index compared to Australian or Tasmanian averages, in contrast to the inferences of the objecting submissions. These two suburbs are accepted as part of the BWS catchment area.

The applicant asserts that the fact that Rokeby and Clarendon Vale are closer to the applicant site than the other more advantaged areas further away is irrelevant and not the basis on

which to determine a catchment area for a liquor store or any other use. Catchments are determined on the basis of distance and relative access to other competing opportunities and the size and quality of the competition.

Providing an extensive analysis of the nearest available liquor stores and aggregations of supermarkets and liquor stores that might attract Rokeby and Clarendon Vale residents on a regular basis – an analysis missing from the objecting submissions – the applicant submits that it is difficult to see how Clarendon Vale or Rokeby could be considered within the primary or main catchment area for BWS Lauderdale when there are multiple and closer options available to these residents along their more frequently travelled routes.

#### *Petition signatures and mobile device distribution*

It is submitted that petitions (such as that provide by the PGH Group) have been given little weight in liquor licensing (and planning) matters in the past due essentially to their lack of independent rigour and basic market research techniques including, importantly, the lack of an opportunity for respondents to register in favour of the licence application. Even so, an analysis of the home origin of signatories to the Hotel's petition indicates the suburbs of Rokeby and Clarendon Vale make up a very small (1%), if not insignificant, contribution indicating further their exclusion from the catchment.

Similarly, the applicant submits that an analysis of a subscription-based data set of mobile phone or tablet devices in use in the Foreshore shopping centre and tracked back to approximate evening addresses and the number of detections per device indicates:

- as expected, a higher concentration and occurrence of devices in Lauderdale, Roches Beach and across the South Arm;
- a relatively high concentration in Oakdowns which is relatively close to Lauderdale and considered part of its catchment;
- a much lower density and device occurrence in Rokeby (3.7% of all devices detected) and Clarendon Vale (0.7%).

Taken together, these data sets reinforce the view that these suburbs are not part of the addressable catchment for the proposed BWS outlet.

#### *Outlet density, consumption and harm*

The applicant contends that, other than broad statements, no evidence is provided that either the local area or the catchment area has an excessive density of liquor stores. Using extensive analysis of population and the level of all liquor licences, points raised include:

- Based on the average population per existing licence by local government area, Clarence has a relatively low density compared with Glenorchy and Kingborough;

- The Foreshore Hotel enjoys a population base which is at least three times the average population that other licences in suburban Hobart trade to. The nearest bottle shop is approximately 6kms away (at Howrah);
- The addition of a second licence (BWS) at Lauderdale and allowing for some population growth, the population per licence still creates a significantly lower density than current suburban density benchmarks; and
- No evidence or substantive argument has been provided that would link additional provision of alcohol in this location with harm.

### Section 22 considerations

The applicant states that the Commissioner for Licensing did not identify any issues with the qualifications of the applicant to hold a licence; nor did he notify the applicant, as he was required to do under section 24(4) that he was not satisfied that the applicant is qualified to hold the licence applied for. In making his referral to the Commission, under section 24(2), he has already determined that the applicant is qualified to hold the licence.

Irrespective of this, the applicant provides a full curriculum vitae outlining formal qualifications and experience in licensed premises as well as his birth certificate and driver's licence.

Regarding the concerns in the representations and raised by the Commission about the applicant residing inter-state, the applicant says that he intends to follow a long-accepted practice in Tasmania of transference of a licence to another suitably qualified person when the premises have been developed and are capable of serving liquor. This person would be required to be approved by the Commissioner under sections 27 and 28 of the Act.

### **Legislative considerations**

The primary matters to be considered for a licence application of this type are to be found in sections 22, 24A and 25A of the Act.

