

**IN THE MATTER**

of the Sale and Supply of Alcohol  
Act 2012

**AND**

**IN THE MATTER**

of applications by **RHYME AND  
REASON BREWER LIMITED**  
pursuant to ss.14,17, and 99 of  
the Act for on and off-licences to  
sell and supply alcohol in respect  
of premises situated 17 Gordon  
Road, Wanaka to be known as  
“Rhyme and Reason Brewery”.

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Mr L A Cocks  
Mr J M Mann

HEARING at Queenstown on 1<sup>st</sup> December 2016

**APPEARANCES:**

Mr N B Horn – representing the Applicant  
Sergeant T D Haggart – NZ Police – to assist  
Dr D W Bell – Medical Officer of Health – to assist  
Miss S H Swinney – Licensing Inspector – to assist  
Mr J R and Mrs A M Eckhold - objectors

**RESERVED DECISION OF THE COMMITTEE**

**Introduction.**

[1] These are two opposed applications by Rhyme and Reason Limited (the company), for an on and off-licence. The company was formed on 27<sup>th</sup> June 2016. The major shareholders and directors are Jessica Lorraine Herman and Simon John Ross. They share a passion for making craft beer and each of them has had considerable experience in the hospitality industry. Ms Herman has spent six years in Australia brewing professionally. Mr Ross owns a business known as MicroBrewTech and designs and manufactures beer bottling machines for small breweries.

[2] The company has managed to secure the lease of a large workshop in an Industrial zone at 17 Gordon Road on the outskirts of Wanaka. The proposal is to fit out the workshop and create a microbrewery with a small bar/service area. There is a compact courtyard area located off the bar area where customers can sit outside. The plan involves offering brewery tours and tastings as well as operating a small-sized tavern style bar with substantial food options. The off-licence is to enable sales of the range of craft beers over the counter for takeaway. At the time of the hearing,

the company was expecting to receive permission to install the brewing equipment, and build a small kitchen and bar.

[3] The company initially sought trading hours from 11.00am to midnight for the on-licence with minor variations for the outside area and the off-licence. Following receipt of public objections, meetings and discussions were held with the neighbours, and the company responded to their concerns by reducing the trading hours as follows:

Off-licence		Sunday to Thursday	11.00am to 10.30pm
		Friday to Saturday	11.00am to 11.00pm
On-licence	Inside	Sunday to Thursday	11.00am to 10.30pm
		Friday to Saturday	11.00am to 11.30pm
	Outside	Monday to Sunday	11.00am to 10.00pm

[4] There was no opposition to the applications from the Police, or the District Licensing Inspector or the Medical Officer of Health. Public notification of the application attracted two objections. One was from a business (Castor & Pollux Limited) which owned the two next door units at 21 Gordon Street. Apparently they are used partially for residential purposes. Their concerns related to the trading hours and potential street cleanliness.

[5] The Inspector pointed out that under the terms of the resource consent for the development of 21 Gordon Road, owners or occupiers of these properties were unable to object to any complying activity undertaken in the industrial zone. At any event the company did not appear at the hearing, and in accordance with local policy, the objection is discounted, particularly as the objector did not attend either of the two meetings organised by the company.

[6] The second objection was from Mr J R and Mrs A M Eckhold. Mr and Mrs Eckhold reside in Queenstown but own a large industrial property over the road from the proposed brewery. In their objection, they stated that they believed that the operation of the licence would cause considerable problems for their tenants, which might result in the tenant terminating the leases or vacating the property.

[7] A meeting was facilitated by the Inspector between the applicant and the objectors. This took place on 2<sup>nd</sup> November 2016. Mr Eckhold explained that he had no problem with the brewery but was concerned about what the tavern could develop into. At the end of the meeting Mr Eckhold advised that he would speak with his tenant and advise whether he intended to continue with his objection. He subsequently advised that he intended to proceed.

[8] Because of the public objection the matters had to be determined at a public hearing (s.202 of the Act).

### **The Application.**

[9] It is not every day that we receive such a well-researched and presented licence application. First, the company employed a Licensing Consultant to assist with the process. Included with the documents was a written Host Responsibility Policy as well as an Alcohol Management Plan. The latter document was supplemented by 'House Rulz' aimed at providing employees with a safe, happy and

healthy environment. The staff training manual gives an informative introduction as to how the two partners came to develop their plans for a 'venue for conversation'. In addition we have read the CPTED report (Crime Prevention Through Environmental Design) with its associated Noise Management Plan.

[10] The company commissioned a Fire Safety Report. The proposed occupancy number is 80 including staff although the building has a capacity for 100 people. Letters in support of the proposal from various members and businesses in the community including neighbours were filed with the application and presented at the hearing. Finally, the company provided information regarding its market profile, its business strategy as well as financial details such as cash flow examples. As the Inspector reported "It is rare that an application of this calibre is received and has made processing the applications relatively easy."

