

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **Glenn Owen France** pursuant to Section 137 of the Act for a Special Licence for premises situated at 15 Lever Street, Napier, and known as Port Ahuriri School.

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Mr J Cocking
Mr R Pinkham QPM

HEARING at Napier on Monday 7th November 2016

APPEARANCES

Mr Glenn Owen France Applicant
Mr Darryn Waugh District Licensing Inspector- to assist.

Observers
Mrs Sara Parlato
Ms Debbie O'Leary

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. This is an application by Glenn Owen France for a special licence for a Food and Music Festival to be held on school grounds at Port Ahuriri School, for their main fundraising event. The application was submitted 10 weeks prior to the event. However, due to DLC staff changes and the resignation and departure of the Inspector, the application was late in being forwarded to the reporting agencies.
2. Whilst the police and Licensing Inspector reported no objections to the application, the Medical Officer of Health indicated that an objection was being prepared and would be forwarded within the statutory time frame.
3. As a consequence, and as the time frame for notification of a hearing prior to the event would not be possible, upon receipt of the MOH report, this hearing was set down in anticipation of the objection.

4. A report dated 1st November from Dr Rachel Eyre the MOH re-iterated her concerns previously expressed in the hearing for the same event in 2015. [NDLC Decision 0333/2015] and that these concerns remained valid and relevant.
5. The report further stated that the Health Protection Officer Theresa Te Whaiti attended the event in 2015 and made the following observation:
 - There did not appear to be any identifiable security personnel on site.
 - There were a lot of people on site and many of them were buying alcoholic drinks.
 - The alcohol stall was very visible to anyone attending the event. It was located up on a deck in front of a classroom.
 - The MC announced a number of times that a bar was open and encouraged those attending the event to purchase drinks.
 - Alcohol was served in large plastic cups (approx 500ml or 2 standard drinks size).
 - There was a good range of food options and this was well promoted.
 - There appeared to be no restriction on where drinking could occur. A large number of people were seen drinking on the field near the children's bouncy castles and play area. The map supplied in the 2015 application identified the concrete courtyard as the licensed area. The grass area was not included. We believe this was a breach of their licence.
 - The age group of those attending the event was wide, from young children to elderly.
6. Dr Eyre reported that her concerns to the issue of a special licence with which the committee must have regard to were:

“s.142 Criteria for issue of special licences.

(1)(a) The object of the Act.

(1)(b) The nature of the particular event”.

7. The last paragraph of the Doctors report states –

“Due to staff restraints, short timeframe and work required for the Havelock North gastroenteritis inquiry I do not wish to appear and make a submission before the DLC and am willing for a decision to be made on the papers. If you require further information please contact me.”

8. As indicated in the final paragraph, neither the MOH nor any of her staff presented themselves at the hearing. We sought guidance in relation to the non appearance of objectors from:

Kim and Change re[2009] NZLLA 1470 paragraph 12 “.....At any event, the applicants and their agents were prevented from testing any of these objector’s claims and assertions. To make a ruling adverse to an applicant based on unsupported objection is a denial of natural justice”.

9. Notwithstanding this ruling, the staffing predicament the MOH finds herself and the reported observations of the Health Protection Officer at the previous event, leads us to accept the report pursuant to s.142 (1)(I) of the Act, and to seek the views of the applicant.

THE HEARING

10. Mr. France stated that he was the Principal of the Port Ahuriri School and representing the Board of Trustees.
11. He stated that this event was the tenth year it has been held, the previous nine all being trouble free. He had no brief of evidence but wished to address the observations of the Health Protection Officer at the previous year’s event.
12. In respect of the security personnel, he confirmed that both the caretaker and one other of his staff were qualified security guards and were present for the duration of the event, roaming the whole of the festival site. In answer to their appearance, he confirmed that both were wearing T –shirts imprinted with the word “SECURITY”.
13. Questioned as to the need for security, Mr France stated that he could only recall one incident when a person was refused entry to the festival as he appeared intoxicated, and the security staff ushered him from the event without a problem.
14. In respect to the visibility of the alcohol stall, he stated that the Board was conscious about the stall not being too prominent, and that it was positioned in an area partially hidden behind the stage truck and on an elevated passageway.
15. He refuted that the MC made announcements a number of times that the bar was open and encouraged attendees to drink. Mr France stated that an announcement was made indicating the bar was open and again that it was closing.
16. He confirmed that wine was sold in 150ml plastic containers and that beer, which was a keg beer, and ginger beer, were supplied in 400-500 ml plastic vessels. He further confirmed that trays were not used for multi sales.
17. Mr France admitted that festival attendees had wandered outside the designated alcohol area, which was substantial. However, the area was not cordoned off because of its size and consequently, patrons had taken their drinks to the grassed area.
18. The whole of the festival area was in the fenced confines of the school premises, and it was considered unwarranted to expect parents and caregivers to remain in the festival area whilst their children were using the play facilities in the grassed area. He stated that this was the reason for the extended alcohol area for this year’s event.

