

Tasmanian Liquor and Gaming Commission

Appeal against a determination of the Commissioner for Licensing made 14 October 2024

Robert Arvier
V
Commissioner for Licensing

Appellant
Respondent

Background

1. In 2 June 2023, the appellant applied to the Commissioner for Licensing for a special licence seeking authority for the sale of liquor products for consumption on and from premises at 86A and 86B, Main Road, Penguin, trading as The Penguin Pantry.
2. In an email dated 23 August 2023, the following information was provided to the applicant (the appellant) by Licensing Branch staff in relation to his request to sell takeaway liquor from The Penguin Pantry:
 - Under the *Liquor Licensing Act 1990*, takeaway sales of liquor are primarily designed to be authorised under an Off licence. To be granted an Off licence, section 24A(2) of the Act requires an applicant to demonstrate '*...that the principal activity to be carried on the premises will be the sale of liquor*'.
 - Given this, for the Commissioner for Licensing to include the sale of takeaway liquor under a Special licence, an applicant must provide a compelling reason as to what makes the sale of liquor at their business 'special'. That is, the Commissioner must consider why takeaway sales should be authorised from a premises where the principal activity is not the sale of liquor.
 - The Commissioner for Licensing and the Tasmanian Liquor and Gaming Commission have considered a number of applications where small general stores have sought to add liquor to their range, most recently Murdunna Roadhouse (2021), Evandale Providore (2021), Log Cabin General Store (2020), TCM Market (2020) and Mount Nelson General Store (2019). Copies of these decisions can be found [here](#).
3. In an email dated 23 November 2023, the applicant advised Licensing Branch staff:

As per our last discussion we agree that the best way forward is to amend the licence application to a 'general licence' and amend the redline drawing to only be in the 86A premises (no sales in the grocery store or customer access to grocery store from the wine store). This premises will have a new trading name.
4. The applicant provided an updated application for a General Licence on 19 June 2024.

5. On 12 July 2024, the applicant advised that the premises referred to above were separated and the premises at 86A were now leased to another party. This separate premises became the subject of a separate General Licence application by the other party to operate as a wine bar. The applicant at this point confirmed that he wished to proceed with the General Licence application for the premises at 86B known as The Penguin Pantry.
6. The Penguin Pantry is described as a speciality grocer/providore and espresso bar providing predominantly Tasmanian food and beverage. Its offerings include fresh local produce such as dairy, fruit and wholegrain products along with specialty pantry items and quality homewares. It sources produce from local bakeries and kitchens and is not a full cafe, offering light meals only.
7. The appellant seeks to make available selective Australian and Tasmanian wine, beer, spirits and cider produced by independent, local or specialty makers to enhance the customer experience. He also intends to include liquor in on-line sales for home delivery as well as in hampers. He submits that with the closure of the Village Wine Shop in Penguin in 2023, liquor suppliers of this type of quality and price point in the immediate area are limited.
8. The Commissioner determined on 14 October 2024 to refuse the application for a General Licence for the premises with a written decision containing a statement of reasons sent to the applicant (the appellant).
9. On 25 October 2024, the appellant appealed in writing to the Commission pursuant to section 211 of the *Liquor Licensing Act* 1990 (Tas) ("the Act").

The appeal

10. The Commission determined that the appeal would be heard on the basis of the written evidence before the Commissioner and additional material provided by the appellant pursuant to section 213 (4A) of the Act.
11. The appellant requested to appear in person before the Commission and did so when the Commission heard the appeal on 3 March 2025. The appellant was advised that any further documentation should be provided to the Commission prior to this. No material was so provided but a document was tabled by the appellant at the hearing, which the Commission accepted. The written evidence considered is set out in attachment A to this decision.
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 3 March 2025.

