

Application by Taeyoung Park at the premises Dagolla Mart, 53 Sunderland Street, DERWENT PARK, 7009.

Decision: Licence refused

Date: 13 August 2021

The application

The applicant seeks authority for the sale of Korean liquor, for consumption off the licensed premises. The premises is located in a semi-industrial area in Derwent Park, Hobart and operates as Korean grocery store.

Mr Park proposes to offer approximately 60 Korean liquor products at the store. In addition to the physical premises, Dagolla Mart operates an extensive online store.

Mr Park states that the business goal of Dagolla is to provide fair pricing and a reliable source of Asian and Korean groceries. Mr Park writes that he has many years of experience in handling food wholesale businesses in Melbourne and thus has strong relationships with suppliers in terms of negotiating a good price.

Mr Park seeks a liquor licence as he has many current customers requesting specific Korean wines, such as soju and rice wine. He states that the consumption of wine is an important part of Korean culture and is considered as a social lubricant. He states that there are not many packaged Korean wines available in the Hobart region at a fair market price.

Mr Park plans to offer a comprehensive range of Korean liquor products focused on popular brands including those that are rarely available in the Hobart region. Mr Park states that the store will provide local residents with some products that cannot be supplied by many of the other existing liquor stores in the local area.

The closest available supplier of special Korean wine, according to Mr Park, is Dan Murphy's located at New Town, where the range of Korean liquor products is substantially smaller than he would offer should he be successful in his application.

Representations

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

Site Visit

I visited the premises on 12 May 2021 and met with the owner. The store is an unremarkable specialist grocer selling largely packaged goods of Korean origin. It sits within a semi-industrial area next door to another specialist grocer, that one of Indian, Nepalese and Pakistani foods.

Mr Park informed me that the primary community benefit should he be successful would be that he could provide his customers, who he told me, came from all across the State, with a wider range of popular, genuine, Korean liquor at much more competitive prices than are available at non-specialist liquor stores in the area.

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.” I am satisfied that the premises is not a supermarket. Although it sells a range of grocery items it does not have the breadth of product lines expected of a supermarket, nor some of the other characteristics identified in previous decisions such as the availability of trolleys, multiple check-outs, extensive parking and so on (see for example Hill Street Sandy Bay 2019).

General considerations

In balancing the general costs and benefits to the community, it is relevant to consider previous decisions of the Licensing Board, the Tasmanian Liquor and Gaming Commission and myself regarding special licence applications for the sale of liquor for consumption off the premises. 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.

To be granted a licence of this type, an applicant must demonstrate that the premises is 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 the 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, which is a specialist grocery store, selling a range of Asian and Korean grocery items. Consequently, special conditions must 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 applicant argues that granting of the licence would bring the community benefit of a broader range of Korean liquor at better prices than are currently available at other licensed premises.

Both the Commission and myself have considered licence applications of this type in recent years. The balance to be considered is between the benefit that might accrue from a comprehensive range of a particular category of liquor and the cost to the community of making liquor more widely available, and in premises that would not be otherwise licensed and that do not have the sale of liquor as their principle activity. In this regard I stated in York Asian (2020) that:

There must be 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 the licence applied for could the community benefit be met.

Further, in considering the application Log Cabin General Store (2021) that argued special circumstances, the Commission made the following remarks of relevance:

23. The Commission has made previous determinations (for example, Asian Town 2020) regarding the availability (or lack) of the full range of liquor products, and that it does not accept that every individual demand for different types (or brands) of products needs to be satisfied. As explained in that decision, the Commission's strong view is that the system of licensing in Tasmania does not contemplate a regime where individual demand for a particular type or brand of product that is not currently available at a particular outlet or outlets will result in a special licence being granted for that product to a new entrant.

In the application York Street Grocery (2020), the Commission noted that:

18. Even if these products were not available at all, the Commission must consider whether the licence applied for is in the best interests of the community. In considering this, the Commission considers that liquor products do not need to be available close to wherever people reside. While undoubtedly this might be more convenient for some, it not in the community's best interests that such convenience overrides the measured and controlled regulation of the supply of alcohol in Tasmania.

There may be benefit to the applicant as a result of incorporating Korean liquor products into his stock. This, however, is a private rather than community benefit. The applicant acknowledges that Korean liquor is available in off license premises in the Hobart area, but argues that the range and price is not at the level expected by the community. I am satisfied that Korean liquor products are available and that there is no structural impediment to existing licensed premises being able to meet any genuine demand in the market. I am not satisfied that lower prices and a broader range are sufficient benefits to constitute the special circumstances required for the licence applied for.

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 the latter regard that it would not be practical, because of the nature of the store, to designate the premises restricted in accordance with section 84(2) of the Act as is normal practice for off licence premises, consequently particular care needs to be taken in granting special licences such as that applied for.

Taking into account the arguments presented by the applicant and the matters discussed above, I am not satisfied that special conditions exist to support the grant of the licence.

Decision

The special licence is refused.



JC Root
Commissioner for Licensing

13 August 2021