

## **Application by Robert Brandon Fisher for a special licence for the premises Mount Nelson General Store at 462 Nelson Road, Mount Nelson.**

**Decision: Licence refused**

**Date: 12 February 2019**

### **The application**

The applicant seeks authority for the sale of liquor, limited to a range of Tasmanian produced products, under a special licence.

The Mount Nelson General Store was previously licensed under a special licence that was surrendered in April 2018. This previous licence restricted the sale of liquor to Tasmanian products, with liquor display not to exceed 4m x 2m x 3m in total.

With regard to best interests of the community, the applicant states that there are currently no other premises selling liquor in the Mount Nelson area and that he has received feedback from customers who are generally receptive of the store selling liquor. The applicant believes there is a market for the sale of boutique and premium liquor in the area and that the grant of the licence would be beneficial to the Tasmanian community at a general level as it will be an additional (albeit small) avenue to further support local suppliers and promote Tasmanian produce.

The applicant states that the premises is not a supermarket and therefore not precluded from being granted a liquor licence under section 25A of the *Liquor Licensing Act 1990* (the Act). In this regard the applicant references the previous special licence granted to the premises and submits that any issue arising from section 25A would have been satisfactorily answered previously. Further, the applicant states that the premises is a general store and does not fall within the meaning of a supermarket as there are differences in scale, pricing and overall business objectives. The applicant states that the business is not affiliated with any large chains, does not sell products in bulk discount price and simply provides general goods to the local community. He further provides that the area of the premises is approximately 201m<sup>2</sup>, only offers baskets to customers (not trolleys) and has about 11 car parking spaces. The premises is open 7:00am to 7:00pm from Monday to Friday, 7:00am to 6.30pm on Saturday and 7:30am to 6:30pm on Sunday.

The applicant stated that he intends to convert the area marked on the plan as “Show Room” into a separate business this year to operate as a bottle shop. The applicant requested consideration of the conditions of the special licence allowing him to sell liquor from Australian companies as he felt selling only Tasmanian liquor would be limiting in respect to meeting the very high demand of his customers, though ultimately he proceeded with the originally proposed conditions limiting the sale of liquor to Tasmanian products.

### **Site Visit**

I visited the premises on 18 January 2019 and discussed the application with the applicant. The store itself is unremarkable, it is of a moderate size, has three aisles and a single counter and stocks such items as:

- Takeaway food such as sandwiches, sushi, cakes, hot pies;
- Fresh coffee;

- Cold drinks;
- Snack food (confectionary, potato chips, ice-creams);
- Fresh meat;
- Eggs;
- Packaged deli meats;
- A limited amount of fresh fruit and vegetables;
- General grocery items such as spices, sauces, condiments, tea, coffee, milk, cereal, biscuits, bread etc;
- Perishables (dairy goods, juice, frozen meals etc);
- Tinned and fresh pet food;
- Cleaning and hygiene products (toothbrushes, deodorant, soap, household cleaning products, mops etc); and
- Hardware and household maintenance items.

If granted the special licence the applicant intends to install two liquor bays which will be located where confectionary is currently shelved at the south-west end of the store. He is not intending to sell high volumes of liquor, for example he intends to sell six packs of beer rather than cartons and would surrender the special licence once he has obtained an off licence.

With regard to the bottle shop/off licence, the applicant intends to develop a currently empty space (formerly a hairdresser) at the north-eastern end of the premises into a bottle shop. In order to satisfy section 24A(2) of the Act the bottle shop would operate as a separate business, operating under a different company, with a different meter box and point of sale. Staff will not go between the two shops and patrons would enter the bottle shop via a different entrance to that of the store.

### **Representations**

No representations were received.

### **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 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.

The premises has been previously licensed and in considering the application at the time the Board (which determined licence applications at that time) took into account the *Liquor and Accommodation Regulations 2003*. These regulations no longer exist, however at the time they stated, at 4(2):

The Board is to direct the Commissioner to grant a special licence to sell Tasmanian wine if satisfied that –

- (a) the principal activity to be carried on at the premises specified in the licence is the provision of hospitality or tourist goods or services; and
- (b) selling the wine is not likely to have a detrimental effect on that activity.

The Board determined that the purpose of the regulation (which is no longer in place) and discretion was to enable Tasmanian wines to be sold in local stores which have made some attempt to improve from the basic, and which serve hospitality and/or tourism purposes. The Board further determined that the premises at the time of the application had, in part, a focus on hospitality. The hospitality sector is defined by the Australian Bureau of Statistics as comprising businesses whose primary activities are the provision of accommodation, selling of alcoholic beverages for consumption on the premises, and provision of food and

entertainment in categories such as accommodation; pubs, bars and taverns; cafes and restaurants; licensed clubs; and casinos.

On viewing the premises it is clear that what hospitality focus it had at the time the Board inspected it is no longer there. The applicant's premises is an unremarkable local store and while there are some premises providing visitor accommodation in the local area it could not be said that there is any tourism focus to the applicant's premises.

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 and Augustus Chocolates 2018) 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 licence an applicant must demonstrate that the premises are not just any other retail store and that special conditions exist that place it in the best interests of the community to be granted a special licence.

The benefits that the applicant identifies are primarily those of convenience for local residents in the purchase of liquor and the opportunity for him to expand his business to meet this local demand. The applicant intends to construct a bottle shop and seeks the special licence to allow him to sell liquor until he has completed his bottle shop and acquired the relevant planning permits and off licence, at which point he would surrender the special licence. He is content with a restriction to Tasmanian liquor in the short term but would prefer a broader condition to allow all Australian liquor. Absent any tourism or hospitality focus there is no rationale to restrict sales to Tasmanian produced liquor (noting that the premises' ability to assist the local liquor industry to develop is very limited).

The Parliament has expressed its requirement for premises limited to 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 the community's best interests are not served by use of the special licence to overcome specific requirements of the Parliament in the absence of a compelling reasons to do so, as would be the effect of granting this application. Consequently I am not satisfied that it is in the best interest of the community to grant the application.

### **Section 25A**

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

The applicant has provided submissions as to why his premises could not be considered a supermarket, notwithstanding that his own plan refers to the premises as such. As I have determined not to grant the licence applied for it is not necessary for me to determine whether the premises is a supermarket.

### **Decision**

The special licence is refused.

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

JC Root

Commissioner for Licensing

13 February 2019