

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application for an Off-licence
pursuant to s. 99 in respect of premises
situated at 143 Fitzherbert Street,
Hokitika and known as Coasters'
Supermarket by Sswastik NZ Limited.

DECISION OF THE WESTLAND DISTRICT LICENSING COMMITTEE ON AN UNCONTESTED APPLICATION

Authority:

Pursuant to section 191(2) of the Sale and Supply of Alcohol Act 2012 and a Council resolution dated 28 November 2013, the functions, powers and duties of the Westland District Licensing Committee are delegated to the committee chairperson where no objection has been filed, and no matters of opposition have been raised by the Police, the Medical Officer of Health or an Inspector. There is no Local Alcohol Policy in place for the District.

Preliminary

The premises at 143 Fitzherbert Street is variously referred in the application and supporting documents as "Coasters Supermarket" or "Coaster's Supermarket" I will use the phrase "Coasters' Supermarket" which I think is grammatically correct and reflects the possibility that more than one Coaster uses the premises.

Summary of Evidence

I am in possession of a copy of the complete file relating to the application.

The Inspector has reported and advises that the applicant is suitable to hold an off- licence.

The Police have no objection to the application. However, the Police have recommended that the licence be granted subject to a condition that the number of single cans of beer at or above 7% alcohol by volume available for purchase be limited to five and the minimum cost per can be \$4.00. This approach would not include beer classified as craft beer.

The Medical Officer of Health has no opposition to the application. However, the Medical Officer of Health (MoH) has recommended that a limit be placed on the number of cans of beer containing over 6% alcohol by volume, sold or supplied to any one person at any one time.

Evaluation of Evidence

I have considered the application on the basis of the uncontested reports received and I have noted that there have also been no public objections. The matter can, therefore, be dealt with on the papers.

The applicant is a company and is, accordingly, permitted to hold an Off-licence. The Coasters' Supermarket is not currently selling alcohol but has done consistently for several years. Sswastik NZ Limited has purchased the business and has suspended the sale of alcohol until a new license is in place. No temporary Authority was applied for. The premises is a grocery store of the type envisaged by Sec 33 of the Act.

The application includes a Host responsibility Policy, which on a quick glance, appears to be appropriate for the nature of the premises with the exception that, in part, it seems to relate to a premises called *Oamaru Supermarket*. I would anticipate that the policy is comprehensively reviewed before any application for renewal is applied for.

The application shows that the principals of the company have significant experience in the industry although no documentation is provided to validate the assertion of experience. The Inspector, in his report

notes at least four years' experience and I assume that he has been able to validate the claim. I have no doubts as to the suitability of the applicant

The application addresses the issue of a single display area and a plan accompanying the application shows two discreet areas very close to each other in the Southern part of the shop floor. Overall, it is a small part of the total display area on the premises.

The application requests days and hours of operation as Monday to Sunday from 7.00am to 10.00pm. I am assuming that these hours are the general trading hours for the shop. I think that they are appropriate for the community.

I have not identified any amenity or good order issues. Likewise, I have not identified any need for designations.

I am satisfied that the applicant has sufficient skilled staff to safely sell alcohol. The Inspector has noted that the number of managers available will likely increase in the future to ensure adequate coverage over the whole of the trading hours.

I now turn my attention to the two recommendations made by the Police and the MoH. In doing so it is worth reviewing the object (Sec4) of the Act:

The object of this Act is that—

*(1)(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).

The Police have recommended that the licence be granted subject to a condition that the number of single cans of beer at or above 7% alcohol by volume available for purchase be limited to five and the minimum cost per can be \$4.00. This approach would not include beer classified as craft beer.

The MoH has recommended that a limit be placed on the number of cans of beer containing over 6% alcohol by volume (ABV), sold or supplied to any one person at any one time.

The overriding issue is that both agencies have not opposed the application but have proposed a condition to be attached to the licence. This is not an approach that is supported by the Act so I could reasonably ignore the recommendations without comment. However, both agencies have a significant interest in the safe and responsible sale, supply and consumption of alcohol and, prima facie, I have some respect for the suggestions made, particularly when considered alongside the object of the Act.

The two recommendations, however, raise a few questions for me and I am unable to have them answered as this is a decision "on the papers". The appropriate forum for discussion and analysis is a public hearing where all parties have the opportunity to consider the proposals and test their veracity. I am left wondering how the establishment of a limit of five cans of beer of 7%ABV could assist in conformity with the object of the Act when, for a similar price, a customer could purchase five bottles of wine or a bottle of spirits if the end game is to purchase high ABV beverages. Likewise, the establishment of a minimum retail price seems to be a step-too-far and I am left wondering if a minimum price might result in a perverse outcome that results in a different and a higher ABV product being purchased in the alternative at a similar price. In addition I have questions as to the exclusion of beer classified as craft beer. It is not too difficult to discover that there are some craft beers available at significant ABV. The fact that they are brewed traditionally and without mechanisation does not make them safer to consume.

On balance, I have elected to set the two recommendations from the Police and the MoH aside.

Decision and reasons

I am satisfied as to those matters provided for in sections 105 and 131 of the Act.

The application for an off-licence by Sswastick NZ Limited is granted on the papers pursuant to s.211 (1) of the Act as Decision Number 120-2021 and I direct that a new off-licence is to be issued. The licence may be issued immediately and for a 12-month period and subject to the following terms and conditions:

- (1) The principal entrance is to be the entrance to the premises fronting Fitzherbert Street, Hokitika.
- (2) Alcohol may be sold or supplied only on the following days and during the following hours:
Monday to Sunday 7.00am to 10.00pm.
No alcohol is to be sold on or supplied from the premises on Good Friday, Easter Sunday, Christmas Day or before 1.00pm on ANZAC Day.
- (3) The area set aside for the display and promotion of alcohol is to be limited to that area shown and shaded in yellow on a floor plan submitted with the application.
- (4) There shall be a "Host Responsibility Policy", similar to that which accompanied the application dated 28 June 2021, in place at all times.

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) either—
 - (i) until the close of the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
 - (i) until the close of the period of 3 years after the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Hokitika this 7 day of October 2021.



Chairman, Westland District Licensing Committee

