

**Application by Dennis Behrakis for a special licence for the premises Salamanca Fresh Bellerive at Shop 2, 1 Scott Street, BELLERIVE, 7018.**

**Decision: Licence refused**

**Date: 4 April 2022**

**The application**

The applicant seeks authority under a special licence for the sale of Tasmanian liquor products for consumption off the premises. The premises is a new construction within close proximity to the previous Salamanca Fresh Bellerive premises, which was licensed for off sales of Tasmanian liquor products under a special licence.

The applicant identifies the opportunity for customers to buy wines, beers and spirits, which they might not usually buy in a conventional stand-alone bottle shop, as a benefit to the community. He states that the sale of locally produced liquor products will increase employment through the manufacture, transport and sale of the product, including increasing store turnover and therefore the staff that can be employed in the store. The applicant does not identify any detrimental impact from the proposed sale of liquor.

The applicant has stated that the premises is not a supermarket, rather it is fine food store focussing on fresh food and deli items. He notes that the store sells an equivalent range of products as were sold within the previous Bellerive store, with the benefit of an increased floor area. The increased floor area is said to allow for a greater range of products within the existing lines but not the sort of products (such as household items beyond the current range) that would qualify the store to be a supermarket. The applicant states that the store will have increased lines of takeaway foods and prepared meals since this is where much of the new demand comes from, and for which the sale of liquor is an essential and demanded accompaniment.

**Site Visit**

I visited the premises on Thursday 27 January 2022. It is a large, open store with a modern and attractive fit-out. The store stocks a large range of goods including: fruit and vegetables, eggs, dairy, bread and bakery items, soft drinks, dry goods, pre-prepared meals, confectionary, frozen goods, cleaning products, toiletries, pet food and other household consumables; it has a butcher 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 main checkouts and two express checkouts. The carpark was undergoing redevelopment when I visited, however it will ultimately comprise 50 car parking spots, motorcycle parking and a timber clad canopy over the central car parking area.

**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 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 myself. Particularly relevant in this case are the Commission decisions of Hill Street Grocer Devonport (2016) and Salamanca Fresh Huonville and Kingston (2018) and my decision of Hill Street Sandy Bay (2019). 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 practical 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 listed: 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 states that the premises cannot be compared to a chain supermarket, and has a more limited range of household items than you would find in a chain supermarket. However, the Commission has pointed out that the key question is whether the premises functions as a supermarket, rather than its character relative to a national chain supermarket, or how particular patrons might utilise it.

The premises that is the subject of this application has, according to the plan provided, 505 square metres of retail space and 257 square metres of “back of house”. These measures are from the plan provided with the development application that was provided to me, however I note that the final design was slightly larger with a small reduction in the size of the next-door tenancy. In any event, the total area of the premises is in excess of 750 square metres. The carpark is large, there are multiple sales points, goods are arranged in aisles and the store, notwithstanding that there are areas where there is service (such as the delicatessen and butcher), is largely self-service. There is a fulsome range of fruit, vegetables, meat, bread, dairy, dry goods, frozen goods and household consumables.

I note that the planning documentation provided to council (though not the version of such that was provided to me) refers to the premises (and the previous premises that it replaced) as a supermarket, and it was considered by Council on that basis. The applicant informs me that the use of this term was an error, however the term was used on numerous occasions throughout the development application, in the included planning and traffic reports and the TasWater Submission to Planning Authority Notice. A story in the Mercury newspaper of 7 February 2021 referred to the new store as a supermarket. These facts indicate that the store falls into a category that a reasonable person (eg a planner, traffic engineer, journalist etc) might consider to 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.”

The term “best interests of the community” has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*).

As I have determined that the premises is operating as a supermarket it is not strictly necessary for me to consider section 24A, however I note the following:

To be granted a special licence applicants need to demonstrate that their premises is not just any other retail store and that special conditions existed 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 the Parliament in establishing the categories.

The Commission and I have considered a number of applications where retail stores have sought to add Tasmanian liquor to their range, most recently Murdunna Roadhouse (2021), Evandale Providore (2021), Log Cabin General Store (2020), TCM Market (2020) and Mount Nelson General Store (2019). Many of the special conditions put forward by the applicant here are similar to those raised in these decisions.

In its recent decision on an application appealing my decision regarding the Log Cabin General Store (2021), the Commission wrote:

49. As the Commissioner, the Commission and the Licensing Board have stated on many occasions, the community’s best interests are not served by retail outlets adding liquor to their collateral as a matter of convenience or to increase revenue. There must exist some special circumstances to allow the granting of a liquor licence to these outlets.

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, in fact the original off licence application was amended at the applicant’s request to a special licence in recognition of that fact. The premises is a store selling a wide range of food and household goods. I have determined that it is a supermarket, however were it not, special conditions would need to exist that place it in the best interests of the community to grant the special licence. The onus is on the applicant to satisfy me of this.

The sale of Tasmanian liquor in and of itself does not constitute a special circumstance requiring the granting of a licence such as this.

Costs to the community accrue through increasing the ease of access to alcohol, which is known to lead to increased consumption and alcohol-related harm. In this regard the Commission’s considerations in the Log Cabin General Store decision are relevant here:

18. It has long been recognised that alcohol consumption in Australia is a serious health issue. The Tasmanian drug strategy 2013-2018 records that about half the Tasmanian

population exceeds the single occasion risk guideline for consuming alcohol (more than four standard drinks on any one occasion), and this rate has not changed significantly over the last six years (ABS 2019).

19. The National Alcohol Strategy 2019-2028 identifies that:

- one quarter of Australians are drinking at risky levels;
- 10 – 15% of emergency department presentations are alcohol related;
- 25% of all frontline police officers' time is taken by alcohol-related crime;
- 25% of all road fatalities can be attributed to drink driving;
- alcohol was involved in 34% of intimate partner violence incidents and 29% of family violence incidents;
- alcohol is a leading cause of drug-related death, with more than 4000 deaths estimated to be attributed to alcohol in any year; and
- alcohol was the most common form of drug of concern for people accessing specialist treatment in 2017-2018, accounting for 35 % of episodes.

20. The Commission notes these publicly available statistics to demonstrate one part of the “general costs” aspect of the “best interests” test. This also is a very good reason why the supply of alcohol in Tasmania is regulated in the manner it is. The Commission mentions this to re-enforce that it is not just the benefit to the specific community that must be factored into this balancing exercise, and also that alcohol is not just another product in a retailer's lines.

The normalisation of community use of alcohol, in particular through increasing the exposure of children to alcohol products, contributes to harmful outcomes. I note in this regard that it would not be practical, because of the nature of the applicant's premises, to designate the premises restricted in accordance with section 84(2) of the Act as is normal practice for off licence premises. Because this cannot be done particular care needs to be taken in granting special licences such as that applied for.

Taking the above into account, I am not satisfied that there are special conditions relevant to the premises that would make the granting of the licence applied for in the best interests of the community.

### **Decision**

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



JC Root

Commissioner for Licensing

4 April 2022