

Application by Zexing (Sky) Wang for a special licence for the premises Asian Town, at 13 Gregory Street, Sandy Bay; and Asian Town CBD, at 74 Elizabeth Street, Hobart.

**Decision: Licence application for Asian Town CBD refused
Licence application for Asian Town Sandy Bay refused**

Date: 19 May 2020

The applications

The applicant, Mr Zexing (Sky) Wang, seeks authority to sell Japanese sake, Korean soju and Chinese white spirits and beer under a special licence for consumption off the premises at two premises.

Mr Wang confirms that he is the owner of three stores in Hobart that offer Asian produce. Two are the Asian Town grocery stores that are the subject of the applications and the other is a smaller store in the Hobart CBD offering Asian snacks. In relation to the two Asian Town stores, he provides that his focus is "...on resolving the imbalance between the increasing number of students and residents with international backgrounds and the shortage of international food product supply". He further provides that the stores offer a large range of Asian products that are harder to find including, but not limited to, snacks, frozen food, cooking-purposed herbs and spices and refreshments. The stores cater specifically for Chinese, Japanese and Korean community members and also for interested locals. Mr Wang states that he wants to meet the needs of the local community and enhance cultural diversity by offering unique Asian products.

Mr Wang indicates that Tasmania is becoming a popular place of residence, study or holiday for people from Asian regions, noting the contribution that Asian food and drink cultures has made to the State. He also notes that alcohol has quite an important role in Asian cultures (eg in cooking). He believes that the range of products provided at his stores assists international residents/visitors to integrate into the local community and makes the city more welcoming.

With regard to the best interests of the community, Mr Wang contends that the sale of liquor from his premises would not disadvantage the community, but would provide benefits. He would try to offer specialty Asian liquor products to meet the needs of customers (many of whom ask for liquor from their home countries). Mr Wang also contends that products that he may sell could not be found in a number of other local liquor outlets and therefore his stores would not potentially compete with existing operators. He would not encourage anyone to consume alcohol. He notes that the premises have no live or loud music and do not open late, so would not create a disturbance in this way. Mr Wang submits that granting the liquor licences sought has the potential to enhance the tourism industry, local economy and cultural development.

In relation to exercising effective control over the sale of liquor on the premises, Mr Wang states that only a limited selection of liquor would be available and items would be displayed behind the counter and not directly available to customers unless requested. He also states that all staff will complete a Responsible Service of Alcohol course and a surveillance system operates. He indicates that antisocial behaviour would not be tolerated.

Mr Wang confirms that the Hobart CBD store operates between 9.30am and 7pm every day and the Sandy Bay store between 8.30am and 10pm every day. He has no plans to extend these hours or the range of liquor products available.

Site visit

I inspected the Sandy Bay premises on 12 February 2020 and met with the applicant. I did not inspect the premises located in the Hobart CBD as I observed surveillance footage and had visited it previously to observe the operation, layout and range of products. As indicated in Mr Wang's applications, both premises operate as Asian grocery stores. The applicant indicated that the stores have the same range of products, but that the Hobart CBD store is larger.

The Sandy Bay premises is located in the commercial area close to the main road, with several existing premises in the vicinity authorised to sell liquor. The layout includes a service counter to the right of the entry, fridges and freezers and five aisles with shelving. Shopping baskets are available and a surveillance system was operating. Vehicle parking is available on the surrounding streets.

Asian Town CBD is located in the Hobart city centre on Elizabeth Street which is a key transport route through the city. In close proximity to the premises are the main shopping malls, University of Tasmania student accommodation facilities and numerous existing premises that are authorised to sell liquor. This includes QiE Asian Grocery which is authorised to sell Korean soju, Korean fruit rice wine and fruit beer and traditional Chinese wine (non-grape), for consumption off the premises, between 10.30am and 7.30pm on any day. Refer to my decision QiE Asian Grocery (2019) and the decision of the Tasmanian Liquor and Gaming Commission QiE Asian Grocery (2019).

The layout of Asian Town CBD includes a service counter to the left of the entry, three aisles with shelving, and fridges and freezers. Shopping baskets and trolleys are available and as indicated a surveillance system operates. Vehicle parking is available on the surrounding streets and is in high demand given the nature of the area, with off-street car parks close by.

Both stores offer a considerable range of mostly pre-packaged Asian products consistent with the applicant's description such as grocery items, snack food, some fresh produce and non-alcoholic drinks.

Mr Wang reiterated his intention to provide selective liquor products that are not available/hard to find locally and that the range available would be displayed behind the service counter in each store, with stock stored securely elsewhere on the premises.

Representations

I did not receive any written representations in relation to either application.

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.” My decision *Hill Street Sandy Bay (2019)* includes consideration of the characteristics that identify a supermarket. Given the nature of the premises that are the subject of this application I am satisfied that a licence, if granted, would not be operated 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 *Salamanca Fresh Davey Street 2013*, *Augustus Chocolates 2018*, *Mount Nelson General Store 2019*, *TCM Market 2019*, and *Moonah Caltex 2020*) 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 those 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 are 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 licences.

The benefits that the applicant identifies are primarily those of making available products that he states may not be easily available in the numerous off licence premises in the vicinity of the applicant's premises.

In its recent consideration of a similar special licence application (ie one restricted to liquor from Asia complementary to the grocery products offered, also from Asia) 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)

It is not sufficient for an applicant to simply identify some liquor product or other not generally available that has a connection to their general product line to thereby obtain a special licence. There must be a true community benefit in that product being available, including a genuine market and a reasonable expectation that existing licensed premises have not moved, or would not move, to address that market, such that only through such a licence could the community benefit be met.

CBD application

The CBD Asian Town store seeks authority to sell Japanese sake, Korean soju and Chinese white spirits and beer. Within the same block as the applicant premises is a general licence premises (Cool Wines) that stocks a range of sake, choya, soju, and Chinese rice wine. On the next block is the QiE Asian Grocer selling a range of Asian liquor products, and also the Melville St Cellarbrations off-licence which stocks Chinese beer. The CBD area is generally well serviced by numerous off and general licences, many of which sell one or other of the products applied for.

Sandy Bay application

The Sandy Bay Asian Town store seeks authority to sell Japanese sake, Korean soju and Chinese white spirits and beer. Within the Sandy Bay shopping precinct is the Sandy Mart store, which is an Asian grocer licensed for the off sale of Japanese sake and Korean soju and traditional wine. Chinese beer is available at the Aberfeldy BWS on Davey St and the area is generally well serviced by numerous off and general licences, many of which sell one or other of the products applied for.

Summary

Each of the applicant premises is nearby to another licensed Asian grocer, and also to a number of off or general licensed premises that stock a number of the products applied for. Increasing the availability of liquor is known to increase the likelihood of harm from its misuse, consequently Parliament has placed restrictions on the sale of liquor and the granting of a liquor licence can only occur in the best interests of the community. The community interest asserted by the applicant is that liquor products would be made available that are otherwise unavailable, however I am not satisfied that is the case given availability of such products elsewhere.

Decision

The special licences applications are refused.

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

JC Root
Commissioner for Licensing

19 May 2020