

**Application by Craig John Baldock for a Special licence for the premises at 18 Niela Crescent, DEVONPORT, 7310.**

**Decision: Licence refused**

**Date: 10 February 2017**

**The application**

The applicant seeks authority for the sale of liquor sold for consumption off the premises under a special licence.

In addition to his application form the applicant provided a written submission, a response to an objection and was interviewed by telephone on 20 January 2017.

The applicant's written submission describes his proposed business as a home occupation business selling liquor via on-line order only. At interview he stated that he was also interested in phone orders if that was allowable under the licence. The applicant's submission states there would be no direct sales, order collection, or general public interaction at the premises, as sales would be via a website and the order would be delivered directly to the customer.

The applicant submits that his business will support small-medium size Tasmanian liquor producers who find running an e-commerce website for their businesses too daunting. He submits that his business will help 'bring their products to market' by facilitating single and low quantity bottle sales on-line. He submits that additional product exposure will also promote tourism awareness, vineyard visits and so on.

The applicant's ideal business model would be 24 hour delivery and include phone orders, with minimum licence hours to be 5am-midnight for delivery of an unlimited range of alcohol products with on demand delivery within the hour in the local area. Payment would be prior to delivery through a local firm Intellidebit. The applicant has commenced discussions with one winery for supply but has no commercial arrangements for delivery, which he proposes to initially undertake himself. He has not undertaken any market research but saw the opportunity based on similar businesses interstate.

The applicant states that the granting of the liquor licence will provide immediate employment for one person (himself), with the potential as the business grows to employ additional (part-time initially), people in both the delivery and marketing sides of the business. He identifies additional benefits from the granting of the licence as the use of a Devonport consultancy agency for web development and the implementation of a new online payment processing system recently developed by Ulverstone based company Intellidebit. The applicant submits that the delivery vehicle will also require regular maintenance and servicing, thereby creating additional work for a local mechanic and that he aims to use local design and printing firms for ongoing work too.

The applicant believes that the granting of this liquor licence has the potential to have a positive impact on the general community. By offering online alcohol sales and delivery, there is the opportunity, he contends, to reduce problems such as noise and antisocial behaviour on the streets, by removing the problem from the streets altogether (I assume by moving it inside). There is also, he states, a high potential to reduce the likelihood of people attempting to drink-drive in order to purchase alcohol, as they can go online and order instead.

The applicant proposes to donate one dollar from every order to worthwhile local community projects or groups working with disadvantaged and vulnerable people. He submits that

delivery instructions, (such as; 'Leave at back door', 'Leave in garage' etc.), will be obtained at the time of ordering, should no one be available to sign upon delivery, and that if there is someone present at the time of delivery, the order will be required to be signed for by an adult. Appropriate ID will be requested and sighted to verify age if there is any doubt regarding age. If age cannot be adequately established, the delivery will not be left. As an additional measure, confirmation of final delivery will also be sent via email.

Initially, the applicant states that his marketing and growth will be aimed at the area of Devonport, expanding to surrounding areas along the NW coast as the business develops. As the business grows, he envisages Australia Post being used for deliveries interstate and further afield. The applicant states that without the ability to offer non-Tasmanian 'mainstay' products, such as other regular beer, wine and spirits, the growth of the business would be curtailed. The applicant states that while stock will be held on the premises where practical, he envisages that regular and ad hoc stock collection from smaller producers would occur.

Currently, he states, it is not viable (or financially possible) to hold large stock quantities, certainly at this early stage anyway, so it is also likely a larger order may be passed directly to the producer for direct fulfilment. In the future the applicant said at interview that he might move his premises to a warehouse if the business is successful.

### **Representations**

One written representation was made in objection to this application by the owner of the residential property located next-door to the premises at 16 Niela Crescent. The representor is concerned at the storage and distribution of an unlimited amount of alcohol from a suburban residence and the increase traffic movement that will result from this business model.

The representor writes that the suburb surrounding Niela Crescent is predominately a quiet residential area with a small shopping precinct and a primary school as its centre pieces. Granting of the application is said by the representor to allow for the storage and distribution of an unlimited amount of alcohol from a house being used as a retail outlet in a residential area not zoned or designed for that purpose. The representor expresses a view that storage of commercial quantities of alcohol at any residential property would heighten the likelihood of burglary in the area posing an unacceptable increased risk to neighbouring properties and residents.

The representation adds that as the applicant will be using courier and freight services to deliver commercial quantities of alcohol to the residence, and to pick up alcohol from the residence for delivery, traffic movements into and out of the quiet residential crescent will increase as will the associated risk to residents of neighbouring properties. Deliveries of alcohol to and from the residence are not limited in number, frequency nor timing and as such could occur any time of the day or night, seven days a week.

Finally, the representation argues that no consideration has been given to loss of the amenity currently enjoyed by residents of the area.

### **Response to representation**

In response to the representation, the applicant states that the objector lives some 20 or more kilometres away, in Port Sorell and that the primary school referred to is around a one kilometre drive from the applicant's premises. The applicant states that his premises will not

be a retail outlet; there will be no signage on the premises, alcohol will not be served on the premises and no customers will attend the premises.

