

Application by Timothy Hinnerk Patermann for a special licence for the premises Augustus Chocolate & Gifts at 100 Collins Street Hobart.

Decision: Licence refused

Date: 22 January 2018

The application

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

The applicant operates a premises which he describes as being predominately a gift shop and chocolatier stocking “high quality, Tasmanian handmade chocolates as well as other premium Tasmanian produce including honey, fudge, and other confectionary, as well as locally made cakes and Tasmanian roasted coffee.” He describes his store as “largely focussed at locals and tourists purchasing gifts for family, friends, colleagues etc.”

The applicant seeks to add premium, locally produced wine as well as limited local whisky and gin to his Tasmanian, locally made offering. He initially intends to stock six wine labels in the shop with each having between two to three different styles of wine.

The applicant cites the benefits of his application as being that the sale of liquor in his store would:

- help round out his offering of local products;
- help promote the State's brand to the many tourists who buy his products and gift them to their friends and family at home;
- improve the offering for gift hampers;
- provide a take-home offering of a range of Tasmania non-perishable gourmet products;
- help to support local producers in complementary sectors, and in particular smaller liquor producers who have little or no representation in bottle shops; and
- allow him to sell his own wines through the store; to that end he hopes that sale of his produce for consumption in restaurants will attract customers to come into his store.

In support of his application the applicant states that the city centre has limited representation of premium Tasmanian wine, whisky and gin, and certainly none that is paired with the range of products, particularly chocolates, offered in his store. Finally he states that while retailing boutique wines, gins and whiskey may not seem like a large contribution to benefitting the community, for those producers whose product are sold, it would make a difference.

Representations

No representations were received.

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.” Given the size and nature of the premises I am satisfied that the premises 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*).

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 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 seeks to undertake three activities in relation to the sale of liquor, those being the sale of Tasmanian made liquor, the sale of his own produce, and the sale of liquor in gift hampers. The latter activity is already allowable under General Liquor exemption number four of 2013 which allows for the sale of up to 1.5 litres of liquor for consumption off the premises as a component of a gift hamper.

On viewing the premises it is a standard retail store that sits within the Hobart CBD and retails a diverse range of greeting cards, gifts, homewares and similar types of products, also for sale is a large range of chocolates, and the premises incorporates an in-store cafe. While there are Tasmanian products there are also a large range of products manufactured elsewhere. Although tourists may shop in the store, this does not make it a speciality tourist outlet, and there is little that distinguishes its retail offering from that of other gift and homewares stores.

In balancing the general costs and benefits to the community it is relevant that previous Board and Commissioner decisions (eg Fresco, Sandy Bay 2011, Salamanca Fresh Davey Street 2013, Bes Mudi 2016 and Middleton 2016) regarding special licence applications have been clear: the community's best interests are not 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 store and that special conditions exist that place it in the best interests of the community to be granted a special licence.

I am not satisfied on the evidence above that there are any aspects of the store that particularly distinguish it from a range of similar gift and homewares stores and consequently I am not satisfied that the sale of liquor from the premises, even with restricting conditions, would provide any particular benefit to the Tasmanian community that would outweigh the general costs of expanding the availability of liquor. While there may be private benefits to the applicant in expanding his range, and to a small number of producers in having an additional outlet for their product, these are not community benefits and the benefits the applicant suggests may accrue to the State's brand, in the absence of any evidence to support the proposition, would be no more than very marginal. Consequently I am not satisfied that such benefits would be sufficient to change the balance of overall costs and benefits to the community.

Decision

The special licence is refused.

A handwritten signature in black ink, appearing to read 'JC Root', with a horizontal line extending to the right.

JC Root

Commissioner for Licensing

22 January 2018