

**IN THE MATTER**

of the Sale and Supply of

Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **DRINKS ON Q LIMITED** pursuant to ss. 32, 40 and 99 of the Act for a remote style off-liscence situated at 8 Industrial Place, Queenstown to be known as 'Drinks on Q'.

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin

Members: Mr J M Mann

Mr L A Cocks

**HEARING** at QUEENSTOWN on 21 January 2021

**APPEARANCES**

Mr D K Taiaroa and Mr D S Sykes – representing Drinks on Q Limited – applicant

Mrs S A Bekhuis-Pay – Medical Officer of Health – to assist

Mr N P Bates – Queenstown Lakes Licensing Inspector – to assist

**RESERVED DECISION OF THE COMMITTEE**

***Introduction.***

- [1] This is an application by Drinks on Q Limited (the company), for a new remote style off-liscence in respect of premises situated at 8 Industrial Place, Queenstown to be known as "Drinks on Q". The intention is to sell alcohol through an existing website [www.foodonq.co.nz](http://www.foodonq.co.nz) for instant delivery (ie within an hour). The application has arisen from the successful operation of a business, which offers instant delivery of food within the greater Queenstown area, in partnership with a number of local restaurants. This business is operated by a company called Food on Q Limited (the original company).
- [2] The business of food delivery has been operating for about four years and there are as many as 50 local restaurants who are involved as participants in

the scheme. Customers can shop on-line through the various menus and choose items to be cooked and delivered. The business "Food on Q", charges a delivery fee of approximately \$10.00, and takes a percentage of the food order with the balance going to the restaurant. The original company receives between 700 and 1000 online orders for food a week.

- [3] The original company received requests for alcohol to accompany the meals. It started to investigate the obtaining of a licence. Although there are other meal delivery services in the district, this was the first time that an application had been received for a licence to sell and deliver alcohol on demand. The initial application was filed on 14 May 2019, and was made by the original company. The application was for remote sales under s.32 (1) (c) of the Act. However, it soon became apparent that the original company would have difficulty in establishing that 85% of the annual income would be from the remote sales of alcohol.
- [4] A suggestion was made that the off-licence could be issued under s.35 of the Act (complimentary sales). However, once again the original company had to show that its principal business would not be the sale of food. With up to 1000 sales of food being made a week, this was also a bridge too far. A legal opinion was obtained by the Council in respect of a similar but unrelated application. The effect of the opinion was that a single website could sell both food and alcohol but there would need to be two separate payment portals which in turn would need to be operated by two separate companies.
- [5] The original company changed direction. It formed a second company which it originally called „Booze on Q Limited". No doubt it received advice on the propriety of a company with such a name applying for a licence. The company name was subsequently changed to „Drinks on Q Limited (the company)". A new application for a remote styled off-licence was filed on 26 August 2020. The company sought to deliver alcohol between 12.00 midday and 11.00pm. Matters in opposition were raised by the Police and Medical Officer of Health in their respective reports. As a result of discussions and a meeting with the agencies, the company changed its proposed operation to alleviate some of the concerns raised. The Medical Officer of Health then withdrew its opposition. The situation with the Police remained unclear.
- [6] Because this is a „Greenfield" type of application, and because of questions as to whether the application was contrary to the Act's objects as set out in s.4, the Committee determined to hold a public hearing.

### ***The Application.***

- [7] Both Mr Taiaroa and Mr Sykes gave evidence. Neither had prepared a brief as requested in the Notice of Hearing. They explained that they thought that the documentation that had been filed with the application contained all the necessary information. Mr Taiaroa resides in Christchurch, and will not be involved in the day to day operation of the business. He has fifteen years experience as a manager of licensed premises, and nine years experience as a licensee. He is the part owner of two premises in Queenstown and

Wanaka. Both these premises have had operational „issues”, but suitability is not really a stumbling block to the issue of a licence.

