

Application	SP1242
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by Waitete Rugby Football Club Incorporated for a special licence pursuant to section 138 of the Act

HEARING at the Otorohanga District Council Chamber 9 November 2017

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Ms S Brown
 Members: Mrs J McFarlane, Mr J Gower

APPEARANCES

Mr N Macrae – Club Secretary and Manager, Waitete Rugby Football Club Inc - Applicant
 Mr N Norris - Licensing Inspector
 Miss N Petersen - Medical Officer of Health
 Sergeant Lindstrom - Police

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

The application for a special licence is declined.

REASONS

1. This application for a special licence by Waitete Rugby Football Club was filed on 20 October 2017, more than 20 working days prior to the event as required by section 137 of the Act. The application relates to two events; the Hillview Wild Foods Festival planned for Saturday 25 November, from 7.00pm to 12.30am and the Macrae Family Reunion planned for 3 and 4 February 2018, from 6.00pm to 12.30am each day.
2. The application is not opposed by the Licensing Inspector, Police or Medical Officer of Health. However, the Licensing Inspector explained in his report that it has come to his attention that the club has been holding events advertised to the public and attended by non-members of the club, without applying for a special licence for more than three years. It is the view of the licensing committee that this raises serious concerns regarding the suitability of the club to hold a club licence and a special licence. Therefore, the application was set down to be heard at a public hearing by the licensing committee pursuant to section 202(1) Sale and Supply of Alcohol Act 2012.
3. The licensing committee conducted a site visit prior to the hearing and notes that the club rooms are clean, tidy and well presented.

4. The purpose of the Sale and Supply of Alcohol Act 2012 (the Act) is to put in place a new system of control over the sale and supply of alcohol (s 3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4).
5. In deciding whether to grant a special licence, the District Licensing Committee must have regard to the criteria in s 142 of the Act. Therefore, this committee must have regard to the following questions within the framework of the purpose and object of the Act:
 - a) What is the nature of the event? Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - b) Is the applicant suitable?
 - c) Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of the licence?
 - d) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - e) Is the design and layout of the premises suitable? Are any areas of the premises designated restricted or supervised areas?
 - f) Does the applicant have appropriate systems, staff and training to comply with the law? What steps will the applicant take to ensure that alcohol is not sold to prohibited persons?
 - g) What proposals does the applicant have in relation to the sale and supply of non-alcoholic drinks and food, low-alcohol drinks and the provision of help with or information about alternative forms of transport from the premises?
 - h) Have the Inspector, Police and Medical Officer of Health raised any relevant considerations?
 - i) Does the application comply with the Waitomo District Local Alcohol Policy?
6. The licensing committee may refuse a special licence even if there is no objection to the application (s 144). Sections 146 – 149 of the Act outline the compulsory and discretionary conditions for a special licence.
7. The main issue of concern from the criteria listed above relates to whether Waitete Rugby Football Club has appropriate staff, systems and training in place to ensure compliance with the Act and whether the club is a suitable entity to hold a special licence.

Does Waitete Rugby Football Club Incorporated have appropriate staff, systems and training in place to ensure compliance with the Act and is the club a suitable entity to hold a special licence.

8. The Licensing Inspector explained in his report that this is the first special licence application received by Waitete Rugby Football Club since 30 January 2014. When the Licensing Inspector checked the club's Facebook page he found a number of examples of events held at the club advertised to the public. These included; the Waitete RFC Quiz Night on 26 October 2016, the 2017 North Island Speedshear Champs held on 13 January 2017, the Hawaiian Luau on 11 March 2017 and the wake for the funeral of Sir Colin Meads. Other events including Social Touch and the Melbourne Cup were also advertised to the public in the Waitomo News. The licensing committee notes that some of these events were quite large and would have required careful management. Because a special licence application was not submitted, the reporting agencies did not have the opportunity to assess the staff, systems and training in place to ensure compliance with the Act.
9. Mr Macrae is employed to manage the club and holds a manager's certificate. Mr Macrae states that he 'pleads ignorance' and was a bit vague about what was required. On the other

hand, he explained that he thought the club could run functions for club members without applying for anything. He says that he has attended lots of seminars about liquor licensing things and understood it is ok. Mr Macrae says he was very busy the week of the funeral and was just carrying out Sir Colin Meads wish to have the wake at the club. Mr Macrae stated that he is still learning the rules around licensed premises and invited guests. His role is a combination of all roles at the club except coaching. There has not been a focus in the club regarding special licences.

10. It is disappointing that Mr Macrae was not supported at the hearing by the Club President, or any other committee members. The whole club committee is responsible for ensuring that the club complies with their licence and not just Mr Macrae. We have no doubt that Mr Macrae has been very hard working and dedicated to doing his best for a club that is clearly well looked after.
11. However, holding a club licence is a privilege and taking a relaxed approach or turning a blind eye to the licence conditions puts the club in danger of losing the club licence or the ability to host special events. As stated above, the licensing committee considers that the Waitete Rugby Football Club has repeatedly breached the conditions of their licence over the past three years and 10 months. This is because the events advertised were clearly for members of the public and not only club members. The club licence clearly states:

Waitete Rugby Football Club Incorporated is authorised to sell and supply alcohol, on the premises situated at Waitete Road, Te Kuiti and known as Waitete Rugby Football Club for consumption on the premises, to any person who -

- is a member of the club; or
- is on the premises at the invitation of, and accompanied by, a member of the club; or
- is a member of some other club with which the club has an arrangement for reciprocal visiting rights for members

12. A club is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or is a body corporate whose object is not for gain; or holds a permanent club charter (section 2).
13. A club licence is one of four licences that can be granted under the Act. A club is prohibited by section 29(1) from holding an on-licence. In other words, it may not sell to members of the public. In a recent decision (*Sheehan v Mortensen [2015] NZARLA 554*) regarding an application for the suspension of a club licence and a manager's certificate, the Licensing Authority, confirmed the approach taken in the *Taradale Club Incorporated* decision under the 1989 Act and observed that:

It seems to us that a club has more privileges under the Act than holders of other licences. ...In exchange for these privileges our expectations are that the clubs will apply the Act scrupulously.

