

Application by Xuan Zhao for a special licence for the premises QiE Asian Grocery at shop 5, 118 Elizabeth Street, Hobart.

Decision: Licence refused

Date: 21 May 2019

The application

The applicant, Mr Xuan Zhao, seeks authority for the sale of liquor products from China, South Korea and Japan, for consumption off his premises which currently operates as a specialty grocery store of Asian products.

With regard to best interests of the community, Mr Zhao describes the location of his premises in Elizabeth Street close to the Hobart CBD as a busy and diverse business zone. His store mainly sells Asian food and ingredients that are dry, frozen and chilled. He seeks to expand his product range to include Asian liquor products and contends that this will enrich consumer choice. His proposed range consists of mainly Japanese sake, Korean soju, Chinese traditional wine and possibly a small amount of Korean fruit rice wine and fruit beer, depending on its popularity. Mr Zhao's target customers are Asian people living in Hobart and locals who love Asian food or ingredients, a majority of whom reside in the city. He also contends that local and international tourists could be potential consumers of the intended liquor products.

Mr Zhao states that the sale of liquor at his premises would be strictly managed, with all staff who sell liquor trained in RSA, procedural manuals about the sale of liquor for staff to follow and 24/7 CCTV surveillance. He is of the view that the location of his premises in a busy and diverse business zone makes it less likely that the sale of alcohol from his premises would have adverse effects on the health and safety of the public.

The applicant did not comment on section 25A of the *Liquor Licensing Act 1990* (the Act), which prohibits the grant of a liquor licence in connection with the activities of a supermarket. The premises trades from 10:30am to 7:30pm seven days a week.

Site Visit

I visited the premises on 17 May 2019 and discussed Mr Zhao's application with him.

The premises is situated with a mix of other businesses including restaurants, bars, a food take away, a music store, clothes stores, a sewing centre and a bicycle store. It is in close proximity to other premises licensed to sell liquor, including three stores for which off licences have been granted. Across the street from the premises are the University Apartments on Melville Street.

The store itself is small in size, has two aisles, an area at the rear for frozen and chilled foods and a single counter near the entry door off Elizabeth Street. There are four lengths of shelves, four freezers and a fridge. It offers a wide range of Asian products including:

- instant food (eg noodles and dumplings);
- snack food (eg crackers, biscuits, potato chips and confectionary);
- spices, tinned food and food in jars; and
- non-alcoholic drinks.

Mr Zhao indicated that his business is the only one of its type in the city area, noting that a store in the CBD offered mainly Asian snack products, and that other stores like his are located in a neighbouring suburb. He confirmed that his main customers are Asian students who have requested liquor products from Asia to drink and to use as a cooking ingredient. Mr Zhao also indicated that these products are not available from other licensed premises in the local area and that he would be sourcing them from interstate suppliers.

If granted the special licence the applicant intends to display liquor on shelves towards the rear of the store. He is not intending to sell high volumes of liquor and indicated that he would only hold a few boxes of each type. He is not proposing to sell whisky.

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:

- 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.

In balancing the general costs and benefits to the community, previous Licensing Board and Commissioner for Licensing decisions are relevant (eg Fresco, Sandy Bay 2011, Salamanca Fresh, Davey Street 2013, Bes Mudi 2016, Middleton 2016, Augustus Chocolates & Gifts 2018 and Mount Nelson General Store 2019). These decisions have been clear that 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 in this case are those of convenience for local residents in the purchase of liquor and the opportunity for him to expand his business. While the premises is a specialty grocer I am not satisfied on the evidence provided that any of its features distinguish it from other stores of this kind. International liquor products are already available from nearby liquor outlets, and there is a selection of Asian products available online from Australian sellers. I am not satisfied that adding liquor products to the range available at this store would provide any particular benefit to the Tasmanian community that would outweigh the general costs of expanding the availability of liquor. With respect to that object of the Act relating to the responsible development of the liquor and hospitality industries, I would note that a speciality grocer of this sort could not be said to be part of the hospitality industry and the importation and sale of internationally produced liquor could not make any significant contribution to the development of the liquor industry.

Parliament has expressed its requirement for premises licensed for 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.” I am satisfied that the premises is not a supermarket as it lacks the broad range of product one would expect to see in a supermarket, for example there is no fresh produce such as meat, vegetables, bakery items or dairy.

Decision

The special licence is refused.

JC Root

Commissioner for Licensing

21 May 2019