

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **FRESH
ETTZ LIMITED trading as
RAEWARD FRESH
QUEENSTOWN** pursuant to
s.103 of the Act for a renewal
off-licence.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr PM Jones
Members: Mr LA Cocks
Mr JM Mann

HEARING at QUEENSTOWN on 9th September 2024

APPEARANCES

Mr J Ettema – Representing Raeward Fresh Queenstown – applicant
Ms KE Burns – Queenstown Lakes District Council (QLDC) Licensing Inspector – to assist
Ms AE Smyth – Medical Officer of Health – in opposition
Sergeant SJ Matheson – NZ Police – in opposition

DECISION OF THE COMMITTEE

Introduction.

1. Before the Committee is an application by Fresh Ettz Limited trading as Raeward Fresh Queenstown (the applicant) for a renewal of an off-licence in respect of premises situated at 53 Robins Road, Queenstown. The application was received by the Queenstown Lakes District Licensing Agency (the Agency) on the 23rd August 2023. The applicant expressed a desire to reduce the single alcohol area (SAA) within the premises which resulted from a plan to increase the area dedicated to the more profitable deli and take-home meal offerings.
2. The applicant operates the premises pursuant to a 'Grocery Store' style licence with a 'Medium' risk rating. The applicant seeks a continuation of the existing hours for the off-licence of Monday to Sunday from 8:00am to 6:30pm.
3. The applicant company has two directors and shareholders as follows:

- a. Jessica Gail Ettema 50% share allocation
 - b. Jonathan Ettema 50% share allocation
4. The applicants have held an off-licence for the business since the 28th September 2022 although the premises have operated in a similar fashion for approximately 20 years under other owners, trading as Raeward Fresh and previously The Mediterranean Mart.
 5. The applicant came to the notice of the alcohol licensing inspectors in August 2023 as there had been changes to the approved SAA which were not authorised. The inspector who noted the breach emailed the applicant on the 17th August 2023, and requested the applicant revert the SAA to the DLC approved SAA. The applicant complied.
 6. Excluding this incident the applicant has not come to the notice of the agencies and it is noted that there has been a willingness to engage with the agencies.
 7. In the current renewal the applicant has requested a reduction of the SAA within the premises. Under s.112(3) of the Sale and Supply of Alcohol Act 2012 (the Act) the applicant is permitted to seek changes to any single-area condition at the time of renewal.
 8. The applicant has proposed replacing a display fridge which currently houses chilled white wine with a smaller display fridge. This would result in a reduced area within the SAA, and a corresponding reduction in the range of chilled white wines.
 9. Detailed floor plans indicating the location of the SAA and other shelving and display areas were provided with the application.
 10. The premises are located in the 'Business Mixed Use' zone. It is surrounded by other commercial businesses, a holiday park and residential dwellings. There are no licensed premises within 50 metres of the premises.
 11. The initial application was sent to the agencies on the 30th August 2023. Ms Bekhuis-Pay, representing the Medical Officer of Health confirmed there was no opposition, and a late report from Police also advised they had no opposition to the application.
 12. During a premises inspection in May 2024 the applicant advised they were now seeking to reduce the SAA area. This was followed by a revised floor plan being presented to the Licensing Inspector on the 7 June 2024. The application was publicly notified for a second time reflecting the changes to the SAA.
 13. Both the Medical Officer of Health and Police advised their opposition to the application at this stage, citing concerns formed during a site visit over a section of the outward facing wine shelving which they believed to be visible on entry to the store, and as a result in breach of Section 112 of the Act. It is noted that this section of the display area was not affected by the changes the applicant was seeking to the existing SAA.
 14. There were no public objections received.

The Applicant

15. Mr Ettema highlighted the outward facing shelf containing the red wine display had been in place without issue for a lengthy period, potentially over 20 years. He noted that his renewal had been unopposed, and it was only when he sought to reduce the existing SAA that the Police and Medical Officer of Health's objections were raised.

