

**Application by Paul Walker for a special licence for the premises TCM Market at Shop 4, 476 South Arm Road, Lauderdale.**

**Decision: Licence refused**

**Date: 15 January 2019**

**The application**

The applicant, Mr Paul Walker, seeks authority for the sale of liquor under a special licence, limited to Tasmanian wine, beer, cider and spirits primarily for consumption off the premises, with liquor sold for consumption on the premises limited to tastings.

The premises is located at The Foreshore Shopping Complex at Lauderdale and has been operating as a specialty gourmet food store since November 2018. Mr Walker describes the business as a specialist retailer of local and imported food and indicates that TCM Market:

“...is designed and operated to provide top quality produce to our customers in a safe, caring and personally convenient service environment...”

Items offered at the premises include fresh fruit and vegetables, local flowers, convenience and gourmet grocery items, pre-packaged small goods, fresh bread and patisserie items, a butchery and delicatessen, cheeses, cold drinks, homewares, kitchenware and gifts. It incorporates a café with indoor and outdoor dining areas. Pre-prepared meals and takeaways are also available. Liquor is intended to be stored in a refrigerated cabinet and tastings and educational sessions with local producers held for customers and staff.

Mr Walker emphasises the quality of service offered by and skills of specialist staff in the full butchery and delicatessen, noting the success and reputation of an associated business, Trendy Cut Meats. He states that the business aims to support Tasmanian producers and lists many local companies that TCM Market supports.

With regard to best interests of the community, the applicant submits that the business has had a successful commencement, is popular with locals and tourists, and is becoming more popular with customers in surrounding areas. He indicates that the community desires the sale of liquor for consumption off the premises as it will be convenient for customers (including elderly residents) to be able to purchase all items in the one place. He refers to the community representations provided in support of the application and also states that: “...the demand for complementary Tasmanian-produced alcoholic drinks to accompany Tasmanian food products has become strongly evident.” Matching food and liquor will be the emphasis if the licence is granted.

The applicant intends to specialise in Tasmanian liquor products providing a selection not offered in the area. He notes that it can be difficult for small boutique producers to find retail outlets because of their size and indicates that the business has already been approached by one such local producer. He states that the sale of liquor from the premises “...will assist in the growth and development of tourism and Tasmanian wineries, distilleries and breweries and expand the existing market for the Tasmanian products”. He suggests that demand for these products may also be increased at other outlets. He also states that some employment will be provided for the local community should the licence be granted, although he does not provide details.

Mr Walker submits that the sale of liquor from the premises will not cause any offence, annoyance, disturbance or inconvenience in the area particularly given that a liquor licence

had been held previously at the location, and will have no adverse impact on the primary school. He states that strict procedures will be in place "...to guard against the sale and supply of liquor to minors".

Mr Walker contends that TCM Market is not a supermarket, but a specialty gourmet store with the additional offerings described above. He states "...TCM Market provides this niche market facility to customers and is not, by any stretch of the imagination, a supermarket." He offers the following considerations:

- **Product range** - Grocery offerings are described as small and the range "...of a very limited nature and would not even reflect the ranges offered by small IGA bannered stores or other independent supermarkets in the area..." The applicant indicates that customers would only do incidental grocery shopping at the store rather than their weekly shop.
- **Trading hours** - The premises operates seven days a week between 6.30am and 8pm.
- **Size** - Fresh produce and convenience items take up 250m<sup>2</sup> of floor space; the butcher and delicatessen 122m<sup>2</sup>; and the café and takeaway 125m<sup>2</sup>.
- **Baskets and trolleys** - Hand held shopping baskets are available to customers for convenience and safety, as well as 10 mini shopping trolleys. The applicant contends that "The provision of shopping trolleys and baskets is not considered a determining factor on whether our business can be classified as a supermarket."
- **Parking** - Considerable off street parking is available to customers at the front of the premises.

Mr Walker concludes that granting the licence would be consistent with statutory provisions, Government policy and earlier decisions.

### **Site Visit**

I visited the premises on 18 September 2019 and discussed the application with the applicant and his business associate. It is of moderate size comprising five aisles, large raised stands, wall shelving, fridges and freezers, tables and chairs to seat around 40 people, long glass display cabinets and an ATM. Immediately outside the premises are four wooden tables with seating.