Grounds of appeal

14. The appellant raises the following grounds:

- 14.1 That the Commissioner's consideration of the benefits of granting a licence weighed against the costs for this premises does not stand scrutiny when compared with the 1292 general and special licences across Tasmania contained in the register. He questions the metrics used to arrive at societal benefit derived from the granting of these licences especially those granted to alcohol delivery services (such as Uber Eats and Dan Murphy's) and in support of this quotes the Commissioner's statements in a previous decision: "Costs to the community accrue through increasing the ease of access to alcohol which is known to lead to increased consumption and alcohol-related harm". (Evandale Providore 2021).
- 14.2 That the Commissioner was inconsistent in his assessment of the best interests of the community compared to the private interests of the applicant. He asserts that, as most licensed premises are private entities existing to make a profit, all would have difficulty in satisfying the test that community interest outweighs private interest. Without private interest in the first instance very few premises would exist.
- 14.3 That the Commissioner failed to assess the application against the significant number of special licences granted to similar grocery businesses such as (*inter alia*) the Hill Street Grocers at Lauderdale and West Hobart, Meredith's Orchard, The Trevallyn Grocer, Delish Fine Foods and Oyster Cove Organic Store. He submits that, given the Commissioner only publishes reasons for unsuccessful applications, it is not publicly clear how these operations were able to satisfy the threshold of being "special" such as to gain a Special Licence.
- 14.4 That the Commissioner appeared to consider that an additional source of off sale liquor was not in the best interests of the community when there are "existing licensed premises immediately adjacent to the applicant premises". The appellant points out that the licence for the (now closed) Village Wine Store has been surrendered. In any case, he submits that the Commissioner appears to have determined that the township of Penguin is at saturation point with issued licences (approximately 1 per 450 people) and questions whether it is a determinative factor for licensed premises not to be adjacent to each other.
- 14.5 That the processes surrounding the Commissioner's consideration of the application have been too lengthy (original application submitted on 2 June 2023; Commissioner's determination made on 14 October 2024) and involved the need for the applicant to sub-let the premises at 86A due to financial unsustainability. He submits this timeline was inappropriate given Object 2(A) of the Liquor Licensing Act 1990 is to "facilitate the responsible development of the liquor and hospitality

industries in a way that is consistent with the best interests of the community.” He also submits he was “led astray” by the guidance received from the Commission (sic) that he would need to submit an updated application to a General Licence as this was indicated as the only way forward given the nature of the store.

- 14.6 That the decision of the Commission (sic) contradicts the strategy of the State Government to enable small business to thrive in Tasmania. It directly relates to a reduction in potential employment opportunities in Penguin and dramatically reduced the confidence of a small business operator to pursue new opportunities. And in so doing, does nothing to materially reduce any harmful effects of alcohol in the community when a customer can already purchase cheaper, poor quality, non-Tasmanian liquor from the adjacent NSW conglomerates. He questions how the licencing process and his treatment through application aligns with the Tasmanian Government’s Small Business Growth Strategy and 2023 Strong Plan.

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. This demonstrates one part of the “general costs” aspect of the “best interests” test. This is also an obvious 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.
20. The Commission notes that the appellant was provided with information related to relevant matters raised in previous decisions namely (*inter alia*) Murdunna Roadhouse 2021, Evandale Providore 2021, The Log Cabin, Bicheno 2020 and TCM Market 2021. These decisions outlined relevant points regarding the best interests of the community test to be applied when considering applications. In summary, the essential finding of the Commissioner is 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 finding is consistent with earlier decisions of this Commission and the Licensing Board.

Consideration of grounds for appeal

21. The essential issue facing the Commission in this appeal is whether this application for a licence in Penguin is in the best interests of the community. Each application must be considered on a case-by-case basis. In the first instance, the Commission looks to the matters prescribed in Regulation 4 of the Liquor Licensing Regulations 2016.
22. The costs outlined in 4(b) are considered first. It does not appear to the Commission that the increased supply of liquor associated with the potential granting of this licence would cause undue offence, annoyance, disturbance or inconvenience to people living, working, attending educational facilities or hospitals or related entities or churches in the area.
23. The venue is located in a commercial/hospitality zone in Penguin close to retail outlets, restaurants and licensed premises where available parking does not appear to be a problem. The premises at 86B are quite small and the hours of operation sought by the appellant (noting that a General Licence carries a statutory authority from 5.00a.m to midnight) do not raise noise concerns for the Commission.
24. As the proposed liquor offerings are Tasmanian and specialty Australian wine, beer, spirits and cider (described as a curated selection of premium liquor made by independent producers and local businesses targeted at a mature market) with their attendant higher end price points, there does not seem to the Commission to be any apparent danger of anti-social or alcohol related adverse behaviours by the intended customers.