16. He also stated that alcohol sales made up only a small percentage of the business, namely 4.61% for the 12 months ending on 9th July 2023, but they still wished to have the ability to offer it as an option to customers. The relatively small total that alcohol added to the annual turnover explained the desire to reduce the existing SAA by removing the existing chilled white wine display fridge and replacing it with a smaller unit.
17. He also stated that he had suggested an alternative to the agencies where stock from the outward facing end of aisle red wine display that was causing the concern was swapped with a nearby shelf from outside the SAA which held drinks such as soda water, tonic and one litre packs of juice however this was rejected as the suggested shelf was outside of the SAA and drinks other than alcohol could not be displayed in the SAA area.
18. In response to a question from the Committee the applicant stated that he would agree to swapping the end of aisle red wine area with the tonic, soda water and juice area, and having the SAA amended accordingly.

The Police

19. Sergeant Matheson submitted that Police did not oppose the application for the renewal of the off-licence, and also had no objection to the reduction of the area of chilled white wine shelving, but as the result of a site visit he believed the end of aisle shelving containing red wine was visible upon entrance to the store, and also through the windows bordering the carpark. He contended that as a result the SAA within the store did not limit, so far as reasonably practicable, the exposure of shoppers to displays and promotions of alcohol.
20. In response to a question from the Committee Sergeant Matheson stated that his concerns would be allayed if the current end of aisle red wine was swapped with the tonic, soda water and fruit juice drinks, and the SAA was amended to remove the current end of aisle area and replaced with the shelving where the other non-alcoholic drinks were currently displayed.

The Medical Officer of Health

21. Ms Smyth submitted the Medical Officer of Health opposed the application on the grounds that the current proposed SAA did not limit the exposure of shoppers to displays, promotions and advertisements of alcohol so far as is reasonably practicable, specifically through the display of red wine held on the end of aisle display which she saw immediately on entry to the store. She also noted that this display was visible from the exterior of the store.
22. Ms Smyth did however see two positive aspects to the application, namely the reduction in the overall footprint of the SAA and the reduction in chilled 'ready to consume' products. She did not object to this aspect of the application.
23. In response to a question from the Committee Ms Smyth agreed that an amended SAA which swapped the end of aisle red wine display shelving with the tonic, soda water and fruit juice shelving area would be an appropriate response to resolve this matter as the red wine display would no longer be visible to customers on entry to the store. She highlighted that tonic, soda water and the non-chilled types of juice currently displayed in the shelving would be appropriate to display in the end of aisle shelving beside the

alcohol, however other drinks of a type which may attract younger customers would not be suitable.

The Inspector

24. Ms Burns provided a submission outlining the history of the application and relevant case law. She highlighted that the applicant sought to reduce the SAA through swapping a smaller fridge presently displaying deli items with a larger fridge which currently displayed chilled wines. The effect would be a reduction of the SAA through the use of the smaller fridge for the chilled wines.
25. She also outlined the basis of the objections, namely that a single shelf within the SAA displaying the red wine range faces outwards towards the main body of the store and the objectors submitted that this shelf can be seen from the principal entrance and from outside the store.

The Committee's Decision and Reasons

26. The Committee considered all the evidence and submissions presented at the hearing and is satisfied the application to reduce the size of the existing Single Alcohol Area through the reduction of the chilled wine display is appropriate.
27. The Committee also considered the proposal that the end of aisle red wine display which was of concern to the Police and The Medical Officer of Health be swapped with the proximate display of tonic and soda water and juices, with the Single Alcohol Area being amended accordingly.
28. As stated in *General Distributors Limited v Medical Officer of Health (Bay of Plenty)*:

“Should the two ends of aisles be removed from the SAA and be used to shelve and display other grocery items e.g. tonic and soda water, the SAA would comply with 112 and the MMoH opposition would be satisfied. We would then be in a position to describe the SAA.”

29. The Committee considered the proposal to swap the end of aisle red wine display with the tonic, soda water and juice shelving area is appropriate, and limits the exposure of shoppers to displays, promotions and advertisements of alcohol so far as is reasonably practicable.
30. Therefore the application to vary the Single Alcohol Area by reducing the chilled wine area and the removal of the existing end of aisle red wine display from the SAA and replacement with a red wine display area in the current soda, tonic water and juice display area as outlined in the attached floor plan (appendix A) is granted.
31. The application by Fresh Ezz Limited trading as Raeward Fresh Queenstown for the renewal of the off-licence is granted.
32. The current Single Alcohol Area will remain in its current form until the 18th September 2024, however the new Single Alcohol Area will be in force from the 19th September 2024.

DATED at Queenstown this 12th day of September 2024.



P.M. Jones
Commissioner
Queenstown Lakes District Licensing Committee

