

Application by Nick Nikitaras for a special licence for the premises Hill Street Sandy Bay at 2 Churchill Avenue, Sandy Bay.

Decision: Licence refused

Date: 15 October 2019

The application

The applicant, Mr Nick Nikitaras, seeks authority for the sale of Tasmanian liquor under a special licence for consumption primarily off the premises, with liquor sold for consumption on the premises limited to tastings.

Mr Nikitaras holds special liquor licences authorising the sale of Tasmanian liquor at Hill Street Grocer Lauderdale (2016), Hill Street West Hobart (2015) and at the Salad Bowl in South Hobart (2014).

At the time of the application the building to accommodate Hill Street Sandy Bay was under development, however it has since been completed and opened on 9 October 2019.

The applicant indicated that the intended focus of the store is that of a provedore, rather than a grocer, and an extension of the existing West Hobart store. He describes it as follows:

“This store will be a high-end provedore, a gourmet emporium surpassing previously seen stores in Tasmania in terms of fit out, product range and in-store experiences.”

The application shows that it will be a contemporary-styled retail space and indicates that the product range will include: fruit and vegetables, artisan bread, home-style ready-to-eat meals, a delicatessen with items such as antipasti and charcuterie, cheeses, dairy items, pastries and cakes, meat, unpackaged wholefoods, convenience products, chocolates, environmentally conscious products, homewares, bakeware and gift hampers. In-store experiences will include access to a large cheese room (where tastings and educational events on cheese and liquor products are intended to be held), a wine and cheese club and a full service florist.

Liquor is intended to be located in joinery units, refrigerated units and in the homewares area as part of gift hampers. It would be sold with an emphasis to match the food sold at the store.

With regard to best interests of the community, the applicant submits that:

- As liquor will only be sold for consumption off the premises there is minimal possibility of any anti-social behaviour causing offence, annoyance or disturbance in the area; and similarly that there is minimised or non-existent risk of adverse effects on the health and safety of members of the public (eg due to the late departure of inebriated patrons) as the premises will close at 8pm and alcohol will not be consumed on the premises. I understand however, that the applicant does intend to offer alcohol at tastings should the licence be granted.
- All counter staff will hold Responsible Service of Alcohol certificates and will be trained in the requirements of the *Liquor Licensing Act 1990* (the Act). The applicant describes other internal practices to ensure compliance with the legislation and the safety of patrons.
- There will be community benefit due to greater accessibility to, understanding and awareness of, high quality Tasmanian liquor products not ordinarily found in large chain bottle shops provided through tastings, educational events and having well trained staff.
- Small local producers will benefit by having an additional retail outlet for their products (many of which are not carried by large chain bottle shops) and opportunities for them to attend ‘Meet the Maker’ events. He refers to existing direct relationships between Hill Street stores and several boutique vineyards, submitting that Hill Street has

become their major retail outlet, and similar success that has been achieved with specialist brewers and boutique distillers. He hopes to make similar partnerships with other small producers to raise their profile.

- The premises will offer only Tasmanian liquor products (over 60 different varieties) which will enhance the overall profile of Tasmanian liquor.
- It will have a positive impact on employment. At least one extra person with liquor knowledge will be employed at the premises and two to three within the cheese room. He contends that the sale of liquor from the premises will also assist local producers to employ more people and will stimulate this sector of the economy generally.

The applicant acknowledges that section 25A of the Act does not allow the grant of a liquor licence in connection with the activities of a supermarket and submits that Hill Street Sandy Bay is not a supermarket within the meaning of that provision. He references a decision of the Tasmanian Liquor and Gaming Commission (Salamanca Fresh - Kingston and Salamanca Fresh - Huonville 2018) in which the Commission comments on the determination of what constitutes a supermarket. I note that the Commission states:

“...in the absence of an easy and agreed supermarket definition, the Commission has placed the stores in question on a continuum of characteristics on which there is a point where a premises is/is not a supermarket. This point can only be identified on a case-by-case basis and each case demands subjective investigation.”

