

Application by Louise Stansfield for a Special licence for the premises at 4409 Channel Highway, MIDDLETON, 7163.

Decision: Licence granted

Date: 22 September 2016

The application

The applicant seeks authority for the sale of liquor limited to a range of Tasmanian produced liquor products.

The applicant applied for a similar licence in May 2014 with that application being refused by the Licensing Board. At that time the Board did not believe that the community best interest was served by retail outlets adding liquor to their collateral as a matter of convenience or to increase revenue base. In the opinion of the Board the applicant had not demonstrated that the premises is not just another retail grocery store or corner store.

The applicant now makes a new application and submits that the granting of the special licence would be in the interests of the public in that it will meet the needs of tourists and locals wishing to purchase a limited range of Tasmanian liquor products. In addition the applicant submits that liquor sales would be a very minor component of her business, anticipating it to be 3 per cent of total sales revenue.

The applicant states that her premises and business enterprise is now focused on catering for the travelling and tourist public, to such a degree that it is outside of the description of another convenience store or retail grocery store. The applicant states that the area has a growing number of accommodation providers, in the nature of Airbnb, where visitors take their own provisions. The applicant refers to a number of previous Board decisions that she states indicate a willingness by the Board to grant a licence where the position of the store is remote, reflecting, she states, an acceptance that a general or convenience store in the country may still be appropriate for the grant of a limited liquor licence.

The applicant provides a number of letters of support from the local community and contends that she has approached a number of wine and cider producers in the vicinity, and that these have indicated that they would welcome being able to have their product sold within the locality, from the applicant's business.

Representations

Eight representations were received, although one was received outside the statutory period and could not be considered. All representations were in support of the application. In addition, the applicant included 16 letters of support with her application. I have considered the seven valid representations and 16 letters of support together.

The representations and letters fall into the following broad categories:

- Fourteen representations/letters were from local residents or their representative in the South Channel Ratepayers and Residents Association. Residents support the application as they say that Middleton has been experiencing an increase in tourism and a growth in local producers of foods and liquor. It is their belief that the addition of Tasmanian liquor products will enhance the applicant's existing range of locally produced foodstuffs and will provide the benefit of convenience for residents. Representors say that Middleton is on the Huon Trail, that the nearby Gordon Campground is a strong attractant for tourists, and that there are a number of new boutique accommodation offerings in the area. Residents are keen for any initiative

that will enhance the local economy. They also note that the applicant is of good standing and well respected in the local community.

- Four representations/letters were from local accommodation providers who assert that the application, if granted, would improve the tourism offering in the area and allow for convenient access to local products which would benefit the tourists staying at their venues. They state that it is an expectation of visitors that they can conveniently access locally produced liquor.
- Four representations were from local producers, who believe that the sale of Tasmanian liquor products through the Middleton Store would assist in their business, support the developing tourist market, and assist local accommodation providers. They say that the Middleton Store already carries a range of locally produced foodstuffs and that the addition of local liquor products would enhance the tourist offering and support the local economy.
- One letter was from a regular user of the campground at nearby Gordon who states that the application, if granted, would enhance convenience for visitors and provide for a more complete local produce offering.

Considerations

The primary matters to be considered for a licence application of this type (special licence) are to be found in sections 22, 24A and 25A of the *Liquor Licensing Act 1990* (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. I am satisfied that the applicant is qualified in accordance with section 22.

Section 25A

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.”

The Act does not define what a supermarket is, however the definition has been the subject of some judicial consideration (in *Australian Hotels Association (Tasmanian Branch) vs. Licensing Board (2006) TASSC 91 (8 November, 2006)*) and has also been considered by the Board (most recently in *Bicheno IGA Everyday, Foster Street, Bicheno (30 October 2014)*). I am satisfied that given the range of offerings and the size of the premises (326.5 square metres) it can be best characterised as a convenience store.

I am satisfied on the basis of the evidence provided to me that the proposed special licence will not be operated in connection with the activities of a supermarket.

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*). This legislative definition did not exist at the time the earlier application was considered by the Board.

Regulation 4 provides:

4. Best interests of the community

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.

I am satisfied on the evidence provided that the application, if granted, would not offend 4(b) or 4(c) of the prescribed interests. Consequently, 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:

- I)** 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.

The applicant applied for a licence of the same type in 2014 and was unsuccessful. While the Board (who determined liquor applications at that time) did not publish a formal decision they did provide reasons for their decision which were as follows:

“The Board noted that because a store is situated on the highway that tourists use to travel south and is sometimes frequented by some of these travellers, this does not make it a specialty tourist outlet such to distinguish it from other standard corner grocery stores.

