

Decision: **SP1964**

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Fuzen Entertainment Limited for an Off-site special licence pursuant to s.142 of the Act in respect of premises situated on Worsfold Farm, 420 Settlement Road, Kaiwaka on 15 February 2020.

BEFORE THE KAIPARA DISTRICT LICENSING COMMITTEE

Chair: Mr Mark Farnsworth
Member: Mr Mark Vincent
Member: Mr Gordon Lambeth (by phone)

SPECIAL HEARING

Held at the Mangawhai Club Committee Room, Mangawhai Club, 219 Molesworth Drive, Mangawhai.

APPEARANCES

Governance Advisor – Mr Gavin Dawson
Legal Advisor – Mr Rob O'Connor

Introduction

The meeting had been called¹ to urgently consider an application for a Special Licence which had been made by Fuzen Entertainment Limited for a planned event on Worsfold Farm, 420 Settlement Road, Kaiwaka on 15 February 2020.

The Council's Governance advisor had provided a series of back ground papers² and the Council Legal Advisor provided written advice.

¹Inspector Trevor Biggs, for the New Zealand Police, in an email to Council dated 31 January noted that the police require that the late special licence application is put before the DLC to judiciously consider the provisions of Section 137(2).

² Including the application and an objective from the New Zealand Police.

Late Application

Council received the application from Fuzen Entertainment on 28 January 2020 for an event planned for 15 February 2020.

Section 137(2) of the Sale and Supply of Alcohol Act 2012 provides that:

“The licensing committee may consider an application for a special licence filed less than 20 working days before the day on which the event concerned begins, if satisfied that the need for a special licence could not reasonably have been foreseen earlier.”

Legal advice noted that:

“Essentially, the DLC needs to be satisfied that the “need for a special licence could not reasonably have been foreseen earlier” and would need to consider the reasons behind the issues with the late filing, and that this could not have been foreseen earlier.

Key points of consideration:

- Fuzen Entertainment did provide an explanation for why the application was filed late.
- This event has been widely advertised; Fuzen Entertainment as an experienced operator of commercial events should be very aware of their statutory responsibilities, especially the need to ensure that any application for a Special Licence is filed on time.
- Precedent - the DLC has granted two previous late applications. These decisions do not set a precedent for granting of future late applications. Each application has to be considered on its individual merits.
- Not granting of a Special Licence does not mean the event has to be cancelled it can proceed as planned but with the absence of the provision and sale of alcohol.

Public Hearing

Legal advice reminded the DLC that if the Committee were of a mind to hold a public hearing, then under section 202(4) of the Act the DLC must give at least 10 working days' notice of the public hearing to the applicant, each objector and the constable, inspector and Medical Officer.

Key points of consideration:

- Giving notice of a public hearing would not meet the requirements of section 202(4).
- If the requirements of section 202(4) are not met it could give rise to potential issues of procedural propriety and natural justice and could give rise to an appeal to the Alcohol Regulatory and Licensing Authority.

- Legal advice on an appeal indicated that:

“..if the rules of natural justice are contravened, with a high likelihood that any such appeal may be successful.”

- Any decision of DLC could be appealed to the Alcohol Regulatory and Licensing Authority.
- Legal advice also indicated that:

“The DLC can regulate its procedure “in such manner as it thinks fit” (s 203(9)), but this is subject to the provisions of the Act and is probably not meant to override the plain words of s 202(4).”

Decision of the DLC

The DLC resolved:

- The explanation provided by Fuzen Entertainment does not satisfy the requirements of section 137(2) of Sale and Supply of Alcohol Act 2012. The event has been widely advertised; Fuzen Entertainment, as an experienced operator of commercial events, should be very aware of their statutory responsibilities, especially the need to ensure that any application for a Special Licence is filed on time.
- If the DLC has resolved to proceed with a public hearing the requirements of section 202(4) of the Act could not be met. Members of the public and stakeholders would have insufficient time to formally consider the application. Giving rise to potential issues of procedural propriety and natural justice.
- Any decision of the DLC is subject to appeal to the Alcohol Regulatory and Licensing Authority; in the event of an appeal the granting of the Special Licence would be effectively be placed on hold pending the hearing of the appeal.
- Not granting of a Special Licence does not mean the event has to be cancelled it can proceed as planned but with the absence of the provision and sale of alcohol.

Mark C Farnsworth
Kaipara District Council – District Licence Chair

DATED at **Mangawhai** this 5th day of February 2020



Mark Farnsworth MNZM
Chair
Kaipara District Licensing Committee

Advisory note:

Section 154 of the Act allows for any party to proceedings before a licensing committee who is dissatisfied with the decision or any part of the decision to appeal to the licensing authority (ARLA) against the decision or any part of the decision.

You have 10 working days after the date on which notice of the decision is given to you to lodge the appeal. It is suggested you seek independent advice before doing so.