

Decision for Special Licence

Licence Number SP14020

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

AND

IN THE MATTER of an application by **PROMOTE DUNSTAN INCORPORATED** for a Special Licence pursuant to section 138 of the Act for **The Clyde Wine and Food Harvest Festival**. The location of the event is in the closed street area of Sunderland Street Clyde as identified on the plan attached to this decision.

BEFORE THE CENTRAL OTAGO DISTRICT LICENSING COMMITTEE

Robert B McNeil (Chairman)
Neil Gillespie
Michael MacAvoy

HEARING at Alexandra on 2 April 2014

APPEARANCES

Louise Joyce – advocate for applicant
Ric Oram – assisting applicant
Senior Sergeant Gordon Pay – New Zealand police – in opposition
Ray Applegarth - Licensing Inspector, Central Otago District Council – in opposition

DECISION

Background

This is an application by Promote Dunstan Incorporated for a Special Licence to sell Alcohol at the Clyde Wine and Food Harvest Festival for both on-site and off-site consumption.

This festival has been held for the past 13 years with local wine growers from the Alexandra Basin promoting their products. In past years the Liquor Licensing Agency issued one licence to the festival organiser, Promote Dunstan to cover both the on and off sales however the Sale and Supply of Alcohol Act 2012 has placed a greater reliance and responsibility on both the licence holders and the District Licensing Committees to ensure the object of the Act is upheld.

The application was duly advertised and objections were received from the Medical Officer of Health, NZ Police, and the Licensing Inspector. Accordingly this hearing was convened to consider the application.

The Applicant's Submission

The applicant submitted that Promote Dunstan has not been refused an on-licence under the former legislation for its wine and food festival and the decisions to issue previous special licences were never contested nor ruled unlawful by either the Liquor Licensing Authority or the High Court. The applicant considered those decisions to be precedents upon which the committee can rely, and on which the group has reasonably relied in organising this year's

event. They submitted that nothing in the new act prevents the group from again being so licensed.

The applicant believes the on-site licence meets all of the criteria in sections 142, 143 and 147 of the Act which the committee must have regard to. The applicant noted that Section 22 of the Act makes it clear that special licences are for designated premises and does not require the licence to be held by the individual seller. The applicant commented that it is therefore unnecessary to require multiple licences for the one shared premises for one event.

The applicant noted that the Sale of Liquor Act, when passed in 1989, did not allow special licences for off-site sales; however Parliament considered this to be an omission so it passed an amendment 10 years later to allow off site sales. The Law Commission report in 2010 *Alcohol in our lives: Curbing the Harm* was quoted to state "It is clear, then, that parliament intended that takeaway sales should be permitted at such events as wine festivals."

The applicant submitted that the procedure for off-site sales means the group effectively is acting as a "distributor" and, therefore, can be granted such a licence. He noted that the Act does not define the term "distributor" but it relies in section 42 on the committee's opinion on the matter. The applicant considered that whilst the police do not consider the applicant to be a "distributor" they know of no legal requirement for a distributor to "be in business" or, indeed to make a profit, nor is there in law any impediment to acting as such for one day, one week or even one year. The applicant quoted the Collins Dictionary which says the word "distribute" means "to hand over or deliver"; the word "distribution" as "transporting...of goods from producer to consumer", and the word "distributor" as meaning "a middleman".

The applicant reminded the committee that the new act emphasises local policies and decisions by local committees and quoted Sir Geoffrey as saying: "I would expect significant regional variations, in how the law was enacted, to apply."

The applicant concluded with the comments that the principal reason for the Clyde festival is to provide exposure for small Alexandra basin producers who are principally, if not totally, manufacturers and because they are small, their wine is not readily available at retail outlets, therefore, festival-goers who like a wine they sample, often cannot find a bottle to buy elsewhere.

The Police Submission

NZ Police opposed the application of the grounds that Section 42 of the Act is not complied with.

In their evidence they stated that they do not oppose a licence being issued to the applicant for an On-site Special Licence because having a single licensee for a large scale event is advantageous to the reporting agencies as there is accountability should offences be detected.

Police submitted that Sect 22(2) allows for a Special licence to be issued to an entity who supplies alcohol, as opposed to selling alcohol as it states "*On the premises a special licence designated as an on-site special licence is held for, the licensee can sell or supply alcohol, for consumption there, to people attending an event described in it.*"

With respect to an Off-site Special Licence Police stated that the Sale of Liquor Act 1989 allowed off-sales to be made under a Special Licence due to an amendment to that section in 1999 to allow such sales to cater for wine festivals.

The Police quoted the history of the Law Commission's report to Parliament "Alcohol in our Lives - Curbing the Harm." with respect to trade fairs being distinct from other types of special licence as they would be the only type to allow "off- premises consumption".

It was also recommended that manufacturers and wholesalers of alcohol be granted this type of licence. Police stated that these recommendations were partially accepted by Parliament and the Off-site Special Licence was a result.