### Section 22

Section 22 of the Act sets out the criteria that a person must meet in order to be qualified to be granted a liquor licence. It requires, among other things, that the Commissioner is satisfied that the applicant will be able to exercise effective control over the service and consumption of liquor. The Commissioner was so satisfied, and subsequently referred the application to the Commission for determination. It is important to note that the Commissioner did not, and was not required to, find as a fact that this effective control would exist. He was required to be satisfied that the applicant will be able to do so.

The Commission does not have any power in this application to review the Commissioner's "satisfaction". Nor does it have any power to consider whether the Commission itself is

satisfied about the applicant's qualification, or whether the so-called "long-accepted practice" satisfies section 22. The Act makes that, in this case, a matter for the Commissioner and he has formed that satisfaction, and accordingly the Commission must proceed on the basis that the applicant is qualified. The Commission's function is to subsequently hear and determine the application.

#### Section 24A

Section 24A of the Act states at (1) that:

*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.*

The term "best interests of the community" has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*). Regulation 4 provides:

*For the purposes of the definition of best interests of the community in section 3 of the Act, the following interests are prescribed:*

*(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.*

Despite a representation indicating that the proposed premises are within close proximity of a clinic providing drug and alcohol rehabilitation services to the community, and a primary school, church, playground and aged care facility, no specific evidence was provided addressing this matter, nor the consequences of that location. It will be taken into consideration by the Commission in its decision that the relevant consideration is that of the balance between the general cost and benefits to the community of the proposed supply of liquor. The context for this consideration is provided by the Object of the Act which is defined at section 2A in the following terms:

*1) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –*

*(a) minimise harm arising from the misuse of liquor by –*

*(i) ensuring that the supply of liquor is carried out in a way that is in the best interests of the community and does not, as far as practicable, detract from public amenity; and*

*(ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and*

*(iii) encouraging a culture of responsible consumption of liquor; and*

*(b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the best interests of the community.*

Section 24A of the Act states at (2) that:

*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.*

The Commission is satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

### Section 25A

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.” The Commission is satisfied that the proposed off-licence will not be operated in connection with the activities of a supermarket.

### **Consideration**

The principal consideration for the granting of any licence is whether it is in the best interests of the community to do so. The Commission has weighed submissions made by both the applicant and objectors.

The submissions made by the applicant advance many reasons why the grant of this licence would be in the best interests of the community, which are not in the Commission’s view all of equal weight.

While not disadvantageous to the application, the Commission considers that the following factors are not strongly determinative:

- We are not persuaded that there is any significant net employment gain by the addition of this outlet. It is possible that there would be a transfer of jobs between other existing outlets and any that new employment addition is marginal at best in terms of providing an employment boost to the area;

- The obvious injection of capital funds (estimated at \$500,000) to build/refurbish the venue and its surrounds is a one-off investment and would not necessarily benefit anyone in this community;
- The BWS record of safety and responsible service of alcohol, while commendable, is what the Commission expects of every licence holder.

Costs to the community of increased competition

The Commission accepts that there is a bottle shop that has served the community for many years virtually next door to the proposed premises. However, the Commission agrees with the applicant that increased competition of itself is not a legitimate reason to refuse the grant of a licence. We note the statements made by the Commissioner for Licensing on a different bottle shop application:

*“The purpose of the Act is not to act as a barrier to competition, or to favour existing licensees over new ones. The Act requires decisions that are in the best interests of the community rather than merely benefitting private interests. ...I am satisfied that there will be an impact on existing licensees, however the question is whether those impacts would be of such a scale that they move from the realm of affecting private interests to having a negative impact on the broader community.”<sup>1</sup>*

The Licensing Board has expressed these same sentiments often in bottle shop applications in the past <sup>2</sup>.

PGH has submitted that based on data collected by the THA from “established licensees where additional licences have been granted”, PGH anticipates that competition from BWS “will result in an immediate 20-30% decline in its turnover generated by” the PGH bottle shop. The Commission does not accept this proposition. The data referred to could have been provided either by PGH or the THA in its submission, but it was not. The THA did not mention this issue in its objection.