The applicant gathers from this decision that while relevant factors will be considered by the Commission “...it is the overall impression of the store which these factors produce which will place that store somewhere on the Commission’s ‘continuum of characteristics’”. He then addresses the factors as they will exist at the premises (summarised below) and submits that “...the sum total of those factors existing within Hill Street Sandy Bay will place Hill Street Sandy Bay on the point on the Commission’s continuum where those premises are not a supermarket.”

- **Size** - The applicant indicates that the store’s retail space will be smaller than the total retail floor space of the Hill Street West Hobart store (I am told that West Hobart is 680 square metres). He submits that it is small in comparison to supermarkets such as Coles and Woolworths which are generally around 3 500 square metres. The applicant also submits that the size of the premises combined with its character and feel make it more akin to that of the West Hobart store for which he holds a special licence for the sale of Tasmanian liquor (and it was therefore not considered to be a supermarket).
- **Product range** - The store will be a high-end provedore, with products and in-store experiences as described above. In addition, the applicant indicates that the premises will house Tasmania’s largest cheese room, a very large delicatessen and a large artisan bread section. The applicant also indicates that the store will have an abundance of Tasmanian sourced fruit and vegetables depending on the season (approximately 75 per cent in summer) and approximately 70 per cent of grocery products comprising gourmet and Tasmanian lines, with only 30 per cent national brand name products. Cigarettes will not be sold. He points out that two grocery bays per aisle will house homewares, bakeware and environmentally conscious products, with an adjoining area housing a large loose unpackaged wholefoods section, which are not “standard supermarket” lines.
- **Product mix** - The applicant states that the product mix at Hill Street Sandy Bay (with an emphasis on the locally sourced and gourmet) will be similar to that of the West Hobart store and will be very different from a “standard supermarket.” The applicant provides a percentage of sales breakdown by department based on average

sales across Tasmania for a standard supermarket at June 2019 and contrasts this with a week of trade in May 2019 for the West Hobart store. The applicant states that this information clearly shows the difference between what each type of store offers. Standard supermarkets focus on groceries (ie packaged national brands) while Hill Street Sandy Bay will focus on gourmet and locally sourced grocery products, delicatessen and fresh produce sales and in-store experiences.

- **Store layout** - This will reflect the product mix. The applicant indicates that just over one fifth of retail floor space at Hill Street Sandy Bay will be taken up by grocery aisles for packaged grocery offering, stating that this is less than half of that of the standard supermarket examined.
- **Self-service** - The applicant states that there will be a combination of self-service and one-on-one service and hand-selling in the store. The applicant states that there will be a higher amount of one-on-one service in the cheese room, florist and the delicatessen areas, and a higher number of staff on the floor in all areas to assist customers than in a supermarket.
- **Use of trolleys** - Primarily baskets will be used, with a small number of trolleys available. The applicant states that “In contrast, supermarkets may have hundreds of trolleys.”
- **Opening hours** - The applicant states that the premises will trade from 7.30am to 8pm, seven days a week. The applicant states that supermarkets “...have a much greater span of hours.”
- **Pricing and use of specials** - The applicant indicates that his businesses offer regular specials and do not advertise in newspapers, with most customer communication online.
- **Parking** - The applicant confirms that of the car parking spaces available at the front of the building, approximately eight will be available to Hill Street Sandy Bay, stating that this “...is in contrast to the many hundreds of spots available at supermarkets...”

In concluding his argument that the premises is not a supermarket, Mr Nikitaras states:

“The combined effect of the factors discussed above, with the look and feel of the store, creates an overall impression of an evolution beyond a supermarket into what might be described as a gourmet emporium like New York's Dean & DeLuca, Eataly in Milan and New York and Harrods Food Hall, which are all certainly not supermarkets.”

Site Visit

I visited the premises on 18 September 2019 and met with the applicant's business associate Mr Euan Wiseman who is the store manager, and Ms Natalia Nikitaras. The construction of the premises was nearing completion and it was being fitted out at the time. Completed aspects included flooring, woodwork, counter-tops and serving areas, some shelving and display areas. These were in accordance with the information provided in the application.

