

Decision No. 60D [2015] 1097**IN THE MATTER**

of the Sale and Supply of Alcohol
Act 2012

AND**IN THE MATTER**

of an application by Nomads
United AFC Inc for an On Site
special licence pursuant to s.138
of the Act in respect of premises
situated at 99 Claridges Road,
CHRISTCHURCH.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:

Chairman : Mr G B Buchanan
Members: Mr A J Lawn
Mr R Wilson

Hearing at the Christchurch City Council Chambers, CHRISTCHURCH on the 25th of
May 2015.

APPEARANCES

Mr M Ferguson; Christchurch City Council Licensing Inspector
Mr Peter Shaw for the Medical Officer of Health.

APPLICANT

Nomads United AFC Inc. Ms Alison Philip

Introduction

- [1] This application is for a junior disco event to be run by the Nomads United Association Football Club Inc. The event is intended to bring together children from the age of 5 years to 13 years together with their parents, who are members of the club, as a family fun event.
- [2] The event is to take place in the Lounge of the football clubrooms on Friday 5th June 2015 from 6.00pm to 7.30pm. It is intended that the parents of the children will supervise them as they participate in the dance.
- [3] A certificated manager will oversee the sale and supply of alcohol.
- [4] It is expected that approximately 80 to 90 people will attend the event. Of them 30 to 40 will be the children.

- [5] The area where alcohol is proposed to be sold and consumed is in the same lounge where the children will participate in the disco.
- [6] There is no designation sought for the area.
- [7] No matters have been raised in opposition by the police or the Inspector in any reports as required by section 141(1).
- [8] The Medical Officer of Health has opposed the application.
- [9] The *main component of the opposition of the Medical Officer of Health* is;

"I believe that this is inappropriate for such an event, focused on children to be licensed for the consumption of alcohol."

The Application

- [10] Ms Philip is the applicant for the Special Licence. She is the secretary of the club and as such, her duties include the overall management of the bar and its finances. It is her responsibility to apply for any licenses required under the Act.
- [11] Ms Philips told the committee about the football club's desire to raise its profile within the community and increase both membership and the current members enjoyment. It was with this in mind that a Junior Disco has been organised for junior team members between the ages of 5 and 13 years. It was expected that the children who attend would be accompanied by their parents. The event was to get the junior members together in a social environment together with their parents.
- [12] A total of approximately 60 people were expected to attend and the time sought for the licence was in order to have a time suitable for the younger children. Ms Philip pointed out to the committee that if they held the Disco at the later time of 7.30pm, then they could do so under the terms of their Club Licence and there would be no need for this hearing.
- [13] Ms Philips said that the event was to be held in the upstairs lounge. This was the only area suitable and had sufficient seating for parents, their children and a dance area. The bar was also located in this large open plan lounge. To questions from the committee, she said that this was where all the members of the club gathered together on Saturdays, after the games and socialised. It was normal to have both adults and children there.
- [14] The applicant pointed out that that there was a substantial amount of finger food available to the children and adults and that only beer, wine and low alcohol drinks were available for sale to the adults. To a question from the Committee, she said that no children would to be served from the Bar area. It was normal

for the children to be served from the kitchen servery on Saturdays and it would be the same on this occasion.

- [15] Plenty of free water would be available and it was pointed out that the event was only for one and a half hours duration and that the nature of the dance meant that there was likely little respite for the parents from the demands of their children. That the concerns regarding the excessive consumption of alcohol were a bit far-fetched.
- [16] The supervision of the sale and consumption of Alcohol would be by a qualified Manager and Ms Philip and her fellow committee member, Ms Gauci, would assist. Both she and Ms Gauci had recently completed their Licensed Controllers Qualification and had applied for their Manager's Certificates.
- [17] Mr Shaw asked if parents would attend the dance if alcohol were not available. Ms Philips said that parents would come. Mr Shaw also asked if parents would drink, if the alcohol was available. Ms Philip said that they may choose to have a drink.
- [18] Mr Shaw referred to a report from the Ministry of Transport (2014), that concluded that any alcohol in the system increased the risk of a motor accident. Ms Philip agreed that it did. She also agreed with Mr Shaw's statement that children are at a greater risk if driven by a driver who has consumed alcohol, but added there was always a risk; regardless of whether alcohol had been consumed.
- [19] Ms Philip said that as a parent she was fine with the availability of alcohol at this event, and that she had been involved with similar events previously for school discos where alcohol was available for sale. They had not previously run an event such as this at this club.
- [20] To questions from the committee, Ms Philip said that the bar only made a small profit, and that the club did not receive any sponsorship from any of the Alcohol producers or suppliers.

