

Application by Andrew Ian Wilcox for an off-licence for the premises at 158 Murray Street, Hobart to be known as Hop Vine and Still

Decision: Licence granted - 15 February 2018

The application

The applicant seeks authority for the sale of liquor under an off-licence from the premises at 158 Murray Street in Hobart.

The applicant's written submission describes his proposal to fit-out and use a currently vacant store that he plans to lease and operate as a retail liquor store.

The applicant submits that it is in the best interests of the community for the licence to be granted as the store will offer a diverse and quality product range from Tasmania and around the world, as well as educational and tasting opportunities not generally available in the Hobart area. He describes it as a "niche liquor store", that "will not be a discount, high volume sales liquor outlet". He says that the store will promote Tasmanian products and small producers, with items including craft beer, fine wines and boutique spirits. He also says that his aim is for the business to become a "destination store" for locals and for tourists, who seek products unavailable elsewhere, in a convenient and easily accessible location.

The applicant states that the business will generate employment opportunities for four people initially, in full-time, part-time and casual capacities, with the potential for this to double as the business grows. He also indicates that day-to-day operations will be established to ensure compliance with the regulatory requirements and to support customer safety. He says that staff training and education will be an important operational focus.

Representations

Seven written representations were received, all within the statutory period and each objects to the grant of a licence. The nature of objections can be summarised as follows:

- Too many existing bottle shops - All representors consider that there is already a sufficient number of liquor outlets, particularly bottle shops, in the area.
- Increased harm from liquor - Six representors are concerned that another outlet may increase the risk of harm from liquor due to, for example, anti-social behaviour.
- Competition and negative impact on surrounding businesses - One representor is concerned that another liquor outlet in the area will put existing businesses under strain, resulting in job losses.
- Inadequacy of the location - One representor is of the view that an increase in traffic due to another liquor outlet in the area will cause inconvenience for the local community and that the store will negatively impact on the residential boundary. They also consider that using the vacant store to sell liquor fails to take up other potential uses that would improve the area.
- Negative impact on tourism - Two representors mention the increasing number of tourists to the Hobart city area, with one suggesting that another liquor store may increase the risk of anti-social behaviour and may damage Hobart's reputation.

Applicant's response to representations

The applicant was given the opportunity to provide a written response to the representations. In response, he recognises the concerns raised, but indicates that his original written submission addresses these concerns in detail. Because of the general nature of some of the comments provided by respondents, the applicant also indicates that it is difficult to provide further detail beyond what was provided in his original submission.

The applicant's response to concerns about the potential for anti-social behaviour is that his extensive experience in retail liquor management, willingness to be proactively involved in harm minimisation activities in local communities, and his business model, will all mitigate the risk of harm from the inappropriate consumption of liquor.

In regard to concerns about the number of existing licensed premises in the area, the applicant submits that his store "is intended to be a niche, boutique liquor store that specialises in craft beer and fine wines as well as offering a range of education experiences for customers". He notes that the area is becoming more vibrant, with the development of new university accommodation and additional options for residential living, creating the necessity to continue to modernise services in the area, including retail outlets.

The applicant submits that the vast majority of representations have come from people who are connected to a single liquor retailer in the area and that comments "are general in nature and not specific to the proposed business operations".

Finally, the applicant expresses concern that some representations are not factually correct. For example, contending that one overstates the number of existing liquor outlets in the area and others provide supporting information that is not relevant, as it relates to issues that have been experienced in different localities.

Considerations

The primary matters to be considered for a licence application of this type (off-licence) are to be found in section 22, and subsections 24A(1) and (2) of the *Liquor Licensing Act 1990* (the Act).

Section 22 - Qualifications for liquor licence

Section 22 of the Act sets out the criteria that a person must meet in order to be granted a liquor licence. I am satisfied that the applicant in this case is qualified in accordance with section 22.

Section 24A - Requirements for licence

Section 24A of the Act states at (1) and (2) that:

(1) 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.

(2) In considering an application for an off-licence, the Commissioner or the Commission must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

With respect to subsection 24A(2) I am satisfied, on the basis of the material presented by the applicant and the absence of any evidence to the contrary, that the principal activity to be carried on at the premises will be the sale of liquor.

Best interests of the community

Subsection 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 and upon objectors to evidence the assertions they make.

