

WAITOMO DISTRICT LICENCING COMMITTEE

IN THE MATTER of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER of an application by Waitomo Caves
Store Limited for an On License
under s99 of the Act

BEFORE THE WAITOMO DISTRICT LICENCING COMMITTEE

CHAIRPERSON:

Diane Sharpe

MEMBERS:

Guy Whitaker

Michael Cameron

MEETING AT:

Waitomo District Council Chambers Queen Street, Te Kuiti

ON THIS:

23rd day of February 2015

APPEARANCES:

Lindsay Norris

Licensing Inspector

John Anderson

Applicant

Rebecca Warbrooke

For the applicant

Nicola Anderson

For the applicant

Guy Pilgrim (Pilgrim Limited)

For the applicant

Patrick Tarrant

For the applicant

Colin Beeston

Objector

Bruce Tobeck

Objector

John Ash

Observer

IN ATTENDANCE:

Ross Henderson

Medical Officer of Health

Karl Tutty

Waipa District Council (secretariat support)

Helen Roberts

WDC Administrative support

Elsa du Toit

Waitomo District Licensing Committee Secretary

THE APPLICATION

1. Application for on license was received by the Waitomo District Licensing Committee on 11 November 2014 pursuant to section 99 of the Sale and Supply of Alcohol Act 2012.
2. The general nature of the premises is to be a café / restaurant.
3. The reporting Licensing Inspector details that the application was complete, with confirmation that the proposal complies with all planning and building requirements.
4. A number of public objections were received in respect to this on license application.

THE APPLICANT

5. The applicant is a newly incorporated company with no relevant history.

6. The applicant has therefore not previously held a license. The premises have been operating under a temporary authority since 2 October 2014, which was renewed from 2 January 2015.
7. The applicant is a family run business and the appointed café manager is an experienced certified manager.
 - a. The company directors: John Burns Anderson and Nicola Jane Anderson
 - b. Shareholders: John Burns Anderson
Pilgrim Limited
Rebecca Ann Warbrooke
Helen Noeline Fortescue
Hadyn Martin Fraser
Nicola Jane Anderson
8. The applicant directors and café manager have been fully cooperative with the licensing inspector.

OBJECTORS

9. The application attracted a total of three objections. Two of the objectors were present at the hearing.
10. The objection from Nick Andreef mentioned a concern with the hours during which the applicant proposes to serve alcohol, possible noise, promotion of excessive drinking and the number of licenses of the kind already in the locality.
11. Bruce and Julie Tobeck are concerned about the suitability of the applicant and the promotion of excessive drinking as well as the days and hours during which the applicant proposes to serve alcohol. They are also concerned with current and future noise levels reducing the amenity and good order of the locality.
12. Janet and Colin Beeston share the same concerns as Mr and Mrs Tobeck and are also concerned about the number of premises in the locality for which licenses of the kind are already held.

STATUS OF OBJECTORS

13. Section 102 of the Sale and Supply of Alcohol Act 2012 specifies the requirements for a person or objection to have status under the Act as:
 - a. *A person may object to the grant of a license only if he or she has a greater interest in the application for it than the public generally;*
 - b. *An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application;*
 - c. *No objection may be made in relation to a matter other than a matter specified in section 105;*
 - d. *An objection may be made only in relation to the suitability of the applicant if –*
 - i. *The application relates to any premises for which a license is in force; and*
 - ii. *The application seeks conditions the same as applying to that license.*
 - e. *The secretary of the licensing committee concerned must give a copy of every objection to the applicant.*
14. The Committee is satisfied that all objectors meet the requirements of Section 102.

15. However, as one of the objectors, Mr Nick Andreef was not able to attend the proceedings his submission was accepted on the papers but no debate was allowed as it could not be substantiated through cross examination due to his absence. Equally, a response by the applicant to the objection by Mr Andreef was accepted on the papers without cross examination.
16. On balance, as the objections are all on very similar grounds, the Committee determined to consider them collectively.

REPORTING AGENCIES

17. The Police reported that they had no objections but that the hours sought are on the extreme range, with intention to close at 1.00am. The closure time is to prevent the requirement for special license applications.
18. The Medical Officer of Health was concerned about the tavern style operations and the potential for noise and suggested a compromise can be reached through the granting of a license until 10:00pm and the applicant obtaining a special license for functions, etc. Alternatively a curfew could be placed on the verandah part of the premises though this would not address the issue of the noisy customers slamming car doors, etc. A recommendation is made that conditions be placed on the license so that operation of the premises outside of the stated intention or the applicant's undertakings will constitute a breach of the license.
19. The Licensing Inspector raises no objection to the application, however, helpfully recommended conditions.