It stocks a considerable range of products including:

- bakery items - bread, wraps, sandwiches, cakes, pies and coffee;
- dairy items - milk, yoghurt, butter, margarine and cheese;
- fresh fruit and vegetables;
- meat - a wide selection;
- eggs;
- ready-made dishes;
- general grocery items - long-life milk, biscuits, cereal, spreads, herbs and spices, sauces, condiments, pasta, noodles, tinned foods, sugar, flour, cake mix, vinegar, frozen foods and pet food;
- snack foods - ice creams, chocolate, lollies and potato chips;
- soft drinks and juice;
- household items - cleaning products, insect repellent and cling film;

- hygiene products - shampoo, deodorant and tissues; and
- home/giftware and cards.

Mr Walker reiterated that the premises is a gourmet grocer with a focus on pairing food with liquor and supporting local producers. Should this application be successful he may submit a future application for the sale of liquor for consumption on the premises at the café.

## **Representations**

Ten letters in support of the grant of the licence were submitted by Mr Walker as part of his application. These representations are grouped and summarised below.

- **Four from residents in and around the local area:**
  - Two of these representations are variations of the same letter with one of these signed by four people.
  - Points made in favour of the sale of liquor from the premises include: its focus on Tasmanian beverages providing a sales outlet in the area for smaller local producers; improved access to Tasmanian products for consumers; and greater competition and product choice.
  - General comments include that the premises offers (or will offer) the area: increased competition and choice of products; the convenience of one-stop shopping given its location in the shopping precinct; longer trading hours suiting locals who work elsewhere during the day; safe vehicle access; employment; and support of local organisations through donations and sponsorship.
- **One from a local wine producer:**
  - This licensee is hopeful that the premises will stock their produce, as was the case with the previous liquor licence holder at the location.
  - The owners comment that a liquor licence holder in the area does not stock their wine, but understand that the applicant, if granted a licence, would focus on local boutique wines, which would provide an opportunity for shoppers to buy a high quality local product.
- **Two from businesses in and around the local area:**
  - These note the applicant's intended support of local liquor producers, with one indicating that specialising in the sale of Tasmanian liquor would complement the applicant's existing stock selection. The other also notes that another grocery business at Lauderdale already sells Tasmanian liquor and sees that it is appropriate to grant a liquor licence to the applicant so "...as not to create an uneven business environment".
  - General points include that TCM Lauderdale: provides (or will provide) choice for consumers in the area and employment, has safe and easy vehicle access and has increased trade at a nearby business.
- **Three from sporting clubs in and around the local area:**
  - Two of these clubs indicate that they are supported by the applicant's business (Trendy Cut Meats) in the form of cash or cash and prizes. Both note that this support benefits each club, as well as the local community.
  - Other comments include that the premises: supports local producers; and will benefit the local community by providing a beneficial retail facility, very good general amenity, convenient one-stop shopping, employment and an element of market competition.

One representation was received objecting to the grant of the liquor licence. It was submitted by the owners of the Foreshore Tavern which is located on South Arm Road in very close proximity to the premises. The licensee of the Foreshore Tavern holds a general licence authorising the sale of liquor for consumption on or off the premises.

The objector is of the view that the premises is a supermarket and contends that granting the licence is not in the best interests of the community. Concerns are raised under four headings with key aspects included below.

- **Demographics of the area:**
  - Based on 2016 Australian Bureau of Statistics Census data, the portion of children and young people living in Lauderdale is higher than for Tasmania.
  - The *Australian Secondary School Students' Use of Tobacco, Alcohol, Over-the-counter Drugs, and Illicit Substances Statistics & Trends 2017* reports that experience with alcohol by 12-17 year olds increases with age.
  - Given this information, the objector states that "...the location of the applicant's premises in relation to other supermarkets, as well as schools, means that a higher than average number of under 14 year old young people may frequent this supermarket."
- **General impacts of alcohol consumption in the area:**
  - Based on data at 2016 for alcohol consumption and for emergency department admissions related to alcohol in Tasmania and Australia, the costs associated with the grant of another liquor licence would far outweigh any benefits to the community.
  - Responsible serving practices may not be of a sufficient standard at the premises, with the objector arguing that:

"There is a clear risk when allowing alcohol to be served in supermarket environments (such as the one to which this application relates) that untrained and even underage supermarket staff will be involved in the serving of alcohol to the community. This lack of effective control, combined with the introduction and intensification of alcohol in a business that in and of its very nature attracts people of all ages including small children, has the potential to result in negative consequences for the community."
- **Existing liquor licences in the area:**
  - The availability of alcohol has increased given the increase in liquor licences in Tasmania over the previous decade.
  - Granting this licence will add another point of access to alcohol and there is already a relatively high number of licensed premises in the area (including the Foreshore Tavern). These premises are well managed and provide services to the community. Granting this licence "...is unlikely to add anything to the locality that does not already exist."
- **Characteristics of the area of the supply or proposed supply:**
  - The premises is located in a mixed use area (ie together with residential properties, aged care facilities, schools, hobby farms and recreation areas).
  - Schools, places of worship and child care centres are located in the area, with proximity indicated in the representation.
  - Concerns are raised about the sale of liquor from a supermarket including that: the Act does not allow it; the community would not ordinarily expect to see alcohol in a supermarket and it creates an unnecessary risk and the potential for

adverse behaviour; liquor available for sale next to food normalises liquor particularly for children; and the negative impact will extend beyond the immediate area given the location of the premises on the way to other suburbs and the lack of supermarkets beyond it.

The applicant was given the opportunity to respond to this representation and his key points are summarised below.

- The premises is not a supermarket and does not have any alignment with a supermarket.
- The premises is a market of gourmet food and seeks to offer wine to complement gourmet food lines.
- He intends to source wine from local wine producers, which is giving back to the local community.
- His customers are on average middle aged educated people who like quality over quantity. Products will be medium to high end, which is not "...conclusive with heavy consumption or binge drinking".
- There is only one primary school and no high school in the immediate area and the product range would not suit underage supply.

### **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 the *Liquor Licensing Act 1990*.

#### **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 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:

- (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.

### **Section 25A**

Section 25A states that “A liquor licence must not be granted in connection with the activities of a supermarket.”

### **General considerations**

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, Middleton 2016, Augustus Chocolates 2018, and Mount Nelson General Store 2019) 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 special licence of this type an applicant must demonstrate that the premises are not just any other retail store and that special conditions exist that make it in the best interests of the community that a special licence be granted. Integral to this 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 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.

This requirement is clearly not met by the premises that is the subject of this application and consequently special conditions must exist that place it in the best interests of the community to grant the special licence (see for example Salamanca Fresh 2005, Mount Nelson General Store 2019).

The benefits that the applicant identifies are primarily those of convenience for local residents and holidaymakers in the purchase of liquor along with their food purchases, support for local

liquor producers and the opportunity for the applicant to expand his business to meet the demand he has identified.

The premises itself, while having a strong focus on its butchery section and on pre-prepared meals, is a gourmet grocer of the type that has become increasingly popular in recent years. While there are some visitor accommodation providers in the local area it could not be said that there is any particular tourism focus to the applicant's premises.

In its recent consideration of a similar (ie one restricted to liquor from a particular geographic area complementary to the grocery products offered) special licence application by the proprietor of the QiE Asian Grocer, the Tasmanian Liquor and Gaming Commission determined that while convenience alone was not a pre-determinative factor for the granting of the special licence applied for, the non-availability of particular products from certain overseas countries may form part of the broad consideration of what is in the best interests of the community as a whole, such that allowing the sale of a limited range of specific liquor products from particular countries not generally available... would appear to offer to members of the community an advantage that would be to their benefit. The Commission further noted that:

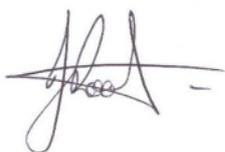
“because particular products are not readily available, then a special licence can be granted. It necessarily follows that once a special licence is granted, the availability of such products is increased. The argument about availability is therefore one that must be considered on a case-by-case basis, and by its very nature will be more difficult to be satisfied once a special licence has already been granted.” (QiE Asian Grocer 2019)

With respect to the application under consideration here, the premises is adjacent to an existing bottle shop that sells Tasmanian products and is approximately 600 metres from a similar gourmet grocery store that also sells Tasmanian liquor products. I am satisfied that Tasmanian liquor products are easily available in the immediate vicinity of the premises such that convenience or lack of access to particular liquor products is not a strong argument for the granting of the licence.

In regard to the argument of an emerging demand for complementary Tasmanian-produced alcoholic drinks to accompany Tasmanian food products I would note that a food retailer can provide recommendations for complementary liquor products without necessarily selling that product themselves and further that a retailer may be able to provide a complementary liquor/foodstuffs product through use of General Liquor Exemption (No. 4) 2013 that allows for the sale of liquor as a component of a gift hamper provided that they meet the conditions of that exemption (including but not limited to the sale being restricted to a maximum of 1.5 litres in any one gift hamper; and for consumption off the premises only).

## **Decision**

The special licence is refused as taking into account the evidence and the matter discussed above I am not satisfied that its grant would be in the best interests of the community.



JC Root  
Commissioner for Licensing  
15 January 2020