

Tasmanian Liquor and Gaming Commission: Decision

Application

Applicant: Mr Carlton Dixon, Smithton Cellars, 34 Smith Street, Smithton.

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

The application was heard at 4 Salamanca Place, Hobart on 19 March 2019.

Decision: 5 April 2019

Background

The application, made to the Commissioner for Licensing on 7 December 2018, seeks an off licence to sell liquor from a proposed outlet, currently vacant (and owned by the applicant) on Smith Street, Smithton.

There are 485 written representations of objection to the application. The breakdown of representations is as follows:

- 53 – tailored individual responses;
- 370 – using a standardised template with common wording relating to the requirements of the Act but providing personalised comments;
- 62 – using the same template response with no additional comments included but with signatures attached.

Most of the representations are from individuals with 26 provided from organisations as outlined below:

- 11 local businesses;
- 8 sporting bodies and clubs;
- 4 community bodies (religious, aged care, treatment and pharmacy);
- 2 Circular Head Council;
- 1 Tasmanian Hospitality Association.

There are no submissions received in support of the application.

Pursuant to section 24(2)(b) of the *Liquor Licensing Act 1990* (the Act), the Commissioner for Licensing referred the matter to the Tasmanian Liquor and Gaming Commission (the Commission) on 6 February 2019. 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 it is unusual that such a significant number of issues should be raised by so many representations in respect of a single application. Given the Commission's greater powers in regard to the conduct of hearings, he was of the opinion that it is in the public interest to refer the application to the Commission for a hearing.

The applicant made a further submission dated 6 March 2019, largely in response to the objectors' submissions.

The Commission inspected the site and visited three existing licensed premises (but took no verbal representations) on 18 March 2019.

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 premises at 34 Smith Street, Smithton (Section 24A(1)).

He bases this on the following arguments:

- The location of the proposed premise in the centre of town would provide convenience for customers.
- It would be the only stand-alone, specialised facility in the area. The nearest stand-alone outlet is 66 kilometres away. In this regard, Smithton is under-serviced in regard to modern liquor off premises. This facility would also provide safety and comfort to those patrons who do not wish to attend hotel premises to purchase liquor.
- It would offer:
 - greater choice through a diverse and wide range of products (3500-4000 items);
 - opportunity – with ample space for product tastings and meet the maker opportunities;
 - better quality of service with opening hours of 9.00 a.m. – 9.00 p.m., 7 days a week;
 - the convenience of on-site parking and drive through access;
 - value for local customers through overall price reduction and competition.
- It would contribute to the business development for the town by providing services of greater diversity and efficiency in a new vibrant, dedicated retail premise.
- It would provide income to the local community in the build and fit-out estimated at \$700,000.
- It would provide for 8 full-time and 12 casual new jobs.
- There would be decreased noise in the area as the site is transformed from a vehicle bodyworks business to a retail business with no undue offence, disturbance or inconvenience at this site;
- The applicant would contribute some financial support to local community organisations.

In answer to some objections, the applicant submits that the proposed business would not increase the sale and consumption of liquor and there is no demonstrable risk to the public, or increased harm from the addition of another bottle shop in the town. Specifically, he notes the objections of those concerned for the clientele of the Wyndarra Centre but sees no evidence of harm or any health and safety issues arising from proximity of the bottle shop to this facility (across the road) and no detriment to its delivery of services to clients. He notes that the concerns raised in the submission from the Wyndarra Centre itself do not relate to the increased availability of alcohol and related potential harm for vulnerable clients.

The applicant posits that many of the objections are anti-competitive arguments aimed at protecting existing businesses and their profits. He cites previous liquor decisions that point out that increased competition is not a legitimate reason to refuse the grant of a licence.

In his supplementary submission, the applicant points out that the traffic flow from the bottle shop would be no worse than existing flow and a retail outlet (bottle shop) is a permitted use under planning and zoning laws. Additionally, he submits that, if the application is refused, the premises would remain vacant, possibly for some considerable time.

