

Application by Cameron Peter McDonald for a Special licence for the premises Bes Mudi at 309a Cambridge Road, Mornington.

Decision: Licence refused

Date: 1 April 2016

The applicant applied for a special licence (restaurant) authorising the sale of liquor for consumption on the premises Bes Mudi, at 309a Cambridge Road Mornington, to a person having a meal

The applicant describes the premises as a take-away eatery designed for Eastern Shore residents, businesses and tradesmen, which also provides in house eating facilities for about 16 people.

The applicant says that he delivers hot fresh food to local businesses and homes three days a week and that the premises has four tables for dining and advises that liquor would be stored in a designated single door refrigerator behind the counter.

The area in which the premises is located is a mix of business, light industrial and residential premises. The applicant advises that there is not a lot of foot traffic from school children.

The applicant submits that the granting of a liquor licence will have great community benefits in that it will provide an eat-in premises that is not bar and gaming focussed, increase social opportunities in the area, increase dining facilities for locals, provide employment opportunities and meet customer demand.

The applicant contends that a special liquor licence, where a drink could be served with one of his meals, would allow him to provide an alternative to the food establishments of the area. In addition the applicant believes such a licence will give the customer true family dining in a relaxed, casual atmosphere totally separate from a public bar and a gambling venues, thereby contributing to community connectedness and well-being. The applicant speculates that other benefits might accrue from the granting of a licence, such as:

- Increased social and recreational opportunities in the area;
- Increased facilities and entertainment for the community;
- Increased opportunities for live music, artists or other performers;
- Increased employment and therefore experience and opportunities;
- The offering of a new venue for public meetings, fundraisers, poetry and writing groups;
- The enabling of greater community involvement;
- Increased economic activities;
- An alternative venue for functions, birthday parties and celebrations, and community and sporting celebrations; and
- Greater customer satisfaction.

Consideration

The premises are small, approximately 6 metres wide and 15 metres deep. The front counter divides the depth of the premises roughly in half, with the front half containing various fridges and displays in addition to providing access to the counter and bain-marie for take-away customers and seating for those who wish to eat their food on the premises. There are three

car parks available to patrons. The purpose of the business is principally the sale of take-away food and the preparation and sale of food for delivery to local homes and businesses. The premises has the “look and feel” of a take-away and a menu focussed on the sorts of foods that one generally sees in a take-away premises (burgers, souvlakis, chips, wedges, dim sims, Chiko Rolls, meat and gravy rolls, fish and chips etc). The space available for seating is limited. Opening hours are from 6am to 7pm, Monday through Saturday.

The *Liquor Licensing Act 1990* defines a restaurant in the following terms: *restaurant* means premises in which the principal activity is serving food for consumption on the premises. With respect to Bes Mudi, it is clear that the principal activity is not the serving of food for consumption on the premises, rather that is a subsidiary activity to the main activity of the preparation and sale of food for consumption off the premises.

The decision to grant any licence must only be made if I am of the opinion that the licence is in the best interests of the community. The evidence that the applicant provided to argue that the granting of a licence for Bes Mudi would be in the best interests of the community is limited at best.

The applicant speculates without evidence as to some benefits that might accrue if a licence were granted, however some of these are not consistent with the proposed purpose of the licence, that being for the consumption of alcohol by persons having a meal. That is to say, the use of the venue for public meetings, fundraisers, birthday parties, sporting celebrations and so on seem to me to be uses beyond that of persons having a meal and the limited space available seems also to mitigate the likelihood of there being any great call for the premises to be used for activities such as live music. The benefits the applicant lists, were they to be realised, would not be dependent on a licence being granted, they could occur in any event.

The applicant provides no evidence as to how the licensing of the premises would lead to greater community involvement or increased economic activity and provides no evidence of a local community desire for the premises to be licenced.

In its decision regarding the Port Sorell Snack Bar (2011), the Licensing Board (who had responsibility for determining licences at the time) said that:

“...it is not the intention of the legislation or this Board that every corner shop or retail venture be also licensed to sell liquor.”

and further that:

“...the mixed business/corner shop plus minor addition of seating space for consuming food does not of itself justify the grant of a liquor licence.”

While the premises in this case has a somewhat different focus to that of the Port Sorell Snack Bar, there is certainly sufficient overlap that the principles identified by the Board apply here.

This is a small premises with limited parking, a take-away focus and limited scope for in-house dining. In-house dining appears to be a minor adjunct to selling of take-away food and packaged meals, indeed take-away patrons walk through the seating area from the front door to access the counter, limiting the amenity of the seating from the perspective of in-house dining.

In summary of the above, I find that the business related to the application is a typical take-away food business with some provision of seating for consumption of food on the premises. It is not a restaurant as defined in the Act. It is little different to the sorts of unlicensed take-away premises that exist in local communities around the State. I have not been provided with real evidence, sufficient to overcome the general principles set out in the Port Sorell Snack Bar matter, that the best interests of the community would be served by the granting of the

licence as applied for. In the absence of such I am bound by section 24A(1) of the Act not to grant the licence.

A handwritten signature in black ink, appearing to read 'J C Root', with a horizontal line extending to the right from the end of the signature.

J C Root
Commissioner for Licensing

1 April 2016