

19 February 2020

Decision of the District Licensing Committee in the matter of:

The Application for a Special Licence by the Association of Friends of the Cathedral Grammar School for Parents Back to School BBQ on 21 February 2020

Following the determination of the above application on **19 February 2020**, please find enclosed the decision of the Christchurch District Licensing Committee.

Decisions of the District Licensing Committee may be subject to appeal under Section 154 of the *Sale and Supply of Alcohol Act 2012*. Any party to the proceedings before a licensing committee who is dissatisfied with the decision may appeal to the Alcohol Regulatory and Licensing Authority (ARLA). Such an appeal must be made within **10 working days** of this notice of decision.

Please find below a link to the relevant area of ARLA's website:

<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority/appeals-to-the-alcohol-regulatory-and-licensing-authority>

Please contact me if you have any queries.

Yours Faithfully



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

AND

IN THE MATTER OF an application by the **Association of Friends of the Cathedral Grammar School** for a Special Licence pursuant to s.138 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at, **2 Chester Street, Christchurch**, known as **Cathedral Grammar School**.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson : Ms C E Robinson
Members: Mr R Wilson JP
Mr P Rogers

DECISION ON APPLICATION FOR SPECIAL LICENCE

- [1] This is an application by the Association of the Friends of the Cathedral Grammar School ('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 2 Chester Street, Christchurch, known as Cathedral Grammar School.
- [2] The event is described in the application as a 'Back to school BBQ' to be held on Friday 21st February 2020. The event is a school social and fundraising event attended by stakeholders. The number of people attending is said to be about 350. Those attending are children, parents and teaching staff of the school. The event is being organised by the Association of the Friends of the School committee, who are essentially the school 'PTA'. The event will be for a three-hour period between 5pm and 8pm. Alcohol will be sold in a separate area away from where children will play. The event is to be

undesignated, however, it is not anticipated that children will be in the area where alcohol is to be sold.

- [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, Diana Wylie, to manage the sale and supply of alcohol. Mrs Wylie has experience running a bar at similar events and this will be her sole responsibility at the event. No issues of concern regarding his suitability were raised by any party.
- [4] The NZ Police did not raise any opposition to the application. The Inspector has filed a Report and recommends that the Committee grant of the application subject to conditions.¹
- [5] The Medical Officer of Health (MOH) has opposed the application as is his practice to do so for school events where children are present. In his letter to the DLC on 5th February 2020 Dr Humphrey has noted that during the ARLA appeal hearing arising from last year's event a memorandum was signed between the MOH and the then representative of the Friends Committee which he says acknowledges "the evidence of harm produced by the MOH" at the hearing of last year's application. The MOH is disappointed that the application has been lodged despite the acknowledgment and agreement of the potential for indirect harm to children through the consumption of alcohol by adults in the presence of children.² The MOH notes his opposition remains on the basis of the indirect harm that may be caused at such events.
- [6] The MOH opposes the application in the knowledge that the Committee may determine not to convene a hearing and may determine the application on the papers with a full quorum of three.
- [7] A committee of three commissioners has been convened and have considered the opposition from the MOH. It is our view that the MOH has not raised any new matters relating to the substantive application which haven't already been fully canvassed by the DLC during the hearing of last year's event and on appeal before ARLA³, therefore, we have determined that a hearing is not required and we will consider the merits of the

¹ Inspector's Report, Anneke Lavery, undated.

² Consent Memorandum of the parties to the Appeal before ARLA, 3rd May 2019

³ *Dr Alistair Humphrey v Cathedral Grammar Friends Group* [2019] NZARLA 91

application “on the papers”. We note the MOH comment with regard to the memorandum that preceded the hearing before ARLA, however, we also note the comments of ARLA at [11] and [12] where it was acknowledged that the Friends Committee had committed to a school policy to avoid such events in the future. ARLA comment that in light its decision the school may review that policy at some point. In any event the School’s policy with regard to such events is a matter for it and our role is to assess the application before us on the merits in accordance with the law. We acknowledge that ARLA does record that the Friends of School Group were agreed that there is the potential for indirect harm to arise from the consumption of alcohol by adults in the presence of children.

Section 142 Evaluation

[8] In undertaking our evaluation, we have followed the approach taken in our decision on the last application which was upheld by ARLA. Section 142 of the Act sets out the criteria for determining an application for a special license. In addition to the object of the Act we are required to have regard to matters pertaining to the nature of the event, other goods and services on offer, the suitability of the applicant, effects on amenity and good order, the days and timing of the event, the design and layout of the premises, any training and steps undertaken to ensure compliance with the Act and provision of food, low alcohol and non-alcoholic drinks, information about transport and matters raised in the agency reports. The matters we are to have regard to follow those for on and off licenses pursuant to s105 of the Act. Our approach is the same.

The object of the Act.

[9] 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).

[10] 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. We are satisfied that the planning and supervision of this event is such that it will be undertaken safely and responsibly, as it has in the past.

[11] 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.⁴ In *Medical Officer of Health v Lion Liquor Retail Limited*, Clark J held that

“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.”

[12] 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.⁵ There is a presumption built in to 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.

[13] '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.

[14] It has been accepted by the applicant that there is the potential for indirect harm of consumption of alcohol in the presence of children but as ARLA held “that does not of itself establish that the consumption of alcohol in the presence of children or at events designed for children is inherently inappropriate.”⁶

⁴ 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].

⁵ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

⁶ *Dr Alistair Humphrey v Cathedral Grammar Friends Group* [2019] NZARLA 91 at [64].

[15] We find this to be a family focused school community event. It is limited to a three-hour period and the sale and consumption of alcohol is an incidental accompaniment to the event. We find that any indirect harm caused to children attending the event should be minimised through the duration of the event, the restricted licensed area to exclude the children's play area, locating bar away from the children's entertainment area and requiring adherence to the AMP.

Other matters in s142

[16] We have had regard to the fact that the applicant will offer a range of children's entertainment activities set apart from the area where alcohol will be sold, supplied and consumed. We are satisfied that the applicant is suitable to hold a licence for the event and has done so in the past without incident. There is no evidence 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 children's entertainment area is appropriate. As with last year's event the applicant will comply with an 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.

Section 213(1).

[17] In the absence of any objection to the appointment of Mrs Wylie as the bar manager and having 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

[18] 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 attached to and forming part of this licence. For the avoidance of doubt this excludes the area identified as the playground and children's activity areas.

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 21st February 2020 from 5pm to 8pm.

- (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) Entry is restricted to ticket holders only.

- (k) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application excluding the area identified as the playground and children's activity area.

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

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

[19] 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.

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

[21] For completeness the Committee notes that this application was received by the Council during the statutory Christmas and New Year holiday period⁷ and then allowing for the Agency reporting requirements of s141 of the Act this application has only just come before the Committee. The applicant's attention is drawn to s152(1) and (2) of the Act. The applicant should take legal advice before proceeding with the event as planned.

DATED at CHRISTCHURCH this 19th day of February 2020.



Cindy E. Robinson
Chairperson of the Christchurch District Licensing Committee

⁷ Section 5 SSAA definition of 'working day'.