- [8] Mr Taiaroa wrote a letter to the agencies on 5 November 2020 after the company had received the reports with matters in opposition. He started with the words:

*“Taking on board the concerns outlined from the MOH and Qt Police, Food on Q would like to propose the following policies to alleviate these”.*

He then proposed a number of new conditions which included not to sell RTD's, and to close off all deliveries by 10.00pm. The company would only deliver to a registered address and would not leave products at the doorstep. Deliveries would not be made if the address could not be accessed. Finally, alcohol would only be provided to the person who ordered it, and that person's ID would be checked.

- [9] Mr Taiaroa concluded his letter with these comments:

*“We get a huge amount of requests from people ordering meals asking for a bottle of wine to go with it. Having a restaurant prepared meal with a bottle of locally sources wine without leaving the house is a fantastic service.”*

- [10] Mr Sykes operates the food business. He explained how he has built up the original company's infrastructure enabling the company to receive orders, contact restaurants, arrange drivers and vehicles and ensure that meals are delivered to the right address and in a timely fashion. The original company operates ten mopeds. The business is both complicated and demanding. He argued that giving the public the option of ordering alcohol would reduce the amount of people choosing to drive after drinking if they wished to purchase more alcohol. It could equally be argued that the inability to order alcohol on demand might well help to reduce the total amount of alcohol that is consumed.
- [11] The lack of evidence did not help the company's cause. On the other hand, there was a reasonable amount of material within the application which we have considered. As pointed out by the Medical Officer of Health, the lack of detail about the application indicated that the proposal may not have been given a great deal of prior thought.
- [12] The company filed a form of host responsibility document which showed that the customer had to initially agree that he/she was over the age of 18 and confirm their address. Alcohol would be delivered by a few select and trained individual drivers. These people will be required to complete an on-line course for sellers and servers of alcohol. They will be trained in how to deal with aggressive and/or intoxicated customers. On delivery the driver will check the customer's ID and ensure that he/she is not intoxicated. If the customer cannot produce a valid driver's licence, or passport or ID document showing that they are over 18, or if they are intoxicated, the delivery will be cancelled.

- [13] The staff training document (Appendix A), is certainly impressive. It confirms that as suppliers of alcohol, there is a social and legal obligation to ensure that alcohol is not provided to customers who are intoxicated. It acknowledges that no matter how well the delivery person conducts him or herself, incidents may still occur. Monthly internal CPO checks are to be conducted, and records kept of the findings.

**The Medical Officer of Health.**

- [14] The application attracted a report with matters in opposition from Stephanie Bekhuis-Pay on behalf of the Medical Officer of Health. She advised that the application was contrary to the objects of the Act for the following reasons:
- (a) Increased chance of pre-loading by people intended to go to town later.
  - (b) Pre-loading is a known alcohol related problem in Queenstown
  - (c) Family harm due to alcohol consumption in the home
  - (d) No policy or comment about supplying bulk alcohol to parties or groups of people
  - (e) No policy or comment about supplying alcohol to people in public places
  - (f) No policy or comment about people who receive the alcohol and who may not be the person who pays
  - (g) No evidence of the range of alcohol for sale indicating the young people may be the target market
  - (h) No maximum quantity for RTD's, the preferred drink of the young
  - (i) A lone person delivering alcohol is likely to take the easy option if placed in a possible position of conflict
  - (j) The issue of a licence would set a precedent.
- [15] Following a meeting with the applicant and other parties, Mrs Bekhuis-Pay wrote an e mail to the Inspector in which she noted that the closing hour of operation had been reduced to 10.00pm, that the applicant had agreed that no spirits or RTD's would be sold, that the applicant had agreed to have more vigorous staff training especially around the safety of staff, that alcohol would not be delivered to public places such as parks or the lake, and that the applicant would give the addresses of all deliveries to the Police if requested. Consequently, she withdrew her opposition.
- [16] At the hearing Mrs Bekhuis-Pay made helpful submissions. She referred us to s.3 of the Act and stressed that the purpose of the Act was to benefit the community of Queenstown as a whole. She questioned whether the grant of an off-licence for instant delivery helped to achieve the object in any way.

