

IN THE MATTER OF the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER OF an application by Cashmere Primary
School Te Pae Kereru PTA for a
Special Licence pursuant to s.138 of
the Sale and Supply of Alcohol Act
2012 in respect of premises situated at,
135 Hackthorne Road, Christchurch,
known as **Cashmere Primary School
Te Pae Kereru.**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson : Ms C E Robinson
Members: Mr D Blackwell QSM
Mr P Rogers

DECISION ON APPLICATION FOR SPECIAL LICENCE

[1] This is an application by the Cashmere Primary School Te Pae Kereru PTA ('the applicant') for a Special Licence under s138 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 135 Hackthorne Road, Christchurch, known as Cashmere Primary School Te Pae Kereru.

[2] The event is known as the "School Twilight Fair" and is an annual fundraising event for the school. The event will be held on Friday 8 November 2019 between the hours of 4.30pm and 7.30pm. The licensed area is roped off and will be managed by a team of volunteers who have worked at the event previously.

[3] The applicant has experience running similar events and has requested an exemption from the requirement to provide a qualified duty manager for the event pursuant to s213(1) of

the Act. The applicant has nominated a parent, Catherine Martin who is a member of the PTA, to manage the sale and supply of alcohol. Ms Martin has managed the event in the past without incident. An Alcohol Management Plan has also been provided.

[4] The NZ Police did not report any opposition to the application.

[5] The Medical Officer of Health (MOH) has opposed the application on the grounds that exposure of children to the consumption of alcohol by adults, in any quantity, and no matter how “responsibly” consumed, results harm to children.¹ The MOH has consistently opposed these type of school related events. The MOH points to the Law Commission Report “Alcohol in our Lives: Curbing the Harm” where it was reported that young people repeatedly point out that their behaviours reflected those of the adults around them and an intergenerational drinking culture. The MOH also points out that the Ministry of Education recommends that alcohol should only be at adult only fundraisers. The MOH is concerned about the effects of normalising alcohol consumption on children and advocates that Schools should be a sanctuary.

[6] The Alcohol Licensing Inspector has filed a report as required by s141 of the Act and recommends the grant of the licence subject to conditions.²

Preliminary matter – is a hearing required?

[7] The District Licensing Committee need not hold a hearing when there are no public objections.³ We may decide not to hold a hearing, notwithstanding the opposition received. However, if we do decide to proceed on the papers, then we require a quorum of 3 committee members.⁴

[8] A Committee of 3 Commissioners has been convened (‘the Committee’). We have decided that a hearing is not required in this case. That is because the MOH has consistently opposed this event (and other similar events), and the Committee has previously proceeded on the papers and granted a licence without incident. The matters raised by the MOH’s letter of opposition to the licence are well known by the Committee and the MOH report does not

¹ See Letter from MOH, 22 October 2019. In the letter the MOH refers to the 2017 Institute of Alcohol Studies in Scotland report and Dr Siobhan Ryan’s work published in the Australian and New Zealand Journal of Psychiatry in 2010.

² Inspector’s Report, Nikki Anderson, 23 October 2019.

³ SSAA 2012, s202

⁴ SSAA 2012, 191(2)

reveal any new or unusual matters in their opposition to this particular application for a special licence.

[9] As required by the Act we have had regard to the matters raised by the MOH in our evaluation under s142 of the Act.

[10] For those reasons we have determined that the Committee can proceed to deal with this application on the papers.

Section 142 Evaluation

The object of the Act.

[11] The Object of the Act is as follows:

Object

(1) The object of this Act is that—

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[12] There are two arms to the Object of the Act and both must be met. In terms of the first arm we need to be satisfied that the sale and supply of alcohol by the applicant should be undertaken safely and responsibly. The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. 'Minimised' means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.⁵ In *Medical Officer of Health v Lion Liquor Retail Limited*, Clark J held that

⁵ See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

“the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm.”

[13] Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions should minimise alcohol related harm.⁶ There is a presumption built into the Object of the Act that excessive or inappropriate consumption of alcohol causes harm i.e. harm caused by *excessive or inappropriate* consumption of alcohol.

[14] ‘Harm caused by excessive or inappropriate consumption’ is defined broadly in s4(2) to include harm in the form of crime, damage, disorderly behavior, illness or injury to individuals and to society generally and includes direct and indirect cause or contribution to harm.

[15] As noted in the recent ARLA decision *Dr Alistair Humphrey v Cathedral Grammar Friends Group and Martin Ferguson* [2019] NZARLA 91 at [62]:

Notwithstanding the breadth of s 4(2) and the definition of alcohol-related harm in s 5, however, the plain wording of s 4(1)(b), s 4(2) and s 5 is that the harm about which the Act is concerned is ‘harm caused by the excessive or inappropriate consumption of alcohol’. Alcohol-related harm is not any harm that may be caused by alcohol but is harm caused by the excessive or inappropriate consumption of alcohol. It is only this kind of harm that the administration of the Act seeks to minimise.