CRITERIA

20. Section 105 of the Act sets out criteria the licensing committee concerned must have regard to when considering an application for on-license:
 - a. *The object of the Act;*
 - b. *The suitability of the applicant;*
 - c. *Any relevant local alcohol Policy;*
 - d. *The day and hours sought;*
 - 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 services;*
 - 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 license;*
 - i. *Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issues of existing licenses that –*
 - i. *They would be unlikely to be reduced further (or would likely to be reduced further to only a minor extent) by the effects of the issues of the license; but*
 - ii. *It is nevertheless desirable not to issue any further licenses.*
 - 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 be made under section 103;*
 - l. *The authority of the license may have on the business conducted pursuant to any other license.*

DECISION AND REASONS

21. The need to consider the object of the Act is possibly the most important of the criteria.
 - a. *The object of the Act (Section 4) is:*
 - i. *The sale and consumption of alcohol should be undertaken safely and responsibly;*
 - ii. *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
 - b. *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
 - i. *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - ii. *Any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (i).*
22. The Committee is satisfied that the applicant is well equipped to ensure the sale of alcohol is undertaken safely and responsibly on the premises, and that harm from excessive or inappropriate consumption of alcohol will be minimised.
23. There is no evidence presented from the objectors or reporting agencies that the object of the Act will not be met by this application.
24. There is no objection from reporting agencies in respect to the applicant's suitability and those raised by the objectors were proved to be unfounded.
25. The Committee is satisfied as to the applicant's suitability to hold a license. In the past four months of operation only one complaint was received by the Applicant. This complaint has been addressed and an amicable solution was found.
26. The Local Alcohol Policy for Waitomo District is still provisional and cannot be formally considered. It is noted that a cap on the number of on-licenses is not proposed.
27. The Committee recognizes that the main concern from objectors is with noise from the outdoor area. The premises are not intended to be principally for the sale, supply or consumption of alcohol as referenced in section 255 of the Act, so use of the outdoor area cannot be restricted under the Act. Having a separate or reduced time for alcohol sale or supply in the outdoor area does not necessarily prevent use of the outdoor area and associated noise, as the outdoor area will still be available to non-drinking patrons.
28. The objectors were in agreement that the zoning of the area is commercial and therefore it is generally a noisy area. The applicant has indicated that his main intention is to serve families and the facility would be a restaurant / café rather than a bar / tavern and that the purpose of applying for a 1:00am licensed closing time was to enable functions to be held without the necessity of special license applications.
29. The applicant noted in evidence that only five functions had been held at the premises in the previous four months. The sole noise complaint to date was associated with one of these functions.
30. The Committee agreed that hours up to 11:00pm will strike a balance between the conditions originally proposed by the applicant and the objectors' concerns about late-night noise.

31. The Committee recommends that special licenses as suggested by the Medical Officer of Health be sought by the applicant for special functions where the function is expected to finish after 11:00pm.
32. The design and layout of the premises were viewed and the Committee was satisfied with those.
33. The District Licensing Committee accepted the evidence that the amenity of the area is already affected by alcohol sales, e.g. Curly's bar and Huhu. The granting of a license to Waitomo General Store with an 11:00pm closing time would therefore not affect the amenity and good order of the locality to more than a minor extent.
34. The Committee is satisfied with the systems, staff and training that the application has in place now that there are six certified managers.

CONCLUSION

35. Having regard to the matters specified by the Act, this application Waitomo Caves General Store for an On License under s99 of the Act is **granted**.
36. The License will be subject to the following conditions:
 - a. No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1:00pm on Anzac Day to any person who is not present on the premises to dine.
 - b. Alcohol may be sold under the license only on the following days and during the following hours: **Monday to Sunday 9:00am to 11:00pm**.
 - c. Food must be available for consumption on the premises as follows: A range of food choices must be readily available at all times that the premises are open. Menus must be visible and food should be actively promoted.
 - d. The licensee must have available for consumption on the premises, at all times when alcohol may be sold under the license, a reasonable range of non-alcoholic and low-alcohol beverages.
 - e. Drinking water must be freely available at the following places while the premises are open for business: **at the bar and on occupied tables**.
 - f. The licensee must take the following steps to ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed:
 - i. Display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons;
 - ii. Request evidence of age documents from any person appearing to be under the age of 25.
 - g. The licensee must take the following steps to ensure that the provisions of the Act relating to the management of the premises are observed:
 - i. All staff will be trained in their responsibilities under the Act;
 - ii. A sign shall be prominently displayed inside the premises, which identifies by name the manager on duty or of the person responsible for the management of the sale and supply of alcohol under the license.

- h. The licensee must ensure that signs are prominently displayed within the licensed premises at every point of sale detailing information regarding alternative forms of transport from the premises.
- i. Subject to section 154 of the Act, any party who was part of these proceedings and is dissatisfied with this decision may appeal to the Alcohol Regulatory and Licensing Authority.



Diane Sharpe
Chairperson
Waitomo District Licensing Committee