[11] When she gave evidence at the hearing Ms Herman noted that the tenant across the road had taken steps to withdraw his objection (even though he had not personally lodged one), and two days prior to the hearing the same person had helped them move the new cool room into place using his time and equipment as a neighbourly favour. She noted that the on-licence will be one of the closest bars to the Police Station as well as one of the smallest in the district.

[12] Mr Horn noted that the shareholders had spent a considerable amount of time and money in establishing their business and clearly it was in their best interests to be a good neighbour and manage the licensed premises in a responsible way.

### **The Licensing Inspector**

[13] In addition to her very full report, the Inspector gave evidence and presented a final submission. She noted that the company had not contacted the neighbours initially as it was assumed that the proposed business would not generate any concern. Once they discovered that there were objections, they had been pro-active in meeting with the objectors and holding two "open days" for neighbouring tenants and businesses. She had no concerns with either applications and did not consider that 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 licences.

### **The Objector.**

[14] Mr John Eckhold gave evidence and expanded on his objection. There are two businesses that occupy the property over the road and both operate heavy road working machinery. He considered that there would be a major risk of accident from intoxicated people coming from the brewery and wandering into the path of the large vehicles. On the other hand he was apparently unaware that the street has a footpath as well as lighting. Secondly Mr Eckhold said that he and his wife were concerned about the increased probability of intoxicated people entering their property and tampering with the machinery, and even taking the heavy road vehicles for "joy rides".

[15] Thirdly, Mr Eckhold stated that he was concerned about the increased probability that customers of the "Tavern" would illegally park on the street or affect the flow of traffic in and out of their land. Fourthly he expressed concerns about the increased probability of litter and broken bottles in the area. Finally, Mr Eckhold expressed concern for the safety and wellbeing of the staff and customers of the

“Tavern” brought about by the likely lack of any Police or taxi presence, and the likelihood of outbreaks of violence. He seemed somewhat surprised to hear that the company intended to install CCTV coverage as well as security lighting.

### **The Committee’s Decision and Reasons.**

[16] What must be stressed in this case is that we are dealing with a new Act which came into force (with some exceptions) on 18<sup>th</sup> December 2012. Pursuant to s.3 of the Act one of the purposes is to put in place a new system of control over the sale and supply of alcohol, with the characteristic that it is **reasonable**. The emphasis is ours. If the system becomes unreasonable, then the objective of the Act cannot be achieved.

[17] The criteria to which we must have regard when considering applications for on and off-licences are restricted to the matters set out in s.105(1) of the Act. The criteria are:

- (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*

[18] Given the content of the objection the only criteria, which could be regarded as relevant to this application, is whether in our 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 licences. Much of the evidence from Mr Eckhold was based on his expectation of intoxicated patrons creating a nuisance either on the road or on his property. Such speculative assessments also reflect directly on the suitability of the

applicant company. Given the Inspector's report that the company is suitable, and the lack of any Police opposition, it would be quite unreasonable in our view to refuse a licence based on Mr Eckhold's belief of what might happen. We are satisfied that the company, and its directors and employees, will obey the law. And we have no doubt that the company is suitable to hold a licence. There is a minor issue about managers which we are confident will be resolved by the time the licences are issued.

[19] Mr Eckhold did himself no favours with his comment "I fully acknowledge we are wasting our time" when he gave evidence. He has very little knowledge of the Sale and Supply of Alcohol Act 2012 and a jaundiced view of the way that alcohol is sold and supplied in this country.

[20] Given the Inspector's opinion about the amenity and good order of the locality, and given the reports such as CPTED, Fire, Risk Management, Alcohol Management, Host Responsibility, and Staff Training, and given the experience of the company directors in the hospitality industry we would be surprised if the conditions of the licence were ever compromised or breached. Good licensees are well aware that a licence is a privilege carrying responsibilities to the community as well as patrons.

[21] There is no doubt that under the new Act it is more difficult to obtain a licence. On the other hand some of the comments from cases decided under the old Act are still pertinent particularly in a case like this. For example, in **Cayman Holdings Limited** LLA PH 145/2001 the Authority stated:

*"The Authority's approach has been to satisfy itself that the applicant is suitable and will uphold the law. The Police or District Licensing Agency Inspector are empowered to apply to vary, suspend or cancel a licence pursuant to s.132 of the Act if problems arise. Apprehension of problems alone is not sufficient to prevent a suitable applicant, particularly one supported by a District Licensing Inspector and the Police from exercising rights granted by the District Council."*

[22] The objector is reminded that licences are granted in the first instance for twelve months. If renewal is sought, then his concerns can be re-examined in the light of evidence then available. In this way the company has a clear incentive to ensure that it complies with the Act, and its Host Responsibility Policy.

[23] For these reasons we are satisfied as to the matters to which we must have regard as set out in s.105 of the Act. We grant the company on and off-licences for the sale of alcohol in accordance with the Act. The interior of the premises will be designated as supervised. The trading hours will be as set out in paragraph [3] above. The grant of the licences is subject to a code compliance certificate being received following completion of the building work.

**DATED** at QUEENSTOWN this 12<sup>th</sup> day of December 2016



Mr E W Unwin  
Chairman