[16] Although, as noted by the MOH research has shown that there is the potential for indirect harm of consumption of alcohol in the presence of children, this does not of itself establish that consumption of alcohol in the presence of children or at events designed for children is inherently inappropriate.⁷

[17] This is a family friendly event and the sale, supply and consumption of alcohol is not the focus of the event. It is being run in the same way as it has in previous years and there is no reported record of any problems or incidents. The applicant has provided details to the MOH of how they intend to manage the alcohol tent and associated area, this includes the following measures:⁸

- (a) The stall selling alcohol also sells non-alcoholic beverages and water. Water is also available throughout the site at school drinking fountains;

⁶ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

⁷ *Dr Alistair Humphrey v Cathedral Grammar Friends Group and Martin Ferguson* [2019] NZARLA 91 at [64] and [65]

⁸ Email from Susan Roy to Helen Barbour, 21 October 2019 and accompanying site plan.

- (b) The tent is located so that it is not the focus of the event and is co – located with adult targeted information stalls.
- (c) The tent is fully enclosed;
- (d) The area supporting the marquee is fully roped off,
- (e) The sale of alcohol is not directly advertised prior to, or during, the event;

[18] We record that in the original application it was suggested that the licence would be designated as 'supervised', but this was later changed to 'undesigned'. This was done due to the practical difficulties with enforcement if children entered the supervised area unaccompanied by their parent. Given the nature of the event and lay out of the school we consider this to be reasonable.

[19] We are satisfied that the proposed sale, supply and consumption of alcohol will be undertaken safely and responsibly and any harm from excessive or inappropriate consumption of alcohol will be minimised with the careful management of the event as outlined in the application, Alcohol Management Plan and as further explained to the MOH by the applicant.⁹

Other matters in s142

[20] We have had regard to the fact that the applicant will offer a range of entertainment activities for all ages and the licensed area is set apart from other activities. No issues have been raised about the applicant's suitability or of those nominated to manage the sale and supply of alcohol. There are no public objections and no suggestion that the event will reduce the amenity and good order of the locality by more than a more than minor extent. We are satisfied that the design and layout of the premises, particularly the separation of the licensed area is appropriate. The applicant has provided a detailed Alcohol Management Plan that provides guidance to the volunteers involved in running the event that should ensure that the law is complied with. We are satisfied that the applicant is providing adequate food, low alcohol and non-alcoholic beverages and information regarding alternative forms of transport. We have had regard to the matters raised in the agency reports made under s141 of the Act.

⁹ Ibid

Section 213(1).

[21] There is no objection to the appointment of Ms Martin to manage the licensed area and the sale and supply of alcohol within it. We have considered the nature, duration and scale of the event we are satisfied that it is appropriate to grant an exemption from the requirements to have a qualified duty manager in attendance at the event and grant an exemption accordingly.

Decision

Having had regard to the matters in s142 of the Act we find that granting the application subject to conditions is consistent with the object of the Act and grant the licence accordingly.

The Licensed Premises

- (a) This special licence authorises the sale, supply and consumption of alcohol within the premises identified on the plan titled Cashmere Primary Te Pae Kereru Twilight Fair 2019 Layout.

Compulsory conditions – section 147(3)

- (b) Alcohol may only be sold under the licence only on the following days and during the following hours:

Friday 8 November 2019 from 4.30 pm to 7.30pm.

- (c) Drinking water will be freely available on the premises as specified in the application:

Discretionary conditions – section 147(1)

- (d) The licence holder must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

- (e) Food must be available for consumption on the premises as specified in the application.

- (f) Low-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (g) Non-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (h) The licensee must provide assistance with or information about alternative forms of transport from the premises as specified in the application.
- (i) A copy of the licence as well as age restriction signage must be clearly displayed.
- (j) Alcohol may only be sold in plastic cups.
- (k) Entry is restricted to ticket holders only.
- (l) Alcohol must only be sold, supplied and consumed within the area marked on the plan titled Cashmere Primary Te Pae Kereru Twilight Fair 2019 Layout.

The licence is also subject to the following conditions, which in the committee's opinion are not inconsistent with the Act:

- (m) Noise should be controlled so as not to disturb neighbouring residents.
- (n) The licence holder shall comply with the Alcohol Management Plan submitted with the application.

[22] The applicant's attention is drawn to s 259 of the Act which makes it an offence to not comply with certain requirements and restrictions imposed by or under the Act.

[23] A copy of the licence setting out the conditions to which it is subject is attached to this decision.

DATED at CHRISTCHURCH this 29th day of October 2019.



Cindy E. Robinson
Chairperson of the Christchurch District Licensing Committee