**The NZ Police.**

- [17] The application attracted a report with matters in opposition from the Police. They were concerned about deliveries arriving late at night. Their report included the following:

***"The Police are concerned that issuing a licence will lead to an alternate way for people to purchase alcohol. We foresee that people at a party or gathering***

***will use this as a means to have more alcohol delivered to them when they have run out of the alcohol and are influenced or intoxicated and unable to go and get more alcohol from a liquor store.***

- [18] After the meeting with the applicant, the Police wrote that the opposition to the application was to be maintained. However, that position was subsequently reversed.

**The Licensing Inspector.**

- [19] We are indebted to Mr Bates for his comprehensive and helpful report. He had been able to find three licences involving instant delivery of alcohol that had been granted in Auckland, Christchurch and Masterton. All had been granted on the papers, and at least two appeared to be in breach of the provisions of the Act. He noted that the company had shown a willingness to work with the agencies and had made numerous amendments as to how the operation would be run in order to carry out the operation as safe a manner as they believed possible. On the other hand in his final submission he confirmed that the question was not whether the company could do more to meet the object of the Act, but whether the very nature of this type of service falls within the Act's objectives.
- [20] Mr Bates advised that there were a number of other operators within the district who would be looking to licence similar operations in the future, and thus any decision would establish a precedent.

**The Committee's Decision and Reasons.**

- [21] This application raises many questions and concerns. There are issues with delivery. Apparently if a customer orders food from more than one restaurant there is likely to be two deliveries probably at different times. Because of the advice on keeping the food and alcohol businesses separate, alcohol will be delivered separately as well and not necessarily at the same time as the food. In other words there could be as many as three deliveries all at different times.
- [22] If the delivery driver had an order for 12 cases of beer and he is satisfied that the person outside the house is sober, and over 18 then the beer will be delivered regardless of who is going to consume it inside the house. There is such a difference between the couple who order a meal and a separate bottle of wine, and a group of party goers who have run out of alcohol and are seeking instant gratification.
- [23] As Mr Taiaroa pointed out in his letter having a locally sourced bottle of wine with a meal is a great service. But the company seemed much more interested in catering for events on demand. There was no concern about how much alcohol was going to be supplied as long as the person who ordered it was over 18 and sober. If the company was serious about minimising the potential harm as much as possible, it could have suggested conditions such as restricting each order to a bottle of wine or six bottles of beer, and only to be delivered with food. We appreciate that such conditions

might well make the enterprise uneconomic but they would certainly minimize the alcohol's potential harm.

- [24] In terms of suitability to hold a licence, we would describe the applicant company as adequate. As providers of food on demand it has acquired the necessary expertise and infrastructure to run a successful business. But it gave the impression of not having given any thought to the issue of harm minimisation. It seemed to us that the directors saw alcohol as just another commodity to be marketed to the public. Indeed, Mr Taiaroa described it as a product. In our view, they had not really considered that they were distributing a drug on demand. They had not thought of ways to restrict such a supply until the issues were pointed out to them. Considering that this was a „Greenfield” venture to supply alcohol on demand, their presentation at the hearing was woeful.

- [25] And then there is the issue of availability.

***“Supply control measures are designed to limit the availability of alcohol. They are based on the theory that increased availability results in increased levels of consumption and alcohol related harm.”*** (Alcohol in our Lives – Law Commission Report – July 2009 – Page 118 Paragraph 9.40)

We accept that it's only a theory, but here we have an applicant for a new licence seeking to increase availability by getting the alcohol to the potential consumer in the shortest possible time. Surely an applicant in such a situation would carefully consider how best it could minimize the potential risk of alcohol related harm.

