

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 (the Act)

AND

IN THE MATTER

of an application by **HOCQUETTE LIMITED** pursuant to s.99 of the Act for an off-licence in respect of premises situated at **UNIT F, 19 SHOTOVER STREET, QUEENSTOWN** known as 'Asian Mart Queenstown'.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr LA Cocks
Members: Mr J M Mann
Mr B Pay

HEARING at Queenstown on 25th August 2023

APPEARANCES

Mr Hongtao Su - applicant
Mr N Horn – assisting applicant
Ms S Swinney – Queenstown Lakes Licensing Inspector – to assist
Sergeant Matheson – NZ Police – to assist
Mrs SA Bekhuis-Pay – Medical Officer of Health – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

1. Before the Committee is an application by Hocquette Limited, for an off-licence under s.32(1)(f).
2. Pursuant to s.32(1)(f), the Committee must be satisfied that the premises is a grocery store, and that the grant of such a licence will not cause any significant increase in alcohol related harm.
3. Concerns were raised as to the applicants ability to have duty managers on duty for the licensed hours, and therefore the Committee elected to convene a public hearing to consider the application.

Application

4. An application was made on 31st October 2022 for a new off-licence for the existing 'Asian Mart Queenstown' grocery shop located on Shotover Street in central Queenstown.

5. The applicant is a registered company and the sole director is Hongtao 'Tao' Su. The Company and its director do not appear to have come to the attention of any enforcement agency or to have breached any laws, and is considered a suitable entity to hold an off-licence. Mr Su has interests in a separate property management business, but has very little time involvement with the running of that business.
6. Trading hours were requested between 9.00am and 10.00pm. Initially no issue was taken with these hours. An acceptable single alcohol area was agreed.
7. The shop has the characteristics and appearance of a grocery store, and the applicant eventually provided a statement of sales divided into various categories as required by s.33(2)(a)(ii) and Regulation 12, which confirmed the grocery store status.
8. Mr Su told us he has been the owner/operator of the Asian Mart Queenstown since 2016 and is seeking an off-licence to enable the sale of Asian alcoholic beverages which are hard to find elsewhere in Queenstown. The aim is to stock Chinese, Japanese, and Korean beers, sake and fruit wines, with a lower alcohol content to minimise the risk of over-intoxication. The reason an off-licence had not been sought earlier was Covid had put the brakes on demand, but demand has now justified proceeding with the application. He assured us he would not increase stock items.
9. In response to concerns raised regarding staffing and providing a certified duty manager when selling alcohol, Mr Su explained that he has applied for a Managers Certificate and had hired another duty manager, but that person is no longer available. His intention is to advertise for a duty manager if the off-licence is approved and also have another current staff member who has completed the LCQ course apply for a Managers Certificate when experience is gained. Two other full time staff will also be encouraged and assisted to undergo the LCQ course. Staff ongoing training will consist of completing the 'Servewise' training, but that has not yet happened. Mr Su stated that if for any reason a duty manager is not present, alcohol will not be sold.
10. Mr Horn submitted on behalf of the applicant, that he considered the application meets the requirements of a grocery store and we should issue the licence upon receiving advice that a certified duty manager has been employed. He also emphasised that this is a very low risk environment.

Inspector

11. The Inspector provided an extensive report of the matters we need to consider under s.105 and s.33 of the Act. The detail in the report reflected the effort required to get the correct and relevant information from the applicant over an extended period, particularly in regard to the single alcohol area, sales figures and categorisation of products to support a grocery store classification, and the provision of certified managers. A single alcohol area has been established to the satisfaction of the Inspector, and she accepts the business is a grocery store.
12. With regard to the suitability of the applicant, and amenity and good order of the premises, the Inspector's report was not unfavourable. The Inspector did however, express concerns about the inaccuracies and deficiencies in the sales

revenue data provided. In particular, vaping products were incorrectly included in the tobacco category, confectionary did not have any sales figures attributed to it, and the figures were not put together by a chartered accountant as required for existing businesses selling alcohol in accordance with Regulation 12(1)(c).