In summary, the applicant submits that the overall actual benefits outlined above outweigh any potential adverse arguments put by objectors. In the absence of any evidence of adverse health and safety issues or demonstrable risk of harm, the application is not contrary to the best interests of the community.

The objectors' submissions

As indicated, there are 485 written objections from a range of parties.

All of the objectors' submissions are claiming to demonstrate that the grant of this licence is not in the best interests of the community (Section 24A (1)).

A number of common themes emerge through the submissions to support this view. The main ones are:

- the impact of the bottle shop on existing licensed premises, particularly the Smithton Club, a not-for-profit service club approximately 200 metres from the proposed outlet. The adverse impact relates both to their profitability and also to existing jobs in these premises.
- related to this, the negative impacts of the potential loss of financial and in-kind support provided to various sporting clubs/organisations and the provision of sponsorships/bursaries from the existing licensed premises, particularly the Smithton Club, and the flow-on effects this level of support has for the community as a whole;
- the location of the proposed outlet near to the Wyndarra Centre and the impact on vulnerable people in this community. The Centre acts as a meeting place for many of these people for whom the existence of a nearby bottle shop would be a problematic health and well-being issue;
- the belief that profits from the proposed outlet would leave the town causing a negative general economic impact; and
- the already sufficient number of off licensed premises in Smithton and the over-riding belief that the town is well serviced already and there is no need for any more.

Additionally, submissions from a number of community members raise concerns about the negative influence of additional off licensed premises in an area of entrenched socio-economic disadvantage and a community that has for a long time struggled with alcohol abuse related issues. The view is that additional availability of alcohol, potentially at reduced prices, would contribute to increased harm for some already vulnerable people.

The President of the Smithton Club, which is the closest competitor outlet (approximately 200 metres away), submits that it has over 500 different lines of product which equates to 13,000 items available for sale and already provides product tasting and meet the maker displays and opportunities. He further submits that the profits from its bottle shop subsidise its public service offerings to the Smithton community and that the Smithton Club survives only as a result of the profitability of the bottle shop. Were these earnings reduced, the operation would cease entirely causing job losses as well as loss of community benefit.

A representation from the Managing Director of the Goodstone Group (the owners of the Bridge Hotel) raises similar issues, estimating a material impact on the profitability of the overall hotel that would result in job losses of between 3 and 5 staff in the bottle shop.

This hotel's total bottle shop operating hours are 76 hours per week with 120 rostered staff hours per week. Five staff are employed with a further two during peak trading times. Along with the General Manager of Tall Timbers Tasmania, he challenges the applicant's submission of his bottle shop creating 8 full-time and 12 casual new staff as an unrealistic and misleading overstatement of what is required in such an operation. They both question whether there would be any net gain in employment in the town from the proposed bottle shop.

He further submits that his establishment offers 1,250 lines or over 10,500 items. It is branded under the "Big Bargain" banner, with Tall Timbers a "Thirsty Camel" outlet and the Smithton Club a "Cellarbrations" outlet. All three national banners provide access to high quality liquor offerings and competitive pricing.

The General Manager of Tall Timbers submits that competition from the proposed outlet would result in a 19% reduction in its earnings thus jeopardising its support for 28 sporting clubs and organisations as well as an annual \$5,000 scholarship to the University of Tasmania. He submits its 2017/18 financial support alone was \$44,700 to the community, the continuation of which would be directly affected by this application being granted. The Circular Head Football Umpires Association writes of its reliance on sponsorship and support from local businesses, such as Tall Timbers, the cessation of which, it submits, would have a dramatic detrimental effect on the Association's sustainability. The Irishtown Football Club writes of similar sponsorship support from Tall Timbers.

The Bridge Hotel offers sponsorships or donations to (inter alia) the Wyndarra Centre and Smithton Stars Cricket Club (confirmed in other submissions) which, it is claimed, would be jeopardised should the profitability of its bottle shop be impacted adversely.

