

**Application by Pui Man (Emma) Chiu for a special licence for the premises York Asian, at 50 York Street, Sandy Bay.**

**Decision: Licence refused**

**Date: 20 May 2020**

**The application**

The applicant, Ms Pui Man (Emma) Chiu, seeks authority to sell Chinese liquor products under a special licence for consumption off the premises.

Ms Chiu indicates that York Asian is a specialty grocery store that caters for Chinese, Japanese and Korean community members, but also attracts others in the community who are interested in sampling Asian products that are difficult to find. Special orders are taken to assist customers.

The store opens at 8.30am and closes at 9.30pm on week nights and at 9pm on weekends and public holidays. The applicant indicates that she does not plan to extend these hours or to widen the range of alcoholic stock that would be available.

With regard to best interests of the community, Ms Chiu submits that she would like to introduce interested customers to Chinese liquor by stocking a small range of products that may not be available in bottle shops. She also submits that it is not easy for international students to buy products from their home countries and suggests that being able to buy these items locally may help with any homesickness. She states that as the premises has no live or loud music and does not open late, it will not pose a disturbance to the community.

In relation to exercising effective control over the sale of liquor on the premises, the applicant submits that alcohol would only be displayed behind the service counter and would not be directly accessible to customers. Ms Chiu provides a House Policy that aims to ensure the responsible sale of liquor on the premises. Employees would be sponsored to complete a Responsible Service of Alcohol course and no special promotions of alcohol would be offered. She demonstrates that procedures would be in place to manage any intoxicated customers and indicates that security surveillance operates to deter unwanted behaviour.

**Site visit**

I inspected the premises on 12 February 2020 and met with the applicant. The premises is located on the eastern side of the intersection at York and Regent Streets in a residential area, a few blocks from the University of Tasmania campus. The commercial area on Sandy Bay Road is within walking distance.

As indicated in the application the premises operates as a specialty grocery store of Asian products. The entry is off York Street with the layout including a service counter to the left, various fridges and freezers located in the front section of the store and three aisles with shelving in the rear section. A surveillance system was in operation. Vehicle parking is available on the surrounding streets.

The store offers a moderate variety of mostly pre-packaged Asian products including grocery items, snack food, some fresh produce, hot drinks and non-alcoholic drinks.

Ms Chiu reiterated that in response to customer requests her intent is to offer Chinese alcohol only, possibly 5-10 different products that are not commonly found in bottle shops. She also reiterated that she would locate liquor products behind the service counter and would not want to undertake promotions.

## **Representations**

I did not receive any written representations in relation to this 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 is the subject of this application, in particular its scale and the limited range of fresh produce, 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 decisions (eg *Mount Nelson General Store 2019*, *TCM Market 2020*, *Moonah Caltex 2020*, and *Asian Town 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 she 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 the licence applied for could the community benefit be met.

The applicant seeks authority to sell Chinese liquor products from what is essentially a corner store with a focus on Asian products. The applicant has not (and the onus is on the applicant to do so) provided me with any evidence that the products she plans to stock cannot be otherwise obtained without unreasonable effort. Within the Sandy Bay shopping precinct, within walking distance of the applicant premises, is the Sandy Mart store, which is an Asian grocer licensed for the off sale of Asian liquor products. I have detailed other premises providing such products in the decision Asian Town (2020).

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 (in particular requiring that premises undertaking off sales have a principal focus on that activity such that responsible service is a focus of the business and not some subordinate concern) 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 is refused.



JC Root  
Commissioner for Licensing

20 May 2020