Previous Board decisions (eg Fresco, Sandy Bay 2011; Salamanca Fresh Davey Street 2013) regarding such applications have been clear: the Board does not believe that the community’s best interests are served by all retail outlets adding liquor to their collateral as a matter of convenience or to increase their revenue base. To be granted a licence an applicant must demonstrate that the premises are not just “any other” retail grocery store or standard corner store and that special conditions exist that place it in the best interests of the community to be granted a special licence.

In making its determination, the Board considered that the applicant had not demonstrated that the premises is more than just a grocery shop/corner store and therefore in the community's best to be granted a special licence."

Prior to making its determination the Board made a site visit to view the store, its fit-out and product lines. The Board noted that products included standard grocery items, some fruit and vegetables, refrigerated delicatessen type products (cold meats, cheese) and hardware lines such as fishing gear, camping supplies, bottled LPG gas and marine petroleum as well as firewood and ice. Petrol is available from bowsers outside the shop. The Board further noted that the closest liquor outlets from the Middleton General Store are at Peppermint Bay (9.5 kilometres) and the Oyster Cove Inn at Kettering (14 kilometres). Both of these premises hold a general licence, though only the Oyster Cove Inn has a bottleshop.

In the other direction from the store it is in excess of 30 kilometres to the Commercial Hotel in Cygnet. The Channel Highway between Kettering and Cygnet is a relatively narrow and winding road.

The Board's reasons for rejecting the 2014 application remain sound. The question to be answered here is whether the applicant has, in her new application, demonstrated to a sufficient degree that the premises are more than just a grocery shop/corner store, thereby addressing the valid concerns of the Board.

In answering that question the applicant references the broad local support for her application. The local support is a relevant factor and it is clear that this support comes from more than only residents, it also comes from accommodation providers and producers who see the granting of a special licence as assisting their own businesses.

The applicant raises the Board's previous willingness to consider remoteness as a relevant factor. The matter I assume she refers to is that of the Arthur's Lake Roadhouse (2007), in which decision the Board stated, *inter alia*:

"The remoteness of the area and distance to alternative sources to purchase liquor, the likelihood that much liquor consumed by shack owners in the vicinity is brought from city areas, indicates that the grant of the licence will provide a service much desired in the locality.

There are a significant number of letters in support from people who express what the Board considers to be a genuine desire to have the convenience of a facility near their property in the area. Not only convenience, but also issues of safety arise where the alternative may be a 44 km round trip for liquor supplies.

Some concession to the remote locality, desire to serve the apparent community need, absence of easy alternatives and holiday or tourism nature of the area must be given."

While the Middleton locality is not as remote as Arthur's Lake, there is no doubt that it would be a lengthy round trip for a visitor to the area to obtain liquor, particularly for users of the Gordon Campground which is some four kilometres further south than Middleton.

The applicant states that her business is focussed more on the tourist market than it has been in the past. She provides little evidence for this; there are Tasmanian food products, some of which are from the local area but the offering is not particularly strong, the look of the store and its broad range of products remains much as it was at the time that the Board viewed it in 2014.

It is not in the best interests of the community that any premises should have a liquor licence merely, as has been said previously by the Board, as a matter of convenience or to increase their revenue base. The premises subject to this application, a convenience store, is the sort of premises that would not generally be licenced without a strong countervailing community benefit.

The applicant and the representors state that the countervailing benefit is that there is no other retail premises in the area from which such products could be sold; that there is a growing tourist accommodation offering in the area; and that there are producers locally who would like to sell their product in the store. In summary, it is argued that the granting of the special licence would assist in the economic development of the local area generally. The supporters of this application also argue that there is a need locally for a more convenient access to liquor than the round trip to either Kettering or Cygnet.

In balancing these community interests I am satisfied that there is a benefit in the granting of the licence, with limitations to ensure that the sale of liquor does genuinely contribute to the local tourist and produce economy rather than simply adding a revenue source for the applicant.

Decision

The special licence is granted as follows:

The sale of liquor is authorized between 7am and 9pm daily subject to the following condition/s:-

1. The sale of liquor is limited to Tasmanian wine, Tasmanian produced spirits, ciders and liqueurs, and Tasmanian beers produced by Tasmanian owned and operated breweries. These products may be sold for consumption off the premises subject to the ongoing sale of a range of hospitality tourist goods or services, which must include Tasmanian produced foods.
2. The display of liquor available for sale at the premises is restricted to display areas consisting of two open shelves and a single glass fronted refrigeration unit.



JC Root

Commissioner for Licensing

22 September 2016