

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **Northern Breweries
2012 Limited** for an off licence pursuant
to s.99 of the Act in respect of premises
situated at **104 Lower Dent Street,
Whangarei** known as "**Brauhaus
Frings**"

BEFORE THE WHANGAREI DISTRICT LICENSING COMMITTEE

Chairman: Councillor John Williamson
Member: Lee Andrews
Member: Mervyn Williams

DECISION (ON THE PAPERS)

This is an application by Northern Breweries 2012 Limited dated 16 December 2013, for an off licence in respect of premises situated at 104 Lower Dent Street, Whangarei, known as "Brauhaus Frings". The general nature of the business is that of a tavern.

The premises

The application relates to an existing tavern and brewery which is situated on the western side of Lower Dent Street within the Business District of Whangarei. An Off Licence was first issued to Northland Breweries 2001 Limited in December 2004 with extensive licensing hours being 7am to 3am the following day, Monday to Sunday to allow off sales across the bar on the premises. In 2012, Dennis Fringes, the manager and owner of the business undertook a voluntary reduction of the licensing hours to 9am to 10.00 pm, Monday to Sunday to ensure the compliance with the Whangarei District Council's liquor policy hours. Northland Breweries 2012 Limited intends to take over the business on 1 April 2014. The premises currently operate as a tavern with a micro brewery and will continue to do so.

An Off Licence is sought by the applicant to carry out off sales across the bar. Section 17 of the Act provides that the holder of an off licence can operate as follows:

- (1) On the premises an off-licence is held for, the licensee can sell alcohol for consumption somewhere else.*
- (2) While the premises an off-licence is held for are open for the sale of alcohol for consumption somewhere else, the licensee can also supply alcohol free, as a sample, for consumption on the premises.*

Public notice and waiver

The applicant placed two advertisements in the Northern Advocate with the first notice on 24 December 2013 and the second on 28 December 2013 as required section 101 (b) of the Act. Notice of the application was displayed at on the principal entrance of the building as required by the Act.

The applicant has applied for a waiver under Section 208 of the Sale and Supply of Alcohol Act 2012. Section 208 states:

"where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by this Act, the licensing authority or (as the case may require) the licensing committee or the chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable."

The applicant has mistakenly advertised as “the renewal of on & off licences” instead of “application for on and off licence” in the public notifications.

No public objections were received.

Management of the premises

The applicant intends to take over the business on 1 April 2014. Leon Inder and Warren Currin are the directors and shareholders of the applicant company. They have been assisting Dennis Frings in managing and operating the business in the past ten months and both are the holders of a manager's certificate. In October 2013, Northland District Health Board and the Police ran a controlled purchase operation in the Whangarei District using persons between the age of 18 to 20 years who attempted to purchase alcohol from Off Licensed premises. The operation was intended to indicate if there were good practices in place at licensed premises such as checking identification to ensure that alcohol was not sold to minors. On one occasion Leon Inder sold alcohol to a minor without asking for identification. He has agreed to a voluntary suspension of his manager's certificate for a period of 2 weeks and served the suspension in December 2013.

Resource Management Act and Building Code certificates.

The applicant has provided the required certificates from the Territorial Authority in respect of the Resource Management Act 1991 and the Building code.

Amenity and Good Order

We note that night time outdoor entertainment on the premises has been the source of loud noise. We are told by the inspector that while controls have been put in place to ensure that this noise is no longer a problem to residents living across the Hatea River, the noise from the premises still does not fully comply with the site boundary noise controls under the Whangarei District Plan. We expect that the applicant will ensure compliance with the site boundary noise rule and that this matter will be pursued by the council.

Section 105 Criteria for issue of licences

In deciding whether to issue a licence, the licensing committee concerned must have regard to the criteria as set in section 105 (1) of the Sale and Supply Act 2012 as follows:

- (a) *the object of this 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 (in its opinion) 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 (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) *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, an inspector, or a Medical Officer of Health made under section 103.*

DECISION

The committee has received reports on the application from the Police, the Medical Officer of Health and the Licensing Inspector and none have raised matters in opposition. The application was duly advertised and no objection or notice of desire to be heard has been received. Accordingly we deal with the matters on the papers.

We are satisfied as to the matters to which we must have regard as set out in s.105 of the Act and we grant the applicant an on licence subject to the following conditions.

- (a) no alcohol is to be sold or delivered on Good Friday, Christmas Day, or before 1 pm on Anzac Day.
- (b) alcohol may be sold only on the following days and during the following hours:

Across the bar:

Monday to Sunday 9.00am to 10.00pm

- (c) the whole of the premises is designated as a supervised area.
- (d) The licensee must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and complete prohibition on sales to intoxicated persons.
- (e) While alcohol is being supplied free as a sample, free drinking water must be provided for customers at the tasting location.

In terms of section 101 of the Act we are satisfied that the omission made by the applicant in the public notification of the application was not wilful and we waive the omission.

DATED at Whangarei this 25th day of March 2014

Chairman
Whangarei District Licensing Committee

14/25377