14. The club has the onus of proving, on the balance of probabilities, that it is a suitable entity to hold a special licence. This essentially means that the club must demonstrate that the club committee, is a responsible body, with all of the necessary systems and staff in place to comply with the Act at all times.
15. When the licensing committee questioned Mr Macrae about who is permitted to attend the club, he wasn't sure, and eventually stated that it would be any rugby club in New Zealand. Section 214 of the Act states that a manager on duty on any licensed premises is responsible for "the compliance with and enforcement of" the provisions of the Act and the conditions

of the licence in force for the premises. It is clear that Mr Macrae, does not understand the conditions of the licence and is not familiar with the rules of the club. Therefore, he has breached his obligations under section 214, by permitting the sale of alcohol to take place to members of the public.

16. Further, we do not find the explanation given by Mr Macrae, that he was ignorant of the rules, to be credible. The Licensing Inspector provided a copy of a letter sent to the club on 15 March 2016, entitled “**When and How to Apply for a Special Licence**” which states:

It has come to the attention of the Waitomo District Licensing Committee that some club owners might not be aware that they have to apply for special licences. This letter serves to inform you when special licences are required and provides information on the procedure to follow to apply.

When is a special licence needed?

A special licence is required if alcohol is sold or supplied to any people attending any “particular occasion or event of series of occasion or events. It is required at any function where

- no club licence exists
- the caterer does not have an endorsed off-licence
- the function is outside the hours or area authorised on an existing club licence

17. The letter went on to provide a link to the special licence application forms. Unfortunately, the club made no effort to contact the Licensing Inspector to clarify when they should apply for a special licence.

18. Despite the fact that the club has an Alcohol Management Plan, the licensing committee is not persuaded that the club has robust systems in place to confirm club membership and ensure that alcohol is only served to authorised customers. The club did not provide evidence regarding the club constitution, the club rules, the club membership list or the methods for signing in authorised members and their guests and authorised visitors. Mr Macrae was unable to clearly explain who members of other clubs with reciprocal visiting rights were for members. The Alcohol Management Plan is general in nature and includes ‘ideas’ such as CCTV cameras that have not been carried out.

19. Section 21 of the Act states that “on the premises a club licence is held for, the licensee can sell and supply alcohol to authorised customers (within the meaning of section 60(3), for consumption there”.

20. Section 60 of the Act states that:

(1) The holder of a club licence must ensure that no alcohol is sold or supplied to any person for consumption on the premises unless the person is—

(a) an authorised customer; or

(b) if the licence issued subject to a condition allowing alcohol to be sold or supplied to people of that kind, a person who is on the premises at the invitation of an authorised visitor who is also on the premises.

(3) In this section,—

authorised customer, in relation to premises a club licence is held for, means a person who—

(a) is a member of the club concerned; or

(b) is on the premises at the invitation of, and is accompanied by, a member of the club concerned; or

(c) is an authorised visitor

authorised visitor, in relation to premises a club licence is held for, means a member of some other club with which the club concerned has an arrangement for reciprocal visiting rights for members

member, in relation to a club, means a person who—

(a) has expressly agreed in writing to comply with the club's rules; and

(b) is recognised as a member of the club by those rules.

21. The licensing committee is of the view that the club lacks the necessary organisation by people in positions of responsibility to ensure compliance with the Act and has shown a complete disregard for the law. Therefore, the club is not a suitable entity, at this time, to hold a special licence. There is insufficient evidence to prove that the club has the necessary staff, systems, and training in place to be given the privilege of holding a special licence and to scrupulously adhere to all requirements of the Act.
22. The licensing committee would be prepared to consider an application for a special licence in the future and would expect to see evidence of training provided to all club committee members and bar staff, regarding compliance with the Sale and Supply of Alcohol Act. The training materials would need to cover who is an authorised customer of the club, and when the club must apply for a special licence. In order to be satisfied that the club has robust systems in place to comply with section 60, the licensing committee would expect to see the club rules and evidence of appropriate membership. This would need to include documentation showing that each member has agreed in writing to the club's rules and is recognised as a member of the club by those rules.
23. We would also recommend that signage is installed around the perimeter of the licensed area, to tell authorised customers where the licensed area ends.

Conclusion

24. Given the lack of organisation and lack of understanding about the requirements of the Act, there is the potential for alcohol related harm to occur. Therefore, the application for a special licence is declined.
25. The licensing committee understands that there is an event scheduled for next weekend. Unfortunately, this event will need to be hosted elsewhere.

Dated this 16th day of November 2017



Sara Brown
Commissioner
Waitomo District Licensing Committee