

Application by Tarrant James Derksen for the premises New Norfolk Distillery Annex, 60 Humphrey Street, NEW NORFOLK, 7140.

Decision: Licence granted as special licence with conditions

Date: 10 June 2022

The application

The applicant seeks authority for the sale of liquor for consumption on the premises and Tasmanian beer and spirits produced on the premises sold as a takeaway, under the authority of a General licence.

The premises has not previously been licensed however there have been 19 permits issued for individual events at the premises since August 2020.

The applicant seeks to licence the building, and external area of the premises to allow a pop up bar at individual events.

Operating conditions have been imposed by local council for the various activities intended at the premises.

The applicant advises that the site houses New Norfolk Distillery, a rum-dedicated distillery, The Eleventh Order Brewery, a craft brewery focussing on unique brews and local flavours, and Drinkmakers Australia, an events and training organisation. He further states that the following activities will be undertaken at the site:

- tastings of spirits and beers produced at the site;
- distillery and brewery tours;
- take away sales of products distilled and brewed at the site;
- on-premises service of regional and Tasmanian alcoholic and non-alcoholic beverages;
- provision of meeting spaces;
- outdoor cinema nights;
- events; and
- training courses.

The target market for the New Norfolk Distillery Annex is stated by the applicant to be locals; intrastate visitors to the Derwent Valley; and interstate and international visitors to Tasmania looking for a unique experience and product. He considers the granting of the licence to be in the best interests of the community as a result of the long-term benefits he states it would provide to New Norfolk, the Derwent Valley and Tasmania. These benefits are said to include: increasing tourism and regional economy; building new local industries; and creating employment. He states that the New Norfolk Distillery Annex will further add to New Norfolk's unique position in Tasmania and build on the heritage and offerings of Willow Court while increasing the destination appeal, visitor distribution and variety of experiences in the Derwent Valley.

The applicant plans to hold smaller monthly events (up to 150 people) at the Annex with two larger events (up to 750 people) held throughout the year. Further to this, the rear events space will be the home to an outdoor cinema where he intends to hold 12 screenings per year.

Representations

The applicant advertised the application, in accordance with section 23(4)(c) of the Act, on 29 January 2022. The applicant provided eleven representations in support of the application. I received a further six written representations. Five of these were individual objections, the sixth comprised five pro-forma letters of objection and a petition in objection with 14 signatures, five of those people signing also provided a pro-forma letter.

The objections were from persons resident adjacent or nearby to the premises that is the subject of the application, the majority being from residents at Valley Mews, a set of units at 34-54 Humphrey St, next door to the premises and within the same planning zone (Particular Purpose Zone 3 - Willow Court).

The basis of the objections primarily related to:

- the hours of operation on the liquor application (5am to 12 midnight) being contradictory to the hours approved on the planning permit;
- concerns that the consumption of liquor on the premises, and the events and activities planned ancillary to that consumption, would lead to the occurrence of annoyance, disturbance and inconvenience to people who reside in the area; and
- parking congestion resulting from events held at the premises.

Response to representations

The applicant was provided with copies of representations objecting to the application and given the opportunity to respond.

In response the applicant noted that an independent acoustics report was carried out in June 2021 as part of the development application to the Derwent Valley Council, concluding that the level of noise generated meant that the application could be approved.

With regard to concerns about the 5am to midnight timeframe, the Applicant noted that Council has imposed restriction on hours of operation of the site that mean it cannot operate between 5am and midnight. With respect to concerns that New Norfolk does not currently have a 24-hour police presence the applicant noted that security would be hired when needed and in the case of larger events, he notifies police as well as other emergency services prior to the event.

The applicant noted that many events have been held at the premises, under individual short-term permits and there have not been complaints. Further, he noted that an independent Traffic Impact Assessment was conducted for the premises in June 2021 which concluded that the activities planned are not expected to create any adverse safety, amenity or traffic efficiency impact. In addition, he noted that car-pooling and public transport are encouraged for attendees and that for larger events local tourism operators are engaged to provide transport. Prior to larger events, a letter box drop is done to all residents on Humphrey Street to notify them of any traffic disruptions that may occur.

Site visit

I visited the premises on 24 March 2022 where I met with the applicant and two of his staff and toured the building and grounds. I also met with four of the objectors to discuss their concerns and reviewed the disposition of the Valley Mews with respect to the premises.