Police submit that Section 22(5) makes it clear that an Off-site Special Licence is intended for the sale of the Licence-holder's own alcohol. *(On the premises a special licence designated as an off-site special licence is held for, the licensee can sell the licensee's alcohol, for consumption somewhere else, to people attending an event described in it.)* and also referred to section 42(1) which they state makes it clear the law makers did not want retailers or any other person to have an Off-site Special Licence *(A special licence designated as an off-site special licence may be issued only to a person who (in the opinion of the licensing committee concerned) is a manufacturer, distributor, importer, or wholesaler of alcohol.)*

The Police referred to the Interpretation Act 1999 *(The meaning of an enactment must be ascertained from its text and in the light of its purpose)* and stated that whilst the applicant asserts they will be a "Distributor", as they intend storing alcohol purchased as an off-sale from stallholders, then distributing it to the purchaser at a later time, the word "Distributor", which is not defined in the Act has the Oxford dictionary meaning - *An agent who supplies goods to retailers.*

Police submit that having spoken to people in the retail trade this is the meaning of a distributor that prevails in the liquor industry, and backed up the view with results of an internet search.

Police discussed section 8 of the Act in relation to exemptions which they submit shows the type of business they did not want to have an Off-site Special Licence. Police consider the applicant's assertions that they are a distributor fail as they are intending to distribute alcohol to the patron, thereby assuming the role of retailer.

Police also acknowledged that section 19(1) of the Act recognises that a distributor may deal directly with the consumer in some circumstances and that a distributor or wholesaler of alcohol does not require to be registered or pay excise duties.

Police submit that the purpose and intent of the Off-site Special Licence is indicated by the very specific wording of Section 42 of the Act that off sales can be made from "trade fair" events (such as the Clyde Wine & Food Festival) but the privilege of holding such a licence is reserved for those whose business is the importing, wholesaling or manufacturing of the alcohol they intend selling.

Police submit that Promote Dunstan Incorporated is not in the business of distributing, importing, manufacturing or wholesaling alcohol which is reflected in their internet web site, and that the arrangement proposed by the Applicant does not qualify them as being a "distributor" as intended by Parliament and that Sect 19(2) of the Act does not assist them with this assertion.

Police submit that if the Committee was to accept the applicant's assertions, the result would be that in future applications any person could call themselves a distributor for the day, which clearly is contrary to the purpose of Sect 42.

In closing, Police submit the application for an Off-site Special Licence by Promote Dunstan should therefore fail.

Medical Officer of Health Submission

The Medical Officer of Health did not appear at the hearing, but in his absence Medical Officers of Health for Otago and Southland Dr Derek Bell and Dr Keith Reid provided a written submission opposing the issue of this licence.

Their written submission states that the reasons for their opposition were the availability of food and that the event organiser, not being a manufacturer, distributor, importer or wholesaler of alcohol, could not hold a special off-licence.

Food availability has since been addressed by the organiser and is no longer a reason for opposition; however they continue to oppose the application on the basis that the event organiser "Promote Dunstan" cannot hold a special off-licence as they do not meet the criteria specified in the Act (Section 42).

The MOH recommended that individual stall holders who wish to sell alcohol for consumption off-site must apply for special off-licences as per Section 42(2) of the Sale and Supply of Alcohol Act 2012, and they supported the Licensing Inspector's proposal that the event organiser apply for an overall on-licence.

The recommended that the event organiser should prepare an overall alcohol management plan that is shared with and used by the individual stall holders who will apply for off-licences.

The Licensing Inspector's Submission

The Inspector noted that Promote Dunstan Incorporated is a suitable entity to hold a Special Licence for on-sales but raised concerns regarding the legal ability of the society to hold a Special Licence for off-sales.

He raised no concerns regarding the event venue, hours of operation or host responsibility measures being put in place for the event.

He considered that the Duty Manager identified in the application, who holds a General Managers Certificate, has experience in managing this event and has done so in a responsible manner in the past.

The Inspector supported the Police interpretation of the Act with respect to who may hold Special Licences for on and off-site consumption.

The inspector referred to the concern raised by Police in their submission that the only part of Dunstan Hotel covered by the licence should be the front bar of the Hotel. He advised that this has since been confirmed by the hotel licensee and the plan identifying the licensed area for the event has been amended.

He noted that although Section 147 of the Sale and Supply of Alcohol Act 2012 identifies food as a discretionary condition for Special Licences with no requirement for alignment with particular licensed hours, the applicant has indicated they will address this issue as it is a concern raised by the Medical Officer of Health.

The Licensing Inspector recommended;

1. That the District Licensing Committee grant a Special Licence, to Promote Dunstan, for the "Clyde Wine & Food Festival", for on-site sales only.
2. That the District Licensing Committee require Promote Dunstan Incorporated to ensure each stall holder selling alcohol obtain their own Special Licences for off-site sales.

