

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by AKA AKA
Brewing Company Limited for
an off-licence pursuant to s.100
of the Act in respect of premises
situated at 975 Aka Aka Road
FRANKLIN known as "Aka Aka
Brewing Company".

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Commissioner: Dr Michael Cameron

Members: Dr Patsi Davies
Mr Barry Smedts

HELD at **NGARUAWAHIA** at 12.30pm Friday 12 April 2024.

APPEARANCES:

Mr T Rollinson, Director of the applicant company
Ms D Baker, Director of the applicant company
Ms C Sturzaker, Licensing Inspector

DECISION

The Committee grants an off-licence, subject to conditions, for the premises at 975 Aka Aka Road FRANKLIN, to be known as "Aka Aka Brewing Company".

[1] This is an application by Aka Aka Brewing Company Limited for an off-licence in respect of premises situated at 975 Aka Aka Road FRANKLIN to be known as "Aka Aka Brewing Company".

[2] The general nature of the business to be undertaken is that of a brewery cellar door. The premises has not previously been licensed. The building is located on a rural property, and has been granted a resource consent.

[3] The application was duly advertised in accordance with section 101 and no objection or notice of desire to be heard has been received. Reports from the Police, Medical Officer of Health and an Inspector do not raise any matters in opposition to the application.

[4] In considering the application, the Commissioner had some concerns regarding the days and the hours during which the applicant proposed to sell alcohol and the applicant's suitability, given concerns about the applicant's prior experience with the sale and supply of alcohol. Accordingly, the application was determined by way of a public hearing.

Hearing:

[5] Mr Rollinson provided, in writing prior to the hearing, submissions and an affidavit in support of his application.

[6] At the hearing, there was some discussion around the days and hours, and it was clear that there had been some confusion about the difference between the licensed trading hours, governed by the licence conditions and Section 46 of the Act, and the hours when deliveries are permitted, which are governed under Section 59 of the Act and are common to all holders of off-licences.

[7] By consent, the directors of the applicant company agreed to licensed hours of Monday to Sunday, 9am to 6pm. They also agreed to a condition on the licence restricting the range of products that could be sold and supplied from the premises, as recommended by the Inspector.

Criteria for determining the application:

[8] In deciding whether to issue an off-licence the committee must have regard to the matters detailed in s.105 of the Act. These are:

- (a) The object of the Act:
- (b) The suitability of the applicant:
- (c) Any relevant local alcohol policy:
- (d) The days on which and the hours during which the applicant proposes to sell alcohol:
- (e) The design and layout of any proposed premises:
- (f) Whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:
- (g) Whether the applicant is engaged in, or proposes on the premises 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:
- (h) Whether the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:
- (i) Whether the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that they would be unlikely to be reduced further by the effects of the licence but it is nevertheless desirable not to issue any further licences:
- (j) Whether the applicant has appropriate systems, staff and training to comply with the law:
- (k) Any matters dealt with in any report from the Police, the Medical Officer of Health or an Inspector made under section 103.

Sections 106, 108 and 109 are also relevant to the criteria for determining the application. The provisions of the Waikato District Council Local Alcohol Policy 2017 (the LAP) are also relevant.

[9] The Committee is of the view that section 105(1) paragraphs (a), (b), and (d) are most relevant when considering this application. The Committee has considered the other criteria in section 105(1), being paragraphs (c), (e), (f), (g), (h), (i), (j), and (k), and is satisfied in regard to those criteria.

Reasons and Decision:

S105(1)(b) Suitability

[10] Concerns about the suitability of the applicant arose because it was uncertain that Mr Rollinson would be granted a Manager's Certificate. If that certificate were not granted, then the applicant would have no certificated manager.

[11] The Committee determined that they would grant Mr Rollinson a Manager's Certificate (Decision No. CertApp084/23). This allayed any concerns the Committee had about the suitability of the applicant.