Given the large size and population of the catchment area that the Commission has determined is relevant to this application (discussed below), given the evidence that this population is increasing, and given the absence of any other off-licence south of the existing PGH and the limited Hill Street licence at Lauderdale, the Commission considers this submission to have no reasonable basis.

The applicant has identified in the Abery report that PGH has provided no evidence to support either its departmental revenue claims or specifically the projected revenue loss claims. Further, the Abery report observes that it is difficult to accept the assertion by PGH that the bottle shop generates 66% of “departmental gross revenue” of a large, integrated hospitality, entertainment and accommodation venue. Without any evidence to support those claims, the Commission also finds them difficult to accept.

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<sup>1</sup> Commissioner for Licensing (2016) Dan Murphy’s Launceston

<sup>2</sup> Licensing Board (2010) Hill Street Cellars; (2011) BWS Deloraine; (2013) Rokeby Liquor.

Consequently, the Commission does not accept the assertions made by PGH concerning the extent of employment reductions that “would be required”, but does take into account that the commercial competition of another licence may result in some reduction of its staffing requirements.

The Commission accepts that there will likely be some adverse impact on the profitability of the bottle shop of the Foreshore Hotel. It is hard to see that this would not occur and, on its own, this would not be a relevant concern to the Commission. What may be relevant is the extent to which a drop in profitability would adversely impact on the ability of the venue to continue its financial support for various community organisations and activities and thereby adversely impact their on-going operation. We note there is no secondary support provided by the representations to strengthen this proposition (as has occurred in other like applications<sup>3</sup>) and the Commission agrees with the applicant that it is up to the existing Hotel to decide how it manages support for community organisations, now and in the future.

The Commission gives little weight to the petition and considers such documents to be generally unhelpful. It was not prepared for this application, but rather for a planning appeal, where the relevant considerations were entirely different. The Commission further observes that many signatories were from outside the catchment area.

#### *Benefits to the community - range, type and price of products*

The new premises would undoubtedly provide greater choice for consumers – two venues instead of one in close proximity. But would a new BWS offer anything more than mere choice?

Is the range of product to be offered the same or different between the two outlets in question? 6000 product lines (the PGH Group) vs 1800 (BWS Lauderdale) is a very large differential and, on the surface, would appear to offer very favourable benefits to the consumer from the existing premises. However, the applicant submits that these differences arise due to different methodologies in product categorisation and counting, and further suggests that, given the footprint of the PGH Bottle-O (450m<sup>2</sup>) compared to a typical Dan Murphy’s store with 1000 m<sup>2</sup> of retail space offering 4,200-4,500 products, a comparison of product range is not comparing “apples and apples”. The Commission is unable to draw a definitive conclusion about the breadth of offering in the two venues given the above disparity but notes that neither representation challenged these propositions by the applicant and we therefore accept that the extent of product range is not of itself disadvantageous to the applicant.

Additionally, the applicant submits that he would offer new products; the Abery report states that the Endeavour Group sources a wide range of exclusive products for its (Dan Murphy’s and) BWS stores with approximately 30% of the BWS Tasmanian range of 1800 liquor products exclusive to BWS and not sold in the Bottle-O. Again, this was not challenged by the representators at the hearing.

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<sup>3</sup> Tasmanian Liquor and Gaming Commission (2019) Smithton Cellars

On the question of price differential, the applicant submits that BWS would offer lower prices on some items and presents data showing the price index of BWS Tasmania to the Bottle-O's advertised prices for a 6-month period, ending 12 September 2021. This level of analysis is convincing and shows that BWS, in any given week, was between 4-8% cheaper than the Bottle-O and over the 6-month period was, on average, 5.6% cheaper. Such an outcome would undoubtedly be advantageous to the consumer. The Commission does not see this as delivering the harmful effects of a "price war" as suggested by the representations. This data analysis was not challenged by either representor.

The applicant further submits the BWS Lauderdale would offer greater convenience through a modest increase in opening hours.