25. With regard to Regulation 4(c), given that the licensee of the Village Wine Store surrendered that Off Licence in September 2023, in the Commission's view the addition of a liquor licence for the subject premises does not appear to unduly increase access to takeaway alcohol in the Penguin community.
26. In summary, there do not appear to be significant costs to the Penguin community as a result of the potential granting of this licence.
27. However, as has been stated in previous liquor decisions, "community" is to be considered more broadly than the immediate area of point of sale. In considering the costs of the potential addition of licensed premises at The Penguin Pantry, the Commission is not of the view that the impact on the broader community beyond Penguin would be an issue sufficient to determine the outcome. The only area where some constraint might be warranted is in the online sales component of the application.
28. On the other hand, the Commission has considered the benefits accruing to the community that the appellant has put forward in support of his application for this licence including (*inter alia*):
- The celebration of local growers and makers and the championing of a Tasmanian first-class food and liquor culture with a commitment to procuring 80% Tasmanian liquor
 - 2000+ quality product lines
 - Support for 180 suppliers with more than one third of them Tasmanian businesses many of which are small regional businesses
 - Support for the employment of an additional 3 FTE (although this was submitted when the application included the premises next door) but could still involve longer trading hours resulting in extra employment for some
 - An asset for the township of Penguin as a growing hive of thriving businesses bringing tourist trade to the region
 - The more success the business achieves (through enhanced revenue), the more can be returned to the community as an existing supporter of the local community through donations and fund-raising activities and as a sponsor of the Penguin Running Festival
 - Care about the environmental impact of the business by the adoption of a robust recycling system with staff trained in waste separation and generally working towards the elimination of waste. Local procurement is a part of this through shorter supply chains with less environmental impact. The store also collaborates with its sister business West Pine to fund the planting of native trees to repair and restore native vegetation along the local waterways.
29. In summary, while all of these benefits contribute to a very positive assessment of The Penguin Pantry as a business, they are not necessarily dependent on or enhanced by the granting a liquor licence. A small potential increase in employment opportunities for locals is an exception along with the development of the business contributing to increased or extended visitation

by tourists to the township of Penguin generally which potentially could spill over to benefits accruing to other businesses.

30. As outlined above, the Commission/Commissioner has said many times in the past, alcohol is not “just any other” product. However, each case must be considered on its own merits and, in this case, the Commission can see no detriment to the inclusion of a small selection of quality alcohol in a line-up of premium products and local fresh produce. In fact, it would appear to complement the providore type of stock offered in the appellant’s premises.
31. The Commission is mindful of the very large number of applications that have unsuccessfully sought in the past to secure special licences to include the sale of alcohol in various venue types. These have failed to convince the Commissioner for Licensing and indeed the Commission itself that such a grant is the best interests of the community for a range of different reasons. It remains the Commission’s strong view that the community’s best interests are not served by retail outlets adding liquor to their range as another stock item, or for the purpose of simply increasing revenue.
32. The Commission is of the view that The Penguin Pantry can be differentiated from other applications for a Special Licence – it is not a corner store, convenience store, roadhouse or general grocery which generally offer a wide range of household kitchen and laundry staples. Its product line includes none of these sorts of stock items and focuses on speciality pantry items and local produce (local fresh fruit and vegetables, dairy, bakery, wholegrains). The ethos described by the appellant suggests a providore business focused on an inclusive environmental experience with a focus on providing options for edible produce grown and made in the local area.
33. The Commission does not intend to canvass the appellant’s contention that he was “led astray” in changing his application from a Special to a General Licence.
34. A Special Licence is contained in the *Liquor Licensing Act 1990* for a reason – to provide a category of licence where the grant of other licence types is not appropriate (for various reasons) and special circumstances prevail. The Commission does not believe that a General Licence is appropriate for this small specialty outlet. This is an expansive licence which allows for the broadest range of alcohol sales on and off the premises, with or without food and for expansive hours of operation. This is not in keeping with the vision the appellant holds for this venue and which he explained at length to the Commission.
35. The Commission concludes that, in balancing the costs and benefits of the grant of a licence for The Penguin Pantry, the best interests of the community are served by it having regard to the overall positive benefits to the Penguin community and beyond. The Commission determines that the grant of a Special Licence with conditions (outlined below) is appropriate for these premises.