S105(1)(d) Days and Hours

[12] The applicant originally sought days and hours of Monday to Sunday, 7am to 7pm. At the hearing, the directors of the applicant company agreed to more restricted hours of Monday to Sunday, 9am to 6pm.

[13] The Committee is satisfied that the agreed days and hours are more consistent with the Object of the Act, as well as being similar to those of other licensees of a similar nature operating in the district.

Section 105(1)(a) Object of the Act

[14] The Committee is required to undertake the evaluative exercise as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749. The steps in this exercise are outlined in paragraph [56] of *Vaudrey*:

"[56] So, in my view, the position can be summarised as follows:

- (a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.*
- (b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:*
 - (i) consider any objections made by persons who have a greater interest in the application than the public generally;*
 - (ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;*
 - (iii) have regard to the criteria stipulated in s 105 of the Act (for present purposes including the design and layout of the premises); and*

- (c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.*
- (d) It must impose the conditions required by s 116(2) and in the case of a supermarket or grocery store, the single area condition (which I discuss in more detail below).*
- (e) It may impose further conditions in accordance with ss 116(1) and 117 (which I discuss in more detail below)."*

[15] Having inquired into the application, and having received evidence and submissions from all parties, the Committee has evaluated the application against the criteria in section 105 of the Act.

[16] The Committee now turns its attention to cross-checking whether the application is capable of meeting the object of the Act. The object of the Act is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[17] Overall, and as outlined in paragraphs [8] to [16] above, the Committee is satisfied that the application is capable of meeting the object of the Act, and that the licence can be granted subject to conditions.

Conclusion:

[18] The Committee grants the application by Aka Aka Brewing Company Limited for an off-licence for the premises at 975 Aka Aka Road FRANKLIN, to be known as "Aka Aka Brewing Company", authorising the sale of alcohol, for consumption somewhere else, to deliver it somewhere else, and to supply alcohol free, as a sample, for consumption on the premises.

[19] The applicant's attention is drawn to ss.56, 57 and 214(3) of the Act obliging the holder of an off-licence to display:

1. A sign attached to the inside or outside of the premises, so as to be easily read by people immediately outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of alcohol; AND
2. A copy of the licence, and of the conditions of the licence, attached to the inside of the premises so as to be easily read by persons entering each principal entrance; AND
3. A sign prominently displayed inside the premises, which identifies so as to be easily read by people using the premises, stating the full name of the manager on duty.

The entrance to the building from Aka Aka Road is designated as the principal entrance.

Conditions

[20] Sections 110 and 111 of the Act detail compulsory and discretionary conditions that may be imposed on the licence. Section 109 also provides that conditions may be imposed if required by a local alcohol policy.

The licence will be subject to the following conditions:

- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1.00 pm on Anzac Day.
- (b) Only alcohol in the form of beer, fruit wine, and cider manufactured on the premises may be sold and only on the following days and during the following hours:
Monday to Sunday 9.00am to 6.00pm
- (c) Drinking water must be freely available to customers at the following places while alcohol is being supplied free as a sample on the premises:
In the body of the premises near to where the samples are being provided.
- (d) No intoxicated persons may be allowed to enter or to remain on the premises.
- (e) Appropriate signage regarding the restrictions on the supply of alcohol to minors and intoxicated persons must be prominently displayed adjacent to every point of sale.
- (f) The whole of the premises is un-designated.
- (g) The licensee must take the following steps to ensure that the provisions of the Act relating to the management of the premises are observed:
 - (i) All staff will be trained in their responsibilities under the Act.
 - (ii) A sign shall be prominently displayed inside the premises, which identifies by name the manager on duty or of the person responsible for the management of the sale and supply of alcohol under the licence.
- (h) The sale or delivery of alcohol is authorised on the premises generally. The premises situated at 975 Aka Aka Road, Aka Aka, are more precisely identified in a plan date stamped as received by the Waikato District Licensing Committee on 13 December 2023.

DATED at Ngaruawahia on 14 April 2024



Michael Cameron
Commissioner
Waikato District Licensing Committee