

Application by Ruth Deans for a special licence for the premises Rhubarb for Gifts, 98 Margaret Street, Launceston 7250

Decision: Licence refused

Date: 03 April 2023

The application

The applicant seeks authority to sell Tasmanian liquor products under a special licence for consumption off the premises.

The applicant describes the premises as a heritage listed building in the central business district of Launceston. The current use of the premises is described by the applicant as primarily a gift and homewares shop that serves coffee and mostly takeaway food (quiches, soup, sandwiches and sweets). The premises has café seating for a maximum of 10 people across three tables. The business is described by the applicant as a destination gift shop for tourists and Tasmanians, selling products supported by product-specific customer service, including Tasmanian-made gift lines.

The applicant wishes to offer boutique Tasmanian liquor, such as fortified fruit wines, apple mead liqueur, leatherwood liqueur, Dasher and Fisher Gin, Three Cuts Gin and low alcohol products. The applicant is requesting the ability to offer product samples/tastings.

The applicant asserts that the inclusion of boutique Tasmanian liquor would provide tourists and the local community with the opportunity to learn more about the Tasmanian products through knowledgeable customer service.

In relation to exercising effective control over the sale of liquor on the premises, the applicant indicates that all employees will be educated in the sale of alcohol. The applicant advises that the store opening hours support the responsible sale of alcohol (9am to 6pm weekdays (closing 5pm during winter), 10am - 3pm Saturday, and during December, trading Sundays 10am - 2pm). A small number of liquor products would be displayed on the service counter.

Representations

No written representations were received in relation to this application.

Legislative considerations

The primary matters to be considered for a licence application of this type (special licence) are sections 22 and 24A 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 qualify 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 the 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.

General considerations

In balancing the general costs and benefits to the community, previous decisions about special licence applications by the Licensing Board, the Tasmanian Liquor and Gaming Commission and the Commissioner for Licensing have clearly stated that 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 (eg Augustus Chocolates & Gifts 2018, Mount Nelson General Store 2019, TCM Market 2019, QiE Asian Grocer 2019, Caltex Moonah 2020 and Murdunna Roadhouse 2021).

To be granted a licence of this type (special), the applicant must satisfy me that the premises is not just any other retail store and special conditions exist that make it in the best interests

of the community. 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. 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 does not provide any particular special conditions that would support the granting of the licence, other than that the sale of Tasmanian liquor would enhance the Tasmanian gift component of the business and that staff would be educated about the liquor products to be sold such that they would be able to pass that knowledge on, enhancing the experience of tourists and educating the local community.

The premises does not exclusively stock Tasmanian made products, rather it is a gift and homewares shop offering an eclectic range of products that includes Tasmanian made products. The applicant states, however, that the premises' location affords the ability to stock Tasmanian gift lines for tourists.

I refer to the Tasmanian Liquor and Gaming Commission's decision on appeal for the Log Cabin General Store (2021) that has relevance to this application. 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 circumstance to allow the granting of a liquor licence to these outlets.

Further:

51. That this store offers for sale a small range of Tasmanian products and services amongst a large array of general products does not make it a specialty Tasmanian produce store.

There may be private benefits to the applicant as a result of incorporating boutique Tasmanian liquor products into stock, as well as to a small number of producers in having an additional outlet for their products. These, however, are private rather than community benefits. The provision of information about the product lines sold is not a significant community benefit.

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. The normalisation of community use of alcohol particularly contributes to harmful outcomes. In this regard the Commission's considerations in the Log Cabin General Store decision are relevant:

18. It has long been recognised that alcohol consumption in Australia is a serious health issue. The Tasmanian Drug Strategy 2013-2018 states 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.

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

Decision

The special licence application is 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

03 April 2023