Conclusion and Reasons for the Decision

In addition to consideration of the criteria for the issue of special licences under section 142 of the Sale and Supply of Alcohol Act 2012, the committee members must turn their minds to whether it is legal under the Act for Promote Dunstan incorporated to hold a Special Licence for the both on-site and off-site consumption, or whether individual stall holders should hold individual special licences for off-site sales.

In considering the application for an **on-site special licence** the committee notes that:

There was no opposition from the reporting agencies in respect to Dunstan Promotion Incorporated holding a special licence for the purpose of on-site sales of alcohol.

The police have supported the proposal as they believe section 22(5) of the Act enables the issue of a single licence to Promote Dunstan as the supplier of alcohol at the event, and that having a single licensee for a large event is advantageous to the reporting agencies as there is accountability should offences be detected within the licensed area.

The committee believes that Promote Dunstan Incorporated is a suitable entity under section 28(1) of the Act to hold a special licence and is permitted to hold a special licence for on-site sales or supply.

The committee notes that this year the applicant is restricting wine sales to "by the glass" only and there will be no bottle sales for consumption on the site. The committee considers this will assist in the responsible management of alcohol consumption and that it is appropriate to apply a condition to this effect.

The committee notes that the Dunstan Hotel will also have their front bar open for the purpose of selling beer on tap, low alcohol beer, cider and soft drinks and acknowledges that the hotel will assist the operation of the event by providing seating and toilets for festival attendees. The application states that the back bar and garden bar will be closed and there will be no sale of bottled beer, wine, spirits or ready to drink mixtures from the hotel, and the display of these products will be covered. It is appropriate to apply conditions to this effect.

With respect to the submission by the Medical Officer of Health, the committee is satisfied that the Risk Management Plan prepared by the applicant addresses alcohol management issues.

In considering the section of the application for an **off-site special licence** the committee considers that:

The provision for off-site special licences is particularly restricted by section 22(5) as being for the sale of the licensee's alcohol, for consumption somewhere else, to people attending an event.

The committee believes that in the circumstances of this event, Promote Dunstan Incorporated, the licensee for the event, cannot claim it is their alcohol which is being offered for sale and therefore do not meet the criteria of section 22(5) of the Act to hold an off-site special licence.

In considering Promote Dunstan Incorporated as a distributor the committee notes that whilst the applicant considers that they will be a "Distributor" for the period of the licence as they intend storing alcohol purchased as an off-sale from stallholders, then distributing it to the purchaser at a later time, that is not the ordinary meaning of the word distributor and nor, in the opinion of the committee, is it the intention of the Act.

The committee has concluded therefore that stall holders must hold individual special licences for off-site sales.

Decision

We are satisfied as to the matters to which we must have regard as set out in Section 147 of the Act and **approve the issue of an on-site Special Licence** for consumption on the premises to Promote Dunstan Incorporated.

The licence is subject to the following conditions;

- a) The licensee must have available for consumption on the premises, at all times when alcohol may be sold under the licence, a reasonable range of non-alcoholic refreshments, low-alcohol beverages.
- b) Free drinking water must be visibly available at all stalls selling alcohol.
- c) Alcohol may be sold under the licence only on the following days and during the following hours:
Sunday 20 April 2014 from 10.30 am to 4.30 pm
- d) A range of substantial food shall be available throughout the term of the licence.
- e) The availability of the courtesy coach service shall be advertised accordingly.
- f) The duty manager (Adrienne Taylor) shall instruct or otherwise provide information to all stall holders to ensure that the object of the Act is upheld and that there are no alcohol sales to prohibited persons.
- g) BYO alcohol is prohibited. Security is to conduct appropriate searches as the patrons enter the site.
- h) Serves of wine are restricted to 15ml for tastings and glass serves are not to exceed 150ml. There shall be a maximum of two glass serves per person in any one transaction.
- i) Only patrons wearing a festival issued wrist band and presenting a festival issued wine glass are to be served wine. Beer may be sold in the vessels provided at the stall.
- j) There must be no bottle sales of either wine or beer for on-site consumption.
- k) A copy of the licence shall be prominently displayed adjacent to the entrance, along with the name of the manager on duty, in accordance with the Act.
- l) The back bar and garden bar of the Dunstan Hotel will be closed and there will be no sale of bottled beer, wine, spirits or ready to drink mixtures from the hotel, and the display of these products will be covered.

We are not satisfied that the application meets the requirements of the Act in respect to the ability for Promote Dunstan Incorporated to hold an off-site special licence, and therefore the objections of the New Zealand Police, Medical Officer of Health and the District Licensing Inspector are upheld and **the application for an off-site special licence is declined.**

Dated at Alexandra this 7th day of April 2014

Robert B McNeil
 Chairman
Central Otago District Licensing Committee