Reporting Agencies

Medical Officer of Health

- [21] The Medical officer of Health called Dr Bagshaw, who has numerous qualifications as a medical practitioner and is employed in various roles in the community, particularly in Youth Health.
- [22] She detailed to the committee that the younger a person is when they start to drink, then the more at risk they are to becoming hazardous drinkers themselves.

- [23] She stated that developing brains are affected by alcohol differently from adult brains and that they are much more susceptible to damage from Alcohol. She pointed to a number of studies to support her evidence and submitted these to the committee.
- [24] Dr Bagshaw said that children and young people learn by observing the adults around them and in particular those close to them.
- [25] She pointed to a 2014 study “Adolescent alcohol use: a reflection of national drinking patterns and policy”. This revealed that high levels of adult consumption are associated with high levels of alcohol consumption among adolescents.
- [26] To questions from the Committee, Dr Bagshaw agreed that if children saw adults drinking responsibly, that they may copy this behaviour.
- [27] When asked for her opinion concerning the likely effect on these children at this dance, she said that children should be able to attend social events such as a dance and not have it associated with alcohol. Alcohol should not become associated with every social occasion, as it has become. She gave, as an example, the difficulty of holding a dance for the youth of Christchurch. She has tried to do so several times, but as there was no alcohol the events failed. She put this down to the association of events and a good time as only being possible around the consumption of alcohol - a learned behaviour.
- [28] Dr Bagshaw pointed out that youth binge drinking had declined, and that this may mirror the fact that adult binge drinking has also decreased. Other contributing factors may also be the changing values of the youth, increased education and school curriculum efforts.
- [29] To a question from the committee as to whether there was a clear link between parents drinking and young children starting, Dr Bagshaw said that there was no such study, but that there was a similar one concerning smoking. This study proved that children did copy their parents smoking.
- [30] Dr Bagshaw said that role modelling alcohol as necessary to have fun was poor messaging and normalisation of alcohol was inappropriate in terms of this age group. Modelling good behaviour with or without alcohol was a good thing in parenting.

Mr Peter Shaw

- [31] Mr Shaw said the principal reason for opposition to this application is the exposure of children attending a junior disco to adults drinking alcohol. Such exposure lends support to the normalisation of alcohol which researchers have found to contribute to significant alcohol issues in society.

[32] Mr Shaw stated that New Zealand Advertising Standards Authority has within its code for the advertising and promotion of alcohol:

NZASA Principle 3 Guidelines:

3(d) Alcohol advertisements shall not be shown on television between 6.00am and 8.30pm. “

[33] The reason is clearly to avoid times when children are likely to be watching.

[34] Mr Shaw also pointed out that Section 112 of the Act seeks to limit the exposure of shoppers in Supermarkets and Grocery stores to displays promotions and advertising of alcohol.

[35] He referred the Committee to the Law Commission proposal to the select committee at page 171 of the document: “Alcohol in our lives: Curbing the harm” April 2010. This was a submission concerning exposure to displays, promotions and advertisement of alcohol.

[36] Mr Shaw also said that by making alcohol available at a children focused disco, the applicant will be increasing the risk of a crash if the transport provider has consumed alcohol.

[37] He referred the committee the Ministry of Transport report “Alcohol and Drugs “2014. Page 4 of the document reports that the risk of fatal accident or serious injury increases with the amount of alcohol the driver consumes. The risk of a fatal crash at alcohol levels below 80mg per 100ml is significant.

[38] To a question from Mr Ferguson, Mr Shaw said that the application was inappropriate because of the potential harm to the children. The normalisation of alcohol was a contributing factor to the incidence of later alcohol harm to the child. Mr Shaw did not agree with Mr Ferguson that the meaning of “inappropriate” could only be in situations where death, disease or disorderly behaviour are direct consequences.

[39] Mr Ferguson asked Mr Shaw that if the Medical Officer of Health was concerned about people driving home from licensed events or premises, then why did they not object to every alcohol licence, as there was always the same potential for an accident. Mr Shaw said that it was a matter of the risk and he noted that the application from the Nomads Soccer Club did not include a safe transport policy to assist people home.

Licensing Inspector

Mr Ferguson

[40] Mr Ferguson did not give evidence but made a written submission to the committee.

DECISION

[41] All the evidence presented to the Committee was considered, and in particular the Committee had regard to the criteria listed in section 142 of the Sale and Supply of Alcohol Act 2012.

