

Application by Brendan Self for an out of hours permit for the premises THETAH at 131 Main Road, New Town.

Decision: Permit refused

Date: 17 December 2019

The application

On 9 August 2019, an application for an out of hours permit (OOHP) was received from Mr Brendan Self. The proposed trading hours for the sale of liquor is from midnight to 5am seven days per week. On the same date, Mr Self applied to transfer the liquor licence for the premises (previously known as Cellarbrations New Town) from the previous licensee Mr Robert Flynn. This transfer was finalised on 13 September 2019.

In his application, Mr Self submits that the premises will be run exactly the same as his previous 24 hour operation using the same measures for security, Responsible Service of Alcohol and noise containment. The referral to the previous operation relates to the premises The Waratah, 272 Murray Street, Hobart which operated under a General Licence with an OOHP that permitted off sales from the bottle shop.

On 12 August 2019, Mr Self provided a more detailed submission that addressed his suitability as a fit and proper person, the exercise of effective control, best interests of the community and a general description of the operation.

Representations

On 12 August 2019, letters of support were received from the following persons:

- Rob Flynn - current lease holder, Cellarbrations New Town;
- Gary Hawkins - Owner, The Talbot Hotel;
- Scott Wilson - Wilson Homes;
- Warwick Dawson - Reece;
- Lydia Andrews - Operations Manager, Ricoh;
- James Murdoch - Principal Computers; and
- Steve Old - CEO, Tasmanian Hospitality Association.

The applicant was required to advertise the application for the OOHP. This was done by way of signposting on the premises and via the Liquor and Gaming Branch website, which occurred on 14 September 2019. No representations were made with respect to the advertisement of this application.

In addition to having the application advertised I sought, in accordance with section 33(3A) of the Act, submissions from a number of relevant bodies.

On 24 September 2019, the Hobart City Council provided a submission regarding the application. The Council advised that the approved trading hours for the premises under the planning scheme is 11:00am to 11:00pm Monday to Sunday. An approval for an extension of the trading hours would be required to extend beyond 11:00pm. The Council further advised any such application would also need to consider the approved hours for the Urban Mixed Use Zone, which the premises is subject to. Issues regarding community safety and wellbeing were also addressed in the submission. The Council stated that it does not support the application.

On 8 October 2019, Clinical Associate Professor Adrian Reynolds, who is an addiction medicine specialist and the Clinical Director of the Tasmanian statewide Alcohol and Drug Service, provided a submission by way of a research based paper. The paper details the prevalence and range of harms caused by the misuse of alcohol and its correlation to the extended availability of alcohol. Professor Reynolds stated that he does not support the application.

On 9 October 2019, the Foundation for Alcohol Research and Education (FARE) and Alcohol, Tobacco and other Drugs Council Tasmania (ATDC) provided a joint submission which addressed the issues of the extended trading hours, negative impact on the local community, negative impact on vulnerable Tasmanians, proximity to alcohol treatment services, an increase in availability and its impact on alcohol-related harms, and the possibility of future on-line sales. FARE and ATDC do not support the application.

On 17 October 2019, Tasmania Police provided a submission which outlined three previous liquor infringement notices issued against the applicant as a licensee, and asked that I take into account the proximity of the applicant premises to Flint House, an accommodation facility for homeless men, said to often include recovering alcoholics and drug addicts. Tasmania Police did not take a position of support or objection to the application.

Response to submissions

On 20 November 2019, Mr Self was invited to provide a response to the submissions prior to a decision being made on the application. Mr Self was afforded 14 days to respond but did not do so.

Considerations

In considering an application for a liquor permit, I am required under section 34(1) of the *Liquor Licensing Act 1990* (the Act) to make a decision which is in the best interest of the community. This includes considering the general costs and benefits to the community, whether the supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to others and the possible adverse effects on the health and safety of the public.

Further, section 34(2) requires that I must not grant an out of hours permit in respect of licensed premises unless the licensee satisfies me that the granting of the permit will not, put briefly, cause the occurrence of undue annoyance or disturbance, or of disorderly conduct, in the neighbourhood of the premises. I highlight that the onus is on the licensee to satisfy me of these matters.