The Commission agrees that the delivery of all of these benefits to the consumer would be a likely outcome of a BWS bottle shop in this location and is a factor in favour of a conclusion that it would be in the community's best interests.

### Density issues

The proposed BWS outlet is undoubtedly in close proximity to the existing Bottle-O banner bottle shop and the click and collect and home delivery service for a small range of Tasmanian liquor products offered by the Hill Street Grocer under a special licence. There are a further 11 licensed bottle shops (general and off-licence) within 15 kms of the proposed site and currently 21 such licences in the Clarence municipality as a whole. The THA submits that this constitutes maximum saturation and demonstrates the insufficient need for any more outlets.

The key point here is to decide what is the relevant catchment or geographic area for the purposes of considering density. Is the THA's submission that the Commission ought to consider the above 15 kms a reasonable construction of the "catchment"? Alternatively, the applicant offers a few versions of this catchment: the suburbs of Acton Park and Roches Beach to the north, west to Oakdowns, Lauderdale and the whole of the South Arm peninsula.

The Commission considers that it is not reasonable to exclude from the relevant catchment area all of the localities south of Lauderdale. There is one liquor licence to the south, which is a club licence at the South Arm RSL and Community Club. This is in the Commission's view of little relevance to its consideration of the "off-licence" catchment area.

The Commission accepts that the catchment area for the purposes of density analysis includes the area identified in Figure 10 of the Abery report, and further it accepts that its population was at least 10,556 people in 2021.<sup>4</sup> For reasons discussed below, the Commission is of the view that Rokeby and Clarendon Vale also should be included in the catchment area.

The Commission notes that the representations propose no assessment of how one measures licence density other than raw figures. The Commission is not persuaded by this. The Commission accepts the applicant's submission that an effective measure of licence density across a defined catchment or geographic area is the average population per licence. The

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<sup>4</sup> BWS application: source ABS

detailed analysis of population figures per general and off-licence provided in the Abery Report is convincing whichever way the “catchment” is defined.

In the Commission’s view, the addition of another outlet (the BWS in question) still makes it one of the higher densities across southern Tasmania, even without allowing for any future population growth. The Commission does not accept the arguments made by representors that the catchment area is “saturated” with licensed premises.

#### Demographics – socio-economic advantage and disadvantage

A major consideration of the Commission in assessing any liquor licence application, and the general costs to the community, is to ensure that harm is minimised and this is especially so when any potential consumers exhibit particular vulnerabilities. The Commission is well familiar with the SEIFA indexes,<sup>5</sup> produced by the Australian Bureau of Statistics following each census, that rank areas in Australia according to relative socio-economic advantage and disadvantage. These indexes are an objective measure of the socio-economic status of an area and are used by all parties in this matter.

Both representations argue strongly that some areas that form the logical catchment of the proposed outlet - Rokeby, Clarendon Vale, Oakdowns and Lauderdale – have clear characteristics of socio-economic disadvantage, some of the worst in Tasmania and by extension Australia. The applicant, on the other hand, while agreeing that Clarendon Vale and (most of) Rokeby are “unquestionably” areas of high socio-economic disadvantage, argues their inclusion as part of the BWS catchment “would appear to be marginal, at best”.

The Commission is of the view that Oakdowns and Lauderdale, while at the lower end of SEIFA scores compared to other suburbs to the north east and north west and south of Lauderdale, are not particularly disadvantaged compared to Hobart and Tasmanian averages. The localities further south are even less disadvantaged.

The Commission accepts that Rokeby and Clarendon Vale are areas of high socio-economic disadvantage but the relevant question is whether this is a determinative factor.