The Smithton Club similarly offers sponsorship for and serves as the meeting place for sporting and other groups. Additionally, the Club has offered bursaries to local schools since the 1940s and donated to local schools. A common view put was that the Smithton Club has played a valuable role as a community centre, providing a local meeting place, a bistro, weekly draws and raffles, live music, and special functions such as grand final day and Christmas parade, for over 50 years. The representation from the Tasmanian Hospitality Association and also those from residents and members of the general community affirm the

major role the Smithton Club plays in the Smithton community, which would be put at risk if another off licence were granted.

Other submissions relate to the potential traffic hazard of the proposed bottle shop location due to poor vehicular access and increased traffic in a dead end street.

The neighbour to the proposed outlet refutes the claim from the applicant that it would be less noisy than the bodyworks business it would replace. The submission from the Chair of the Wyndarra Centre states they have never had any complaints or had any issues with noise in the area. Other representations suggest that the noise from the proposed outlet would be increased due to traffic flow and deliveries over a longer period of each day.

A claim made by mostly industry representors relates to the applicant's potential future interest in leasing the site to the Woolworths Group to run a BWS bottle shop. They claim that he has a track record of doing this in other parts of the State and they do not want this to occur in Smithton as this level of competitor "power" would threaten existing venues and profits would leave the town.

As stated above, the most common theme claimed by many objectors for a range of reasons is that they simply do not want or need another bottle shop in Smithton. There are already three licensed premises offering extensive bottle shop facilities; that another would add nothing new to the community; that the applicant has failed to put forward any convincing argument to the contrary; and that, in summary, it could not be said that this application is in the best interests of the community.

Considerations by the Tasmanian Liquor and Gaming Commission

The Tasmanian Liquor and Gaming Commission is called upon to determine this application for an Off Licence (Section 9) authorising the sale of liquor for consumption off the premises.

The principal test for the granting of any licence is if it is the best interests of the community to do so.

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 (24(A) (1)).

The Commission has weighed submissions made by both the applicant and objectors.

Regarding the applicant's submission that the proposed outlet is conveniently placed in the centre of town, the Commissioner's visit verified that it would be located on a dead end street that could be described as central but given that the Smithton Club is 200 metres from it on the same street, it does not appear that the location itself offers anything that is not already there. The Bridge Hotel is less than a kilometre from this and Tall Timbers is under two kilometres away. All venues are thus reasonably central and conveniently located.

While the applicant's claim that there is no "stand alone" bottle shop in the town may be technically correct, each of the three licensed premises has an attached bottle shop, all of

which provide a drive through and walk in service. A patron is not required to attend the general hotel/club section of any of the premises and can access the bottle shops as a separate entity should that be an issue for any individual.

There seems little point in making the distinction between what a new outlet might offer in terms of a “stand alone” facility when off licensed sales are available from the other premises in attached bottle shops that serve the same overall purpose. The spread of opening hours in the venues is similar with the proposed bottle shop offering a marginal earlier start (one hour) but on other occasions, an earlier closing time. The Commission does not see the operating hours as relevant.

The applicant submits that he will offer 3,500-4,000 items. Submissions from the existing hoteliers (and verified visually during the Commission’s visit) suggest that the range of products available from these outlets is broad and of a quality similar to that proposed by the applicant. The Smithton Club’s retail space would appear to be of comparable size to that proposed for the applicant’s bottle shop. The Club claims to offer 13,000 items across 500 different product lines; the Bridge Hotel offers 10,000 items over 1,250 different product lines. The breadth and depth offered by the existing premises appears to be sufficient for their needs in the eyes of community members making representation.

All three licensed premises belong to independent retail liquor brands: the Smithton Club’s Cellarbrations banner is one of the largest in Australia with over 500 stores nationally; the Bridge Hotel is part of the Thirsty Camel brand with over 375 stores across Australia and Tall Timbers belongs to the Big Bargain group. It is not clear what brand the applicant may belong to but he has not convinced the Commission that it would offer anything more to members of the Smithton community in terms of diversity of range and competitive pricing than they are already able to access from the other three licensed premises.