With respect to the occurrence of noise, disturbance and disorderly conduct, the applicant explained the systems and training that he has in place to manage the conduct of patrons, and states that his record at The Waratah premises is evidence of the limited effect on the amenity of the area that the off-licence might have. Representations from businesses adjacent to The Waratah support the applicant's claims, though I note that the representors are primarily daytime businesses.

With respect to my considerations around the best interests of the community, the applicant has said that the community will benefit because:

- There will be a smooth transition in the availability of an all-night off-licence between his current (at the time) operation at The Waratah and his new operation.

- The Talbot Hotel’s ongoing operation will be supported by the application.
- Staff from The Waratah will be employed at the new premises.
- Shift workers will be able to purchase liquor on their way home.
- The new location will shift people out of the city, thereby reducing harm in the city.
- In the absence of a 24 hour off-licence there will be an increase in violence in the city. People will have no choice but to leave their homes and go to late night bars or nightclubs to locate alcohol.
- The presence of a 24 hour off-licence provides additional work for taxi and uber drivers bringing customers to the premises.
- The off-licence will continue to support sporting clubs and community fund raisers.
- The off-licence will continue to stock over 200 Tasmanian liquor products.

The benefits that might accrue for the community from the application need to be balanced against the potential costs. In refusing a special license for the business “Alcohol Deliveries” in 2016 (this decision was confirmed by the Tasmanian Liquor and Gaming Commission on appeal) I referred to comments by the Victorian Commission for Gambling and Liquor Regulation (VCGLR) in the matter of *Christopher James Dingas at The Late Night Bootleggers premises (Liquor-internal review) [2015] VCGLR 43 (19 November 2015)*¹:

“36(e) The case of *Rosstown Hotel*² 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)...”

While noting that the Victorian regulatory regime is not identical to that operating in Tasmania, I was satisfied, and remain so, that the reasoning applies in the Tasmanian context.

Professor Reynolds has expanded on the VCGLR’s observation in the following terms:

“Persons wishing to purchase alcohol in the early hours of the morning are more likely than not to be those who commonly consume and/or who have already been drinking, well in excess of the low risk drinking advisories of the National Health and Medical Research Council (NHMRC) 2009. Those in the community who do not have a drinking problem and/or whose every life pursuit and socialisation does not centre around drinking will not be thinking about or going out of their way late at night or early hours of the morning to find and purchase alcohol. They will be able to purchase their alcohol in a planned manner during normal trading hours and if they do not have time to do so on a particular day, will not be concerned about going without.

Persons wishing to purchase alcohol in the early hours of the morning are therefore likely to be those whose lives do centre around alcohol and who have already been

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

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

drinking at the time, often well in excess of the low risk drinking advisories of the NHMRC.”

Professor Reynolds also notes that:

“...extending the hours of trade at off-licenses is known to increase the incidence of domestic violence while restricting trading hours at off-licenses is generally followed by decreases in the incidence of assault and hospitalisation.”

Tasmania Police, the Hobart City Council and FARE/ATDC brought my attention to nearby community and alcohol-related treatment services. In objecting to the application, the Council stated:

“The City of Hobart is also aware that there are several community services located in the vicinity of the proposed application, including boarding houses and supported accommodation facilities where the availability of alcohol for extended hours could have a detrimental impact on the wellbeing of people accessing these services.”

The combined submission from FARE/ATDC objecting the application stated:

“Close to the Cellarbrations store is the Salvation Army’s Bridge Treatment and Recovery Service in New Town. This service provides 12 residential beds and four transitional units offering Alcohol and Other Drug counselling and interventions. Other key services in the community less than a kilometre away are the Alcohol and Drug Services at St John’s Park, and Clare House, which works with child and adolescent mental health.”

I am satisfied that the location of the applicant’s premises in the vicinity of these types of community facilities is a relevant matter to consider in assessing the permit application.

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.

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

JC Root

Commissioner for Licensing

17 December 2019