As well as the mobile device data and home addresses of petitioners described above, the Abery Report presents an analysis of street patterns of Clarendon Vale and Rokeby and their proximity to the BWS site and other licensed venues including the bottle shop at Howrah which is the closest to it (6.2 kms). While the analysis of closest road distances from the mid-points of Rokeby and Clarendon Vale attempt to “prove” that residents of these suburbs would not travel to the BWS Lauderdale as there are closer options linked to where they currently would appear to do their main shopping, the Commission is not necessarily convinced by this argument. Consumers do not necessarily respond to changes in an expected manner and their retail patterns not always driven by logic (or mathematical calculations about mid-points and driving distances). It could be that the possible attraction of cheaper prices on average over time and some different product lines on offer might be such to draw them to Lauderdale wherever they reside.

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<sup>5</sup> Commissioner for Licensing (2016) Chigwell Bottle Shop; Licensing Board (2013) Ravenswood Duncan’s; Rokeby Liquor

### Alcohol related harm

Will the possibility that some residents of these two areas of greatest disadvantage may change their purchasing behaviours and frequent the BWS Lauderdale expose them to greater alcohol related harm than at present? Will the fact that there would be two venues in Lauderdale to access rather than one result in greater alcohol related harm? The Commission is not satisfied that would occur. An increase in supply for any product does not automatically lead to an increase in demand. There is no evidence that an additional bottle shop would change individual purchasing behaviours concerning amounts of liquor purchased. The Commission does not accept that it would necessarily result in any person purchasing more alcohol than they may already do from the existing outlets.

The fact that Rokeby is home to a clinic offering medical support to those suffering from alcohol addiction (amongst a raft of mental health conditions not related to alcohol) does not, in the Commission's view, mean that there are more vulnerable people in this community. This clinic is the only one of its kind on the whole east coast of Tasmania. There may be any number of reasons why it is located where it is. The proximity of the clinic to the proposed BWS is also in the Commission's view not a determining factor. This clinic is 6 kms from the proposed BWS (and PGH Foreshore Hotel) but is 4.8kms from the nearest bottle shop at Howrah.

The Commission notes the reference in both representations to the proposed BWS being in close proximity to a primary school, church, playground and aged-care facility but is not satisfied that there is evidence provided as to any harm (or costs to the community) caused by this.

Would the existence of another licensed premises in Lauderdale mean that the harms that come from misuse of alcohol will be increased? In considering the risks of this occurring, the Commission is of the view that it is unlikely that these adverse effects will result from the grant of another licence in this part of Lauderdale.

### Summary

On balance, weighing all the information in the submissions, the costs to the community discussed and the benefits identified, the Commission's view is that the benefits outweigh the potential costs and that the grant of this licence would be in the community's best interests.

### **Decision**

The Commission directs the Commissioner for Licensing to grant the off-licence to Mr James Scott-Mackenzie as applied for.

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

25 January 2022

**MATERIALS relied on:**

- Application for an Off-licence, and accompanying documents, from Mr James Scott-Mackenzie received on 1 July 2021, in respect of the premises BWS Lauderdale.
- Representation to the application by the PGH Group, received 10 September 2021.
- Representation to the application by the Tasmanian Hospitality Association (THA), received 10 September 2021.
- Letter from the Commissioner for Licensing to the Chair advising of the application referral, dated 24 September 2021.
- Letter from the Commissioner for Licensing to the applicant advising of the application referral, dated 24 September 2021.
- Letters sent from the Chair to the applicant, PGH Group, the THA, and the Commissioner advising them of the time and place of the hearing, dated 13 October 2021.
- Emails sent on 17 November 2021 inviting the applicant, PGH Group, and the THA to attend the hearing remotely.
- The written submission from the applicant's lawyer (including the "Abery Report"), on behalf of the applicant, dated 10 November 2021.
- Documents relied upon by the PGH Group during the referral hearing, received on 6 December 2021, including:
  - *Alcohol and Methamphetamine Harm in Emergency Departments: Findings from the 2019 Snapshot Survey*, produced by the Australasian College for Emergency Medicine; and
  - Letters to the Commission from: Lauderdale Football & Sports Club Inc; South Arm Boardriders; and Hamilton Reid Accountants and Advisors.