19. Mr France considered the question in regards to non alcoholic beverages, and stated that these were not provided at the beer and wine stall other than ginger beer, and water, but were provided at different stalls, so under age attendees had no need to be present near the alcohol outlet.
20. Mr Darryn Waugh the Licensing Inspector enquired as to the experience of the staff and training requirement. Mr France responded that 2 experienced Certificated Managers were on site, Ms Ami-anne Best and Mr Chris Sullivan who would be addressing gate staff and security regarding intoxication and prohibited persons.
21. Upon questions regarding reporting agents' attendance and feedback, he responded that he saw a police presence, but did not notice, nor was approached by, the licensing inspector or Health Protection Officer, and further that he had received no comments on the festival from any agency.

DECISION AND REASONS

22. The matters to which we must have regard are the subject of s142 of the Act.

“s142 Criteria for issue of special licences.

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

(a) the object of the Act:

(b) the nature of the particular event for which the licence is sought and, 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:

(c) the suitability of the applicant:

(d) any relevant local alcohol policy:

(e) 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:

- (f) the days on which and the hours during which the applicant proposes to sell alcohol:**
- (g) the design and layout of the premises concerned:**
- (h) whether the applicant has appropriate systems, staff and training to comply with the law:**
- (i) any areas of the premises that the applicant proposes should be designated as restricted areas or supervised areas:**
- (j) any steps the applicant proposes to take to ensure that the requirements of the Act in relation to the sale and supply of alcohol to prohibited persons are observed:**
- (k) the applicants proposals relating to-**
 - (i) the sale and supply of non-alcoholic drinks and food; and**
 - (ii) the sale and supply of non-alcoholic drinks; and**
 - (iii) the provision of help with or the information about alternative forms of transport from the premises:**
- (l) any matters dealt with in any report from the Police, the Medical Officer of Health, or an Inspector made under section 141.**

23. The applicant has stated that the event could be attended by up to 800 people, which would define it as a large scale event. However, we are satisfied that the provision of alcohol is a low key activity, that the event is family orientated and is for a limited period of 3½ hours. Furthermore, without any comment from the Police or Licensing Inspector we are satisfied in not asking for any of the requirement of s.143(1), nor having regard to the matters stated in s143(2).

24. We find that there has been no further evidence provided in the report from the MOH in respect of her two principal areas of concern:

S142(1)(a) the object of the Act,

S142(1)(b) the nature of the particular event,

which would sway us from the previous decision of the hearing of the 2015 event, which are documented in paragraphs 28-35 of that decision (NDLC Decision 0333/2015).

25. In consideration of the observations made by the Health Protection Officer in the report, and of the applicants response we have further considered the matters to which we must have regard in s.142.

26. The suitability of the applicant, by omission of any report from the Police or Inspector, is acceptable.
27. There is no local alcohol policy.
28. The event has been held for the past nine years without any adverse reactions reported by the Police or Inspector in relation to the reduction by more than a minor extent of the amenity and good order of the locality.
29. The event is one of only 3½ hours duration with the supply of alcohol from 4.30 pm to 8.00 pm, which is acceptable.
30. The extensive layout of the premises has been seriously considered. However, we are of a mind to accept the applicant's assurance that monitoring of the site by security personnel will be constant. Also that service of alcoholic beverages will not be undertaken with a tray, therefore limiting the quantity supplied, and that the alcohol area extending onto the grass recreation field, where parental control of children on the playthings can be undertaken, will itself act as a control on alcohol consumption, due to its distance from the bar stall.
31. Training of gate staff and helpers by an experienced licensee and manager both of whom are certificated, together with the requirement of one to be at the alcohol stall at all times, satisfies us that the law will be complied with.
32. Consideration of a cordoned designated area for the supply and consumption of alcohol was rejected for reasons stated in paragraph (30) above.
33. The applicant has stated that signage will be displayed at the stall regarding prohibited persons, intoxicated persons and availability of transport from the event.
34. The event is described as a food and music festival and has numerous food outlets surrounding the entertainment area.
35. We are therefore satisfied as to the matters we must have regard as set out in s.142 of the Act, and grant the applicant a Special Licence, subject to conditions of the Special Licence 30/SP/4049/2016 attached to and forming part of this decision.
36. The licence may issue immediately.

DATED at NAPIER this 10th day of November 2016

A handwritten signature in blue ink, appearing to read 'DE Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman
Napier District Licensing Committee