Fresh Hop Beer Festival 2022

I received feedback on the conduct of the Fresh Hop Beer Festival that was held at the premises under the authority of a liquor permit on 9 and 10 April 2022. Compliance officers from the Liquor and Gaming Branch attended on 9 April and I also sought feedback from Tasmania Police. Compliance officers reported that there were three security staff in attendance, that the crowd was well behaved and that the crowd noise and piped music levels were reasonable and would most likely not disturb nearby residents. They further reported that live music was much louder and at a level that may be unacceptable to nearby residents. Tasmania Police had no concerns about the conduct of the Festival. The Liquor and Gaming Branch received one complaint about the noise.

Legislative considerations

The primary matters to be considered for a liquor licence application 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.

The context for this consideration is provided by the Object of the Act which is defined at section 2A in the following terms:

- l) 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.

I am satisfied on the evidence provided that the relevant consideration is whether the proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who reside or work in the area of the proposed supply, in the context of the object of the Act at section 2A(1)(a)(i) that the supply of liquor should be carried out in a way that does not detract, as far as practicable, from public amenity.

With regard to this relevant consideration, section 43 of the Act provides me with the power to impose conditions on a licence relating to:

...

- (d) the area of the premises on which liquor may be sold or consumed;
- (e) the services to be provided while liquor is being sold or consumed;
- (f) the entertainment to be provided while liquor is being sold or consumed;
- (g) the staff to be employed both before and after the time that liquor is sold or consumed and during the time liquor is being sold or consumed, and the qualifications and duties of that staff;
- (h) the measures to be taken to suppress or limit noise and disturbances.

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.

General considerations

In determining this application I considered:

- the application;
- submissions by the applicant accompanying the application (including representations provided by him);
- an acoustic report prepared by Enfield Acoustics;
- a parking report prepared by Hubble traffic;
- representations I received and discussions with some of the representors;
- the applicant’s response to representations;
- the Agenda, Minutes and attachments of the meeting of the Derwent Valley Council on 28 October 2021 at which the relevant development application was considered;
- the amenity plan from the applicant; and
- feedback provided regarding the Fresh Hop Beer Festival April 2022.

The concerns around amenity raised by the nearby residents were considered in the planning process by the Derwent Valley Council. Issues such as noise or parking are normally dealt with through Council, but are a matter for me where they are ancillary to the supply of liquor, as is the case here. I am satisfied from the evidence provided that it is relevant for me to consider the impact of the entertainment (cinema, events, music etc) proposed and the hours of operation on the amenity of nearby residents. I am not satisfied that the day to day activities of the distillery, and liquor sales and tastings, will unduly impact on the amenity of nearby residents. Having considered the council process I am satisfied that parking issues have been addressed through the planning process.

I note here that it was not Parliament's intent that there be no impact at all on amenity from the supply of liquor, rather that such supply *as far as practicable*, not detract from public amenity, and not *unduly* offend, annoy, disturb or inconvenience people residing in the area.

The Council issued a planning permit which was conditioned to provide, in the view of the Council, "a suitable balance between the activation of a non-residential use and maintaining a reasonably [sic] level of amenity for nearby residential areas. It was noted that the proposal is discretionary as the use is discretionary in the zone, and the proposal does not meet all the Acceptable Solutions of the Planning Scheme and relies upon satisfying Performance Standards.

I note in regard to the Council deliberations that the premises sits within Particular Purpose Zone 3 and that the conditions that Council applied in respect of noise refer to noise at the boundary of the residential zone. Unusually, there is a large block of residences (Valley Mews) that sits not within the residential zone, but within the Particular Purpose Zone, and consequently occupants of Valley Mews have not had the consideration that residents in the residential zone have had. For example, the acoustic report refers to the large walls bounding the premises to the south and west as protecting residents from noise, however there is no large wall to the north protecting the residents of Valley Mews. The acoustic report did not reference any measurements taken north of the premises. The Valley Mews is home to a number of elderly and disabled persons who are at greater risk of impact from noise.

The Council required that the tasting and sales activity is to remain ancillary to the main use of the site as a brewery/distillery. The purpose of the tasting and sales activity is to predominantly provide opportunity for sampling and sales of the product produced on site but may also provide for the sale of food and drinks produced elsewhere. The conditions relevant to the entertainment and operating hours were:

The use must operate between the following hours:

Brewery/Distillery

7.00am to 9.00pm (Monday to Sunday, including public holidays);

Cellar door sales and distillery tours

7.00am to 6.00pm (Monday to Sunday, including public holidays);

Events

7.00am to 11.00pm (Monday to Sunday, including public holidays);

The above time restrictions apply to all aspects of the nominated activities, other than office and administrative tasks, monitoring of the distilling/fermentation process, emergency situations, or other exceptional circumstances as consented to by the General Manager.