Ms Nikitaras indicated the following:

- the premises has a similar floor space to the West Hobart store;
- it will have a similar stock mix to the West Hobart store and focus on local products;
- there will be five aisles;
- it will be a European-style market offering high-end products as well as activities such as producer nights, demonstrations, tastings and the in house florist, with things happening all of the time;
- grocery items and homeware/environmentally friendly products will be integrated, for example, products necessary for a particular meal will be located in the same place;

- self-service opportunities will be available, such as in the wholefoods area; and
- in relation to the sale of liquor: the intention is to allow customers to match liquor with food; and to promote local producers by exposing their products, including new producers and products.

I further visited the site after it had opened, on 12 October 2019 to observe its operation, layout and the range of products on offer. The large carpark, comprising around 50 spots at the front of the premises, was full, and while there were some patrons in the café the majority of those parking were attending the Hill Street store. At the entrance and to the side were a few dozen shopping trolleys. The store has, as the applicant describes, a large range of goods: fruit and vegetables, meat, dairy, bread and bakery items, dry goods, household consumables, a small florist, an area where cheeses are displayed, and a delicatessen. Goods are arranged in aisles and along the sides of the premises, and there is ample room for passage of shopping trolleys. There are four staffed checkouts and three self-checkout points (these latter ones were not operating at the time of my visit).

Representations

One written representation was received objecting to the grant of the liquor licence on the basis that the premises is a supermarket and that the Act does not allow a supermarket to sell liquor.

Mr Nikitaras was offered the opportunity to respond to this representation, but I did not receive anything further from him. His application includes a thorough account as to why he does not consider the premises to be a supermarket under the Liquor Licensing Act.

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 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.”

While supermarket is not defined in the Act, the characteristics of a supermarket have been considered in a number of recent decisions of both the Tasmanian Liquor and Gaming Commission and the Commissioner for Licensing. Particularly relevant in this case are the Commission decisions of Hill Street Grocer Devonport 2016 and Salamanca Fresh Huonville and Kingston 2018. A simple view of these decisions is that a supermarket is a premises (regardless of its appellation) where a typical household might purchase its weekly shop of food and household consumables. From this functional perspective, rooted in the historical development of the supermarket as a premises bringing together the produce of such specialist stores as the butcher, baker, dry grocer and greengrocer into a single place and allowing for the customer to select the majority of their goods themselves, flow the characteristics referred to in the decisions above: the availability of parking, shopping trolleys, a broad range of goods arranged in aisles and a premises of a size capable of holding such, multiple sale points, hours of opening beyond normal business hours and so on.

The applicant has identified a number of reasons for which he says that the premises should not be determined to be a supermarket, these are summarised above. Broadly, he compares

the characteristics of his premises with those of a large chain supermarket of the Coles or Woolworths variety and identifies points of difference. He says that rather than patrons doing a large shop they are more likely to use the premises as a pantry. However as the Commission has pointed out the key question is whether the premises functions as a supermarket, rather than its character relative to a national chain supermarket, the existence of ancillary non-supermarket services, or how particular patrons might utilise it.

The premises that is the subject of this application has, according to the plan provided, 459 square metres of retail space, 80 square metres of “back of house”, 332 square metres of storage space and common areas of 54 square metres. The total area of the premises is in excess of 900 square metres. The carpark is large, there are sufficient trolleys for the patrons who want to use them, goods are arranged in aisles and the store, notwithstanding that there are areas where there is service (such as the delicatessen, cheese area and florist), is largely self-service, extending even to the checkouts where self-checkouts are installed. Self-checkouts are very common in supermarkets but would be unusual in grocers or convenience stores. There is a fulsome range of fruit, vegetables, meat, bread, dairy, dry goods, frozen goods and household consumables and the store is part of the IGA group. There is no doubt that the products are generally higher quality than many supermarkets, and many appear to be at a higher price point, however these are not factors that would change the character of what would otherwise be a supermarket.

In considering all of the above, balancing the factors identified by the applicant as points of difference for his premises with those characteristics that identify a supermarket, I am satisfied that the premises is 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.”

As I have determined that the premises is operating as a supermarket it is not necessary for me to consider section 24A.

Decision

The special licence is refused as I am satisfied that the premises operates as a supermarket.



JC Root

Commissioner for Licensing

15 October 2019