

**Application by Constandinos Grillas for a special licence for the premises
Blac Fig at 527 Sandy Bay Road, SANDY BAY, 7005.**

Decision: Licence refused

Date: 14 November 2023

The application

The applicant seeks authority to sell Tasmanian liquor under a special licence for consumption off the premises.

The applicant states that Blac Fig is a specialist providore that sells premium fine food, deli food, fresh fruit and vegetables and artisan meals, with a focus on small scale Tasmanian producers.

The applicant refers to a repositioning from the previous premises use with significantly less floor space for grocery items. Opening hours are 7am to 7pm seven days a week. A car park is available for customers.

The applicant wishes to offer Tasmanian liquor for consumption off the premises for mainly local consumption, although it is suggested that some tourists may purchase the store's specialty products. The applicant states that the sale of liquor would support a one-stop shop for local residents.

The premises includes a café. While not part of this application, the applicant indicated they may subsequently seek a licence to serve liquor with meals from the café.

With respect to best interests of the community the applicant notes that Lipscombe Larder previously operated on the site and had authority to sell Tasmanian liquor for consumption off the premises. The applicant states that obtaining this licence will allow the sale of liquor to continue, in line with what is said to be community expectation. A licence would enable the continued offerings of the business previously at the site, including the provision of specialised customer-selected hampers. Sale of liquor is said to assist the viability of the business model, enabling continuing employment and growth.

It is intended to limit the alcohol range to Tasmanian produce at a premium price point. The applicant states this will not attract customers wishing to buy consume in bulk and the applicant claims that the sale of liquor from the former business at the site did not cause any issues in the community. The range selected will have an emphasis on small scale Tasmanian producers who are too small to sell their products through bottleshops and may be unable to justify a cellar door.

In relation to exercising effective control on the premises, the applicant has held the special licence at Coterie & Co since July 2015. He advises that all staff will be required have Responsible Service of Alcohol qualifications and check ID for people who appear to be under 25 years of age. The liquor display counter is intended to be directly opposite the main counter and therefore can be easily monitored.

Site

Blac Fig is a large, open store with a modern fit-out, multiple sale points and includes a small cafe. The store stocks a large range of goods including fruit and vegetables, eggs, dairy, bread and bakery items, dry goods, pre-prepared meals, delicatessen items, confectionary, ice

cream/gelato and frozen goods. The website describes the store's offering under nine categories, being Bakery & Patisserie, Fruit & Veg, Groceries, Deli, Ice Cream, Liquor, Ready-made meals, Catering, and Hampers. There is a focus on fresh produce and the site describes the grocery offering in the following terms:

“From milk to bread and pasta our shelves are stocked full of household staples from the brands you know and love, making it easy for you to do all your shopping in one place.”

There is a car park for around a dozen cars and outdoor seating and tables utilised by the café.

Representations

No written representations to the Commissioner were made in respect of this application for a liquor licence.

Legislative 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 *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 of the Act.

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.

Section 25A

Section 25A of the Act states that “A liquor licence must not be granted in connection with the activities of a supermarket.” I am satisfied that the premises is not a supermarket.

General considerations

In balancing the general costs and benefits to the community, previous decisions about special licence applications by the Licensing Board, the Tasmanian Liquor and Gaming Commission and the Commissioner for Licensing have clearly stated that the community’s best interests are not served by retail outlets adding liquor to their collateral as a matter of convenience or to increase their revenue base.

A number of premises with similar community interest considerations have been determined, eg Evandale Providore (2021), Murdunna Roadhouse (2021), Dagolla Mart (2021), Log Cabin General Store (2020 & 2021), Mount Nelson General Store (2019), TCM Market (2019), and QiE Asian Grocer (2019).

To be granted a licence of this type (special), the applicant must satisfy me that the premises is not just any other retail store and special conditions exist that make it in the best interests of the community for the licence to be granted. In this regard I refer to the Tasmanian Liquor and Gaming Commission’s decision on appeal for the Log Cabin General Store (2021). The Commission wrote at 49:

As the Commissioner, the Commission and the Licensing Board have stated on many occasions, the community’s best interests are not served by retail outlets adding liquor to their collateral as a matter of convenience or to increase revenue. There must exist some special circumstance to allow the granting of a liquor licence to these outlets.