- [26] Finally, under our list of concerns is the domino effect that the granting of the application might have on other licencees, thus creating a cumulative regime where instant gratification becomes the norm. In summary we believe that the grant of this application carries with it a real risk of alcohol related harm. In those circumstances we have a duty to ensure that such a risk is minimised. If the proposals are unsatisfactory the application must be refused.

- [27] The criteria to which we must have regard when considering an application for a new remote styled off-licence are set out in s.105 of the Act. In our view, the relevant criteria are:

- (a) *The object of the Act:*
- (b) *The suitability of the applicant:*
- (c) *Whether the applicant has appropriate systems, staff, and training to comply with the law.*
- (f) *Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

- [28] However, the crucial issue relates to the Act's objectives. S. 4 states:

- The object of the 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.*

- [29] As the Inspector pointed out there is little case law on the subject of selling and supplying alcohol safely and responsibly. On the other hand, minimizing harm has been accepted as reducing it to the smallest amount extent or degree. In trying to achieve this objective we accept that the controls authorized by the Act need to be applied in a reasonable way. Even Mr Taiaroa conceded that the application did nothing to minimize harm.
- [30] The Sale and Supply of Alcohol Act 2012 had its genesis with the report from the Law Commission entitled “Alcohol in our Lives” which was published in July 2009. In his foreword, Sir Geoffrey Palmer the President of the Law Commission, made these comments:

*Research that has been done since 1986 demonstrates beyond doubt that alcohol is no ordinary commodity. It is a drug. It needs to be treated with caution and controlled by the law. Used to excess, alcohol is a potent producer of serious health hazards. Private choices to consume alcohol excessively have important and costly public consequences.*

- [31] In our respectful view, once alcohol is viewed by the public as a product or a commodity that is the beginning of the end of the effectiveness of the Act.
- [32] At page 25 of the Law Commission’s report is this statement:

*At the time of the Laking Committee it was estimated that 59 per cent of alcohol was consumed away from licensed premises. The most recent Alcohol Advisory Council Alcohol Monitor puts the figure at 68 per cent. As we shall discuss later in this report, this trend towards consumption away from controlled environments has implications for strategies aimed at reducing alcohol related harm.*

- [33] Drinking at home or away from licensed premises carries the greater risk of harm. Granting an off-licence to enable people more conveniently and speedily to drink in an unsupervised manner, demands extra caution.
- [34] At page 218 paragraph 124 of the Law Commission’s report:

*The catalogue of harm and social disorder analysed in Part 1 of this report seems to the Law Commission to call for measures to curb the harm. These measures should go beyond what is being achieved by the existing law. Designing a suite of measures that will target the harm without damaging the interests of the reasonable drinker poses no easy challenge. No law can save society from all the adverse consequences of consuming liquor.*

- [35] Eventually the Alcohol Reform Bill came before Parliament. The Honourable Simon Power moved its first reading with these comments:

***"This is a large Bill, but its objects are simple. It zeros in on alcohol-related harm, crime, disorder, and public health problems, especially where our young people are concerned. It aims to reduce excessive drinking and improve the operation of the alcohol licensing system, including community input on licensing, and to support the responsible sale, supply and safe consumption of alcohol. Licences will be harder to get and easier to lose."***

- [36] Having considered all this information, and the relevant criteria, we are required to stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires us to form a view on whether there is evidence to suggest that granting the application will be contrary to s.4(1) of the Act. In other words, whether granting the application, would increase the risk of alcohol related harm and/or whether the supply of alcohol will be undertaken safely and responsibly?
- [37] We conclude that the answer to the first question is “Yes” and the answer to the second question is “No”. For these reasons the application is refused.

**DATED** at QUEENSTOWN this 9<sup>th</sup> day of February 2021`

Mr E W Unwin, Chairman

A handwritten signature in blue ink, appearing to read "E W Unwin".