The term “best interests of the community” has been defined in the Act and the interests prescribed in the *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 costs 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:

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.*

While not determinative of this application, it is useful to note that it relates to a premises that is located on the fringe of the Hobart central business district, on a busy arterial road

that runs through the city centre. The area services the wider catchment of greater Hobart (including other residents and tourists), particularly on weekdays as the population temporarily grows with people travelling to the city centre to work.

Twenty-three premises are authorised to sell liquor within approximately 200 metres of the area surrounding the applicant premises. Nine of these are authorised under a general licence for consumption on or off the premises (eg hotels). Two are authorised under an off-licence for consumption off the premises and one of these is a bottle shop. Six premises are authorised under an on-licence for consumption on the premises (eg restaurants and bars) and six under a special licence subject to specified conditions (eg restaurants).

In determining the best interests of the community in respect of this matter I have weighed the information provided by the applicant and by representors, and, where relevant I have obtained statistical information to assist me to evaluate this information.

I accept the applicant's contention that the proposed off-licence would provide benefit to the community, including to tourists, by offering the option of high-end and emerging liquor products. It would be distinct from the existing off-licences in the area, which focus on stocking popular liquor brands, and offer regular specials and bulk discounts.

Opportunities for employment and to attend classes to learn about liquor products, as well as the proposed modern fit-out of the store (images were included in the submission) will have a positive impact in the area.

I have not been provided with sufficient evidence to support the argument that there are too many existing liquor outlets in the area. One respondent is a local liquor licence holder and indicates that granting the licence will put existing businesses under considerable strain and cause job losses, however, he does not provide any estimates of the impact on turnover and employment loss. I note the applicant's claim that the majority of the other respondents have written in support of one other liquor licence holder in the area. I considered similar arguments in my decision *Dan Murphy's Launceston (2016)* in which I stated:

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.

While I accept that existing licensees will be impacted by a new off-licence, I am not convinced that this will extend to also negatively impact on the broader community. The balance of the evidence is that it would not.

Concerns about the potential for increased harm and anti-social behaviour due to the sale of liquor in the area are understandable, including a potential negative impact on tourism. However, concerns are not specific and relate to the excessive consumption of alcohol generally or in other localities, and assume that this proposal may add to the problem. I note the Liquor Licensing Board's comments in *Hill St Cellars (2010)* where it found that:

...in the absence of particular issues, the mere prospect that a licence may lead to harm by the supply of liquor which might be misused is not of itself a justification to refuse the licence.

I am not satisfied that there is anything specific about this application that would justify my refusal to grant the licence. The premises is located close to the Hobart city centre, traffic volumes and public surveillance are high, the surrounding suburbs are not vulnerable given

their Socio-economic Indexes for Areas rankings relative to other Tasmanian suburbs¹ and the proposed store seeks to service the greater Hobart area, including residents and tourists. My decision *Dan Murphy's Launceston* (2016) included similar considerations in regards to an absence of specific issues.

In its decision *Steve's Liquor Bottle-O Warehouse* (2014), the Board commented that there is always a risk that new premises will exacerbate harm and recognised that efforts can be made to mitigate this. In the same way, I am satisfied that the business model outlined by the applicant for a high-end liquor retail store with a focus on responsible service and education, will limit the risk of harm from the sale of liquor.

The inadequacy of the location is raised in terms of the negative impact on traffic and the residential boundary, as well as the opportunity foregone should an alternative business operator have taken up the premises. Traffic and zoning matters are generally considered by Council and would have been included when it assessed the partial change of use application for the premises. In this case Council deemed that no permit is required. It seems to me, *prima facie*, that the existence of an off-licence is not inconsistent with the immediate surrounding mix of commercial uses, which includes a pharmacy, hardware store, pet store, a store for gym and leisure products and a beauty therapist. I did not receive representations from any of these businesses, nor did any nearby residents provide representations to me. The presence of an off-licence seems appropriate and I am not convinced that it would lead to any more traffic, parking or zoning issues than an alternative use of the premises. My comments in *Forth Village Bottle Shop* (2016) are similar in this regard.

Commercial interest in the premises has rightly been a matter for the market to decide and I am not required to consider alternative uses. Although alternative uses would also provide benefits to the community and potentially associated risks.

Decision

I am satisfied that, on balance, it is in the best interests of the community to grant the licence.



J C Root
Commissioner for Licensing
15 February 2018

¹ The Socio-economic Indexes for Areas product produced by the Australian Bureau of Statistics provides an objective measure of the relative socio-economic advantage or disadvantage of an area. This is available at: <http://www.abs.gov.au>