Decision

36. Under section 214(c)(iii) of the *Liquor Licensing Act 1990*, the Commission directs the Commissioner to grant a Special Licence for The Penguin Pantry, 86B Main Road, Penguin with the following conditions:

- The sale of premium Australian and Tasmanian wine, beer, spirits and cider is authorised only while the contribution of the sale of those liquor products made to the operation of the business of The Penguin Pantry is smaller- in revenue, stock size and layout of the store – than the contribution to the business of the sale of speciality pantry merchandise and quality homewares and local fresh produce and food offerings;
- Online sales of liquor are limited to one dozen bottles of wine, beer, or cider, or to 2 bottles of spirits, in any one transaction per customer per week;
- The sale of liquor is restricted to the hours of 7.30 a.m. to 6.00p.m., 7 days a week.

Decision made by the Commission on 18 March 2025

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

Attachments

No.	Date received or provided	Title
1.	2 June 2023	Liquor Licence Application from the applicant, Mr Arvier, for The Penguin Pantry.
2.	2 June 2023	Liquor Licence Applicant Submission from the applicant, Mr Arvier.
3.	2 June 2023	Email from Central Coast Council confirming ability to sell liquor under Council's approval, dated 10 November 2022.
4.	2 June 2023	Lease agreements for the premises 86a and 86b Main Road Penguin, dated 16 December 2022.
5.	2 June 2023	Food and beverage menus.
6.	2 June 2023	Internal and external photographs of The Penguin Pantry premises.
7.	16 August 2023	The applicant's, Mr Arvier, responsible service of alcohol (RSA) certificate.
8.	25 August 2023 - 19 November 2023	Email chain: 25 August 2023 - from Licensing Branch staff to the applicant, Mr Arvier, providing information on past applications for Special Licences including relevant decisions, inviting further supporting information as to how his application constitutes "special" 22 September 2023 – from Licensing Branch staff seeking further outstanding information 19 November 2023 – from applicant advising a change of licence type to a General Licence and for the premises 86a Main Road Penguin only.
9.	19 June 2024	Letter of support from the Central Coast Council supporting a liquor licence at the premises.
10.	12 July 2024	Proposed redline plan, indicating the proposed licensed premises where liquor can be sold and consumed.
11.	12 July 2024	Interview questions and answers conducted by the assessing Licensing Officer with the applicant, Mr Arvier.
12.	26 July 2024	Representation against the application for a liquor licence from Katrina Carlos.
13.	12 August 2024	Letter from the applicant, Mr Arvier, in response to the representation from Katrina Carlos.
14.	16 August 2024	Memo to the Commissioner for Licensing for determination of the applicant's application for a General Licence for The Penguin Pantry.
15.	14 October 2024	Commissioner for Licensing's decision to refuse the application for a General licence at The Penguin Pantry.
16.	15 October 2024	Covering email sent to the applicant, Mr Arvier, advising and providing a copy of the Commissioner for Licensing's decision to refuse the application.

17.	25 October 2024	Notice of appeal from the applicant, Mr Arvier, against the Commissioner for Licensing's decision to refuse the application.
18.	2 December 2024	Briefing paper LI/24-11 to the Tasmanian Liquor and Gaming Commission to set a hearing of the appeal of the Commissioner for Licensing's decision to refuse the application.
19.	19 December 2024	Letter from Commission to appellant setting date of hearing 3 February 2025
20.	3 January 2025	Email from appellant advising inability to attend hearing set for 3 February and seeking alternative date
21.	10 January 2025	Letter from Commission advising change of hearing date to 3 March 2025
22.	3 March 2025	Letter tabled by appellant at the hearing from him to the Commissioner for Licensing following determination to refuse the general licence, dated 31 October 2024.