The Commission is not convinced that the proposed premise would contribute to increased traffic flow or noise. While hard to test, we are inclined to think that Smithton’s population is hardly likely to cause traffic problems anywhere comparatively, and we doubt noise would be increased.

We are not persuaded that there is any significant net employment gain by the addition of this outlet. Like many objectors, we feel that the applicant’s claim to employ 8 full-time and up to 12 casual new staff may be an over-statement, based on the hours of operation (84 hours per week). In any case, even if all the proposed jobs eventuated, we suspect there would be a transfer of jobs between other existing outlets and any new addition is marginal at best in terms of providing an employment boost to the area or much economic advantage to the community.

On the other hand, the estimated expenditure of \$700,000 in the build and fit-out of the premises provide income to the local community (presumably) but we note that this is a one-off injection of funds.

There is no evidence of any commitment by the applicant to flow benefit to the broader Smithton community through sponsorship arrangements, scholarships etc. of the like described by many objectors as provided by other licenced premises, the Smithton Club in particular. His vague mention of “some” financial contribution to local community organisations does not stand up against the clear and real in-kind and financial supports made by all the existing licensed venues, as supported by the some of the beneficiaries.

A significant issue for the objectors is the financial impact that the proposed outlet would have on other licensed premises, particularly the Smithton Club, a not-for-profit, service club that has existed in the town for nearly 100 years. The regard in which community members hold it is expressed strongly and often – its dining facilities, as a centre point for various community celebrations, its meeting place facilities and its sponsorships of sporting teams and bursaries for school students. These are real and actual community benefits that many people, including the Club personnel, feel would be adversely impacted by the presence of another bottle shop next door. The overwhelming secondary support for the Club is quite persuasive.

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. ¹

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

In this case, the Commission accepts that there will likely be an adverse impact on the profitability of the bottle shops in the existing licensed premises. Many objectors with no direct vested commercial interest in the Club or hotels (that is, not venue operators or their staff) submit the same thing. 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 is relevant is the extent to which a drop in profitability would adversely impact on the ability of the venues to continue their financial support for various community organisations and activities, thereby jeopardising the important social and community services provided by the licensed premises. Objectors are highly supportive of the proven contribution made in the community by the Smithton Club. The Commission agrees that there is a real possibility that

¹ Commissioner for Licensing (2016) Dan Murphy’s Launceston

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

these benefits would be affected adversely and the community of Smithton would lose out as a result.

Objectors make strong claims that are based on a range of arguments, some stronger than others, and not all accepted by the Commission, such as the potential future connections between the applicant and the Woolworths Group or, in the absence of evidence, that another bottle shop would increase alcohol related harm to some community members. We find these matters not relevant.

While the Commission has a broad remit to interpret “community” – it is not just the local community and can include “society” in general – nothing that the applicant has evidenced has convinced us to take a broader definition.

As stated elsewhere, the concern of the Commission is whether the granting of this licence is in the best interests of the community. It is clear to us from the many submissions that the overwhelming position of members of the Smithton community so represented is that they do not want the proposed bottle shop as they believe there is already a sufficient number of off licensed premises in Smithton, that the town is well serviced already and there is no need for any more. They hold an over-riding belief that the proposed bottle shop is not in their best interests.

While the applicant argues that there is no evidence from objectors’ submissions to indicate that this application will be contrary to the best interests of the community, the fact is that the onus is on him to demonstrate that it is. Overall, we are of the view that the applicant has not put forward a strong case.

On balance, given that the applicant has not satisfied the Commission to the contrary, the Commission believes that it is not in the community’s best interest to direct the grant of this licence.

Decision

The Commission directs the Commissioner for Licensing to refuse the application of Carlton Patrick Dixon for an off licence for Smithton Cellars.

Jenny Cranston (Chair) Stuart Barry (Member) Leanne Topfer (Member)\

5 April 2019