Section 142 Criteria for issue of special licences:

In deciding whether to issue a special licence, the licensing committee concerned must have regard to the following matters:

- (a) the object of this Act:*
- (b) the nature of the particular event for which the licence is sought and,*
- (c) in particular*
 - (i) whether the applicant is engaged in, or proposes at the event to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods; and*
 - (ii) Whether the applicant is engaged in, or proposes at the event to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
- (d) the suitability of the applicant:*
- (e) Any relevant local alcohol policy:*
- (f) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence:*
- (g) the days on which and the hours during which the applicant proposes to sell alcohol:*
- (h) the design and layout of the premises concerned:*
- (i) whether the applicant has appropriate systems, staff and training to comply with the law:*
- (j) any areas of the premises that the applicant proposes should be designated as restricted areas or supervised areas:*
- (k) any steps the applicant proposes to take to ensure that the requirements of this Act in relation to the sale and supply of alcohol to prohibited persons are observed:*
- (l) the applicant's proposals relating to —*
 - the sale and supply of non-alcoholic drinks and food; and*
 - i. (ii) the sale and supply of low-alcohol drinks; and*
 - ii. (iii) the provision of help with or information about alternative forms of transport from the premises:*
 - iii. any matters dealt with in any report from the Police, the Medical Officer of Health, or an inspector made under section s.141.*

[42] The Committee has considered the provisions of section 142 of the Act and do not have any concerns regarding any other matters. The Committee has no concerns regarding the suitability of the applicant.

[43] The only issue to arise in evidence before the Committee concerned section 4 of the Act.

(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—

(m) any crime, damage, death, disease, disorderly behaviour, illness, or

(n) injury, directly or indirectly caused, or directly or indirectly contributed to, by

(o) the excessive or inappropriate consumption of alcohol; and

(p) (b) any harm to society generally or the community, directly or indirectly

(q) caused, or directly or indirectly contributed to, by any crime, damage,

(r) death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[44] In particular, the evidence from the Medical Officer of Health focused on the wording in subsection (1) (b) of section 4, “inappropriate consumption”. His contention was, as this event is focused on children, under the legislation there is an additional requirement to fulfil the Object of the Act in relation to the minimisation of harm associated with the inappropriate consumption of alcohol. It was his assertion that the provision of alcohol at this type of event would constitute “inappropriate consumption” and would contribute indirectly to the harms described in section 4.

[45] It is the Committee’s view that it was the intent of the section to connect the harm in section 4 (1) (b) and the harm to society generally, to those behaviours caused by the excessive or inappropriate consumption of alcohol and that the harms should be of a type listed in subsection 4 (2) (a)(b)(c) namely; crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly caused or indirectly contributed to, by the excessive or inappropriate consumption of alcohol.

[46] The Committee does not believe that inappropriate “parental modelling” can be considered to be one of these harms.

- [47] Mr Shaw pointed to the provisions of the Act which restrict where alcohol can be displayed or advertised in supermarkets to limit exposure, particularly to young people. This is also the case in regard to the Advertising Standards Authority, which prevents alcohol advertising when television is likely to be watched by younger viewers.
- [48] The legislation does not seek to remove all exposure to young people in supermarkets, simply to reduce it. Parents can choose to take their children into the areas which display alcohol. It leaves the parent to make the decision as to the level of exposure they wish for their children.
- [49] The Medical Officer of Health proposed that “parental modelling” could lead to harmful behaviour in young people at a later date. Evidence from Dr Bagshaw stated that the normalisation of alcohol as a requirement to “have a good time” is wrong. Children copy the behaviour of adults, particularly their parents. She said that children were being taught that alcohol was something that you had to have to have fun. She also pointed out that good behaviour was copied as well as poor behaviour. She referred to a recent study (NZ Health Survey, Youth 2000 study) which identified that binge drinking had reduced in both the adult and youth populations.
- [50] The submission by the Nomad Football Club disagreed with this approach and believed that positive parental modelling in a safe and caring environment was important for the development of young people and that this modelling could include the exposure of young people to the responsible consumption of alcohol. They gave evidence that the event was properly supervised and alcohol was available in a well controlled environment. The Committee agrees.
- [51] The Committee felt that the Medical Officer of Health failed to clearly identify, or to produce, evidence of a causal link between viewing responsible drinking and future alcohol abuse. Both the applicant and Dr Bagshaw were of the view that positive parenting models influence children’s behaviour. The argument was whether responsible drinking, in this proposed environment could be seen as positive.
- [52] The Medical Officer of Health did not convince the Committee of the linkage between parental modelling and alcohol harm, as set out in section 4 of the Act.
- [53] We do not consider that the Act intended to exercise a level of control over children watching adults consuming alcohol in this environment as is suggested by the Medical Officer of Health.
- [54] In the decision of the Authority Bond Markets Limited (Vaudrey) the Authority stated at [38]

A DLC, like any other judicial body can only decide an application on the evidence before it (see Erebus supra). It is not entitled to provide its own evidence or use its own personal opinions to justify the use of s.107.