The applicant states that delivery and collections would not be taking place 24 hours a day, seven days a week, and that large, commercial-style trucks will not be delivering pallet loads of alcohol to the address at all hours. Rather, on the occasion that product may be delivered to the premises via courier, it will more than likely be via Australia Post (standard courier van), or other similar local contractor between 7am and 5pm on business days.

The applicant states that he will personally be completing deliveries, meaning no out-bound couriers will be required, and that he has recently installed additional security to address the risk of theft from his premises.

## **Considerations**

The primary matters to be considered for a licence application of this type (special-licence) are to be found in sections 22 and 24A of the *Liquor Licensing Act 1990* (the Act). The context for considering relevant matters is provided by section 2A of the Act which sets out the Act's objectives in the following terms:

### **2A. Object of Act**

**(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 2A(2) puts an obligation on "... any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the object set out in subsection (1)."

The best interests of the community are prescribed in Regulation as follows:

- (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.

## **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 24A**

Section 24A(1) requires that I must make a decision which, in my opinion, **is** in the best interests of the community. That is to say, I cannot make a decision that I think *may be, appears to be, or is likely to be*, in the best interests of the community. Rather, my opinion must be that it **is** in the best interests of the community. The onus falls upon the applicant to put forward a credible case.

In determining the best interests of the community in respect of this matter I have weighed the submissions of the applicant and representor within the context of the objects of the Act, and, where relevant I have obtained other information to assist me to evaluate those submissions.

#### *Representation*

I am satisfied that the representor has standing in this matter. Although he may, as the applicant asserts, live some distance away, he does own the adjacent property and has a legitimate interest in his tenant's amenity. With regard to his arguments, the proposal is a home business, and there are many such businesses in residential areas, one would expect that there would be an increase in comings and goings for many of these businesses, over and above what might occur through normal domestic activity. Consequently I am not satisfied that the activity proposed would have an *undue* effect of causing disturbance to nearby residence through business hours and perhaps into the evening, when a normal home business might have some activity going on. I do accept the representor's argument when it comes to trading into the early hours of the morning. That is, it is reasonable to conclude that frequent alcohol deliveries conducted after midnight would result in disturbance above and beyond what would normally be expected in a neighbourhood from the comings and goings of domestic activity and home businesses.

I am not satisfied from the evidence provided that there is an undue risk that the storage of alcohol will attract criminal activity.

#### *Applicant submissions*

The applicant wishes to commence a home delivery business for alcohol in the Devonport area. Ideally he would trade at any time of the day or night, but at a minimum he seeks authorisation to trade from 5am until midnight. He does not provide me with any evidence of community support for the proposed business, other than to say that some of his neighbours are supportive of the concept, and my impression from my interview was that his business model is still in its development phase and there were some aspects of his operation that were yet to be clearly determined.

The applicant provides me with some reasons as to why his application is in the best interests of the community, which I have detailed above. This application is broadly similar to the matter of *Christopher James Dingas at The Late Night Bootleggers premises (Liquor-internal review) [2015] VCGLR 43 (19 November 2015)*<sup>1</sup>, where the applicant proposed a similar business model that was rejected at first instance by the delegate. The Victorian Commission for Gambling and

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<sup>1</sup> <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCGLR/2015/43.html>

Liquor Regulation considered the matter on review, and affirmed the decision to reject the application, noting that:

36(e) The case of *Rosstown Hotel*<sup>2</sup> has established the basic principles underpinning Victoria's approach to applications for extended hours for supply of packaged liquor. The decision in that case stated that "despite a legitimate need for such a service possibly existing '...a demand (perhaps substantial) would also arise from persons leaving licensed premises...who may be intoxicated...underage persons running out of liquor usually at late night parties...intoxicated persons who have run out of liquor...' and that this would likely cause '...alcohol fuelled problems (such as violence, noise, disorderly conduct, criminal damage, vandalism, binge drinking and so on)..."

The Commission found that "...the Application, by proposing the delivery of liquor between the hours of 8pm to 5am, has the potential to contribute to the misuse and abuse of alcohol, albeit in the home rather than at licensed premises. This does not accord with the fundamental object of the Act, being harm minimisation, and would not promote a culture of responsible consumption of alcohol." and did not accept the applicant's submission that the "application will benefit the community by reducing the risk of alcohol-fuelled assaults, drink-driving and damage to property, as the Applicant provided no evidence in support of these submissions."

While noting that Victorian regulatory regime is not identical to that operating in Tasmania, I am satisfied that the reasoning applies equally to this case, and indeed the applicant here has made similar arguments in support of his application as those advanced in the Late Night Bootleggers matter, and has similarly provided no evidence to support these arguments. Further, I am concerned that the applicant's proposed business practice of allowing for delivery instructions such as "leave in garage", while perhaps appropriate to the delivery by courier of a parcel in the day-time, and indeed recommended by guidance on my website for such instances, would be a high-risk practice in the case of delivering general liquor products to the door late at night, with the consequence that proper RSA practices could not be securely followed.

### **Decision**

In weighing the evidence provided I am not satisfied that the application is in the best interests of the community or that it furthers the object of the Act relating to the minimising of harm arising from the misuse of liquor, consequently the application is refused.



J C Root  
Commissioner for Licensing

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<sup>2</sup> *Rosstown Holdings Pty Ltd v Liquor Licensing Commission* [1998] LLCV 611A