Integral to this consideration is a requirement to ensure that the structure of licence categories is not subverted by the artificial use of the special licence category to overcome limitations or prohibitions attached to the other categories, and thereby to defeat the purpose of the Parliament in establishing the categories.

The Parliament has expressed its requirement for premises that provide off sales of liquor in section 24A(2) of the Act:

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.

I am satisfied that this requirement is not met by Blac Fig given the principal activity is the sale of food. Consequently, special conditions must exist that mean it in the best interests of the community to grant the special licence. The onus is on the applicant to satisfy me of this.

The applicant states that the sale of liquor would:

- enable customers to continue to access liquor as they became accustomed to at the business formerly at the premises and maintain the goodwill of the business;
- support the economic viability of the business and job creation in the Lower Sandy Bay precinct;
- bring tourists to the local area to purchase quality produce, meals and gift hampers;
- provide a safe and fun culture for the local residents to feel safe and help bring the community together;
- provide an outlet for smaller liquor producers; and
- be a one-stop shop for local residents.

The sale of liquor to enable one-stop shopping or to enable the continuation of a business model people may have become accustomed to does not constitute special circumstances requiring the granting of a licence such as this. No evidence has been provided that the addition of an extra stock line (liquor) will increase employment at the site.

With respect to the applicant's desire to provide for specialised produce hampers, there exists, by virtue of General Liquor Exemption (No. 4) 2013, and exemption under section 16(1) of the Act allowing for the sale of *bona fide* gift hampers containing liquor (up to a certain volume) without the need for a licence.

There may be private benefits to the applicant as a result of incorporating boutique Tasmanian liquor products into stock, as well as to a small number of producers in having an additional outlet for their products. These, however, are private rather than community benefits, and I note in regard to the latter point that many of the brands listed as the proposed stock (including one from NZ) are from large producers that are widely available in existing off licences.

I am not satisfied that the addition of alcohol will support bringing tourists to the area. I note the applicant's submission states that the addition of alcohol is not anticipated in itself to add to foot or vehicle traffic. Although tourists may shop in the store, this does not make it a speciality tourist outlet.

I have not been provided with any evidence that the sale of liquor off the premises will support a safe and fun culture for local residents, bringing the community together.

Costs to the community accrue through increasing the ease of access to alcohol, which is known to lead to increased consumption and alcohol-related harm. In this regard the Commission's considerations in the Log Cabin General Store decision are relevant here:

18. It has long been recognised that alcohol consumption in Australia is a serious health issue. The Tasmanian drug strategy 2013-2018 records that about half the Tasmanian population exceeds the single occasion risk guideline for consuming alcohol (more than four standard drinks on any one occasion), and this rate has not changed significantly over the last six years (ABS 2019).

19. The National Alcohol Strategy 2019-2028 identifies that:

- one quarter of Australians are drinking at risky levels;
- 10 – 15% of emergency department presentations are alcohol related;
- 25% of all frontline police officers' time is taken by alcohol-related crime;
- 25% of all road fatalities can be attributed to drink driving;
- alcohol was involved in 34% of intimate partner violence incidents and 29% of family violence incidents;
- alcohol is a leading cause of drug-related death, with more than 4000 deaths estimated to be attributed to alcohol in any year; and
- alcohol was the most common form of drug of concern for people accessing specialist treatment in 2017-2018, accounting for 35 % of episodes.

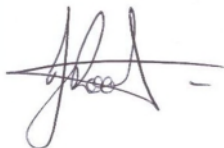
20. The Commission notes these publicly available statistics to demonstrate one part of the “general costs” aspect of the “best interests” test. This also is a very good reason why the supply of alcohol in Tasmania is regulated in the manner it is. The Commission mentions this to re-enforce that it is not just the benefit to the specific community that must be factored into this balancing exercise, and also that alcohol is not just another product in a retailer's lines.

The normalisation of community use of alcohol, in particular through increasing the exposure of children to alcohol products, contributes to harmful outcomes. I note in the latter regard that it would not be practical, because of the nature of the store, to designate the premises restricted in accordance with section 84(2) of the Act as is normal practice for off licence premises, consequently particular care needs to be taken in granting special licences such as that applied for.

Taking into account the applicant's submission and the matters discussed above, I am not satisfied that special conditions exist to support the grant of the licence.

Decision

The special licence is refused.



J C Root

Commissioner for Licensing

14 November 2023