- [55] The Medical Officer of Health also raised the issue that potentially, some parents could consume alcohol and drive children home at the end of the evening. He accepted that these drivers were unlikely to be over any legal blood/alcohol limit, but indicated that there was a risk that their drinking would affect their driving and therefore could place children at risk. (MOT 2014 Alcohol and Drugs Report)
- [56] Driving while under the influence of Alcohol is an offence under the Land Transport Act 1998. Parliament has prescribed the exact level of intoxication at which one should not be driving a vehicle. However, to accept the notion that any driver who may have attended a function at which alcohol is available, poses a risk, is in our view unreasonable. Parliament has set the level that they think is reasonable.
- [57] The committee must consider in light of the objections presented, whether in the circumstances, it is reasonable to approve or decline the application.

Section 3 of the Act Purpose

(2) The characteristics of the new system are that it is reasonable

In the decision of *Absolute Caterers Ltd* [2-13] NZARLA 946 the Authority said....

Authority's Decision and Reasons

[11] Plainly, the DLA was referring to that portion of the object of the 2012 Act set out in s.4(1) of the 2012 Act:

The object of this Act is that –

(s) The sale and supply and consumption of alcohol should be undertaken safely and responsibly; and

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

*[12] The DLA's decision is not absolutely correct. The words in paragraph 21 of the decision "reasonably minimised" add a qualification to the concept of minimisation that is not included in s.4(1) of the 2012 Act. The New Shorter Oxford English Dictionary defines "minimise" as to: reduce to the smallest amount, extent or degree". The decision introduces a discretionary element; whereas the requirement contained in the section is absolute. This does not detract from the DLA's and this Authority's duty to act reasonably. Whilst that duty is no longer contained in the 2012 Act's Object (c.f. s. 4 of the 1989 Act), it is contained in s.3(2) of the 2012 Act which is intended to set out its purpose. (If the New Shorter Oxford English Dictionary is the authority, it seems that "purpose" and "object" can be synonymous). The comments of the Court of Appeal in *Meads Brothers Ltd v Rotorua District Licensing Agency* [2001] NZCA 386; [2002] NZAR 308 at paragraph [23] as to a reasonable licensing*

system, the controls of which should not be oppressive or excessive, remain good law under the regime introduced by the 2012 Act. The error in the DLA's decision is not crucial to the determination of this appeal for the reasons set out later in this decision.

[58] In the Court of Appeal in *Meads Brothers Limited v Rotorua District Licensing Agency* [2002] NZARLA 308 (CA) at [53] stated:

*"It is to be remembered that the statutory object is to establish a **reasonable** system of control. This envisages that at a certain point, at the extreme end of the scale, the administration of the licensing may become unreasonable in its pursuit of the aim of reducing liquor abuse."*

[59] This comment was reiterated in *Christchurch District Licensing Agency v Karara Holdings Limited* [2003] NZCA 96; [2003] NZAR 752 (CA) at [26]. The Authority confirmed in *New Zealand Police v Absolute Caterers Limited* [2013] NZARLA 946 at paragraph [12] that the duty to act reasonably in accordance with *Meads* and *Karara* applies to the Sale and Supply of Alcohol Act 2012.

[60] Alcohol is a product that can be consumed in various social environments, both licensed and unlicensed. The evidence of the Medical Officer of Health is that it is poor parenting to allow children to watch adults drinking in this environment. We disagree.

[61] We are satisfied as to the matters to which we must have regard as set out in s.142 of the Act and we grant the applicant a special licence pursuant to s.104(1).

[62] The licence will not issue until all relevant clearances have been obtained.

The applicant is not entitled to sell liquor until the licence issues.

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 this Act. Specifically sections 46 to 63.

The applicant must comply with all conditions specified on a licence.

The licence will be subject to the following conditions:-

Compulsory conditions – section 147(3)

The following conditions are compulsory:

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

Friday 5th June 2015 from 6.00pm to 7.30pm.

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

Discretionary conditions – section 147(1)

- (a) 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.**
- (b) Food must be available for consumption on the premises as specified in the application.**
- (c) Low-alcohol beverages must be available for sale and supply on the premises as specified in the application.**
- (d) Non-alcohol beverages must be available for sale and supply on the premises as specified in the application.**
- (e) The licensee must provide assistance with or information about alternative forms of transport from the premises as specified in the application.**
- (f) Entry is restricted to invited guests only.**
- (g) A copy of the licence, together with signs showing the age restriction must be clearly displayed.**

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

- Noise should be controlled so as not to disturb neighbouring residents.**

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

THE LICENSED PREMISES

The premises are identified on the plan provided with the application for a licence.

DATED at CHRISTCHURCH this 2nd day of June 2015.



G B Buchanan
Chairman
Christchurch District Licensing Committee