Use of all outdoor spaces must cease by 9.00pm.

Events

A maximum of twelve (12) outdoor cinema screenings may occur on the site each calendar year.

A maximum of twelve (12) other events, with up to 150 patrons may occur on the site each calendar year.

A maximum of two (2) events, with up to 750 patrons may occur on the site each calendar year.

(Condition 12) Noise emissions measured at the boundary of a residential zone must not exceed the following:

- 55dB(A) (LAeq) between the hours of 7.00 am to 7.00 pm;
- 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 7.00 pm to 7.00 am; and
- 65dB(A) (LAm_{ax}) at any time.

(Condition 13) Noise emissions may exceed these levels in Condition 12, as follows:

During events or outdoor cinema screenings:

- 55dB(A) (LAeq) between the hours of 7.00 am to 9.00 pm;
- 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 7.00 pm to 7.00 am; and
- 65dB(A) (LAm_{ax}) at any time.

In addition to those instances outlined in Condition 13, a maximum of six (6) events per calendar year, noise levels must not exceed the following:

- 65dB(A) (LAeq) between the hours of 7.00 am to 9.00 pm; and
- 5dB(A) above the background (LA90) level or 40dB(A) (LAeq), whichever is the lower, between the hours of 7.00 pm to 7.00 am.

The Council required that prior to the commencement of the activity allowed by this permit, a Noise and Amenity plan must be prepared, submitted to Council and approval gained from Council's General Manager for events where noise levels will exceed 55dB(A), in accordance with the recommendations of the Acoustic Report prepared by Enfield Acoustics Pty Ltd., dated 24 August 2021. I have received one such amenity plan from the applicant and I note that there are mechanisms identified to ensure that noise level restrictions are not breached, however there is no recording of sound levels proposed such that compliance with noise levels could be confirmed.

I note that my considerations relate not to the requirements of the planning scheme for activity in particular zones, but rather to the amenity of nearby residents regardless of the zone in which they reside.

Decision

I am satisfied that the sale of liquor at the premises can occur with appropriate conditions. In this regard I have determined to grant the licence in the form of a special licence rather than a general licence as this will enable me to ensure that the hours of operation are clearly part of the conditions of the liquor licence.

I have also determined to condition the licence such that there is suitable protection for residents at the northern border of the property by requiring that live music, piped music and cinema activities can only occur within the distillery building or in the walled area at the rear, or southern, end of the premises. Further, to ensure that conditioned sound levels are

adhered to I will require that the sound levels of live music, piped music and cinema activities be recorded in an approved manner and that such recordings include the correct date and time and be held for a minimum of 14 days.

Otherwise I am satisfied that the Council conditions provide a suitable balance between the applicant's activities and the amenity of residents and I include the relevant hours of operation in the licence. Further to the conditions included in the licence, Section 18 of the Liquor Licencing Act 1990 provides that a liquor licence does not authorise the sale of liquor on premises if the use of those premises for that purpose is otherwise unlawful, ie the applicant must comply with Council conditions otherwise the sale of liquor is not authorised.

The licence is granted as a special licence with the following conditions:

1. Any liquor may be sold for consumption on the premises subject to the premises continuing to operate primarily as a distillery.
2. The sale of takeaway liquor is restricted to sealed containers of Tasmanian beer and spirits produced on the premises for consumption off the premises.
3. Sufficient licensed crowd controllers are to be provided during all events to ensure effective control of patrons.
4. Sound levels produced by live music, piped music and cinema activities must be recorded for the duration of the activity in a manner approved by the Commissioner.
5. The recorded data must include the correct date and time.
6. The recorded data is to be held for a minimum of 14 days and must be provided to officers of the Liquor and Gaming Branch or members of Tasmania Police upon request.
7. Live music, piped music and cinema activities may only be conducted within the distillery building and in the walled outdoor area at the rear (or southern end) of the premises.

Hours of operation are restricted to:

Brewery/Distillery

7.00am to 9.00pm (Monday to Sunday, including public holidays);

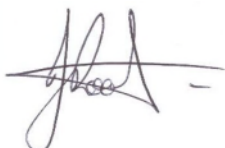
Cellar door sales and distillery tours

7.00am to 6.00pm (Monday to Sunday, including public holidays);

Events

7.00am to 11.00pm (Monday to Sunday, including public holidays);

Use of all outdoor spaces must cease by 9.00pm.



JC Root
Commissioner for Licensing

10 June 2022