13. The Inspector advised us the public notification of the application was undertaken correctly and did not generate any public objections. With regard to the reporting agencies, the delegated Medical Officer of Health stated no opposition, and the Police initially reported in an email no opposition to the application. Based on further information, the Police subsequently changed stance and submitted matters in opposition under s.105(e) & (j) of the Act. The Inspector advised us this opposition was submitted outside the statutory 15 working day time that the Police must report in, and provided caselaw to support non acceptance of the late report so that statutory obligations are complied with and natural justice is not breached.
14. With regard to the applicant's Managers Certificate application, the Inspector advised the application has been approved with a signed undertaking by Mr Su that it will only be used at the Asian Mart. This certificate will not be issued until the off-licence application is approved.

Delegated Medical Officer of Health.

15. Ms Stephanie Bekhuis-Pay, delegated Medical Officer of Health under s.151 of the Act, reported no opposition to the application, but at the hearing sought more information from the applicant regarding staff training. Ms Bekhuis-Pay also supported reduced licensed hours to those requested for the first 12 months, to enable the applicant to show he has the relevant number of qualified staff available to manage the off-licence.

Police

16. Sergeant Matheson acknowledged our non-acceptance of the Police late opposition to this application, but welcomed the opportunity to submit. Police initially had concerns under s.105 (e) & (j) of the Act regarding the design and layout of the premises, and whether the applicant has appropriate systems, staff and training to comply with the law. However, at the hearing Police withdrew concerns about the design and layout and focused on staff issues.
17. The staffing concerns raised by Sergeant Matheson were that the applicant would not have enough qualified staff for the licensed hours sought to manage the sale of alcohol as required by the Act. Police were concerned staff would not have the ability to take breaks and rests in compliance with employment legislation, resulting in tired, overworked staff and poor decision making.
18. Sergeant Matheson questioned why the applicant had not advertised for duty managers yet, but acknowledged the applicant's commitment to not sell alcohol when a duty manager was unavailable.
19. To reduce the concerns and risks regarding staff, Sergeant Matheson supported a reduction in the licensed hours requested for a 12 month period.

The Committee's Decision and Reasons

20. The Inspector has reminded us when assessing the application we must have regard to the criteria in s.105 of the Act, and Sale and Supply of Alcohol Regulations 2013: 7 to 11, and 13.
21. In assessing the criteria, we are satisfied:
- a. the applicant is suitable;
 - b. the design and layout of the premises is acceptable;
 - c. the premises in a grocery store; and
 - d. the amenity and good order of the locality will not be reduced to more than a minor extent.
22. We have heard concerns from the Inspector and the Agencies as to whether the applicant has the appropriate systems, staff and training to comply with the law. This brought into question whether the licensed hours sought are acceptable.
23. The duty manager nominated in the application fell through which accentuated the staffing concerns. The applicant advised us his managers certificate has been approved subject to approval of the off-licence and he intends advertising for a duty manager. He expressed an intention to have existing staff gain experience with the sale of alcohol and become qualified as this will make best use of staff for the whole of the business. The applicant acknowledged this will take some time and confirmed that if a duty manager is not present, alcohol will not be sold and the single alcohol area would be covered.
24. We heard from the Agencies a desire for the requested hours of operation for the licence (Monday to Sunday 9.00am to 10.00pm) to be reduced to ease the pressure on staff and ensure the licence is managed lawfully. This was discussed with all parties and hours of operation Monday to Sunday 12.00 midday to 10.00pm for 12 months gained acceptance.
25. Having considered all this information, and the relevant criteria, we are of the view that granting this application with hours of operation Monday to Sunday 12.00 midday to 10.00pm will not be contrary to s.4(1) of the Act. We do however, emphasise that when a duty manager is not present, there is to be no sale of alcohol and the alcohol area is to be covered. As with all new licences, a renewal application will be required in 12 months, at which time the suitability of the applicant based on the quality and accuracy of the information supporting the application will be reviewed, as will the lawful compliance of the systems, staff and training.
26. This application by Hocquette Limited for an off-licence is therefore approved, with the amended hours of operation.

DATED at QUEENSTOWN this **4th** day of **September 2023**

A handwritten signature in black ink that reads "L A Cocks". The signature is written in a cursive, flowing style.

Mr L A Cocks, Chairman

