

<b>Application</b>	19/029/2019
<b><u>IN THE MATTER</u></b>	of the Sale and Supply of Alcohol Act 2012
<b><u>AND</u></b> <b><u>IN THE MATTER</u></b>	of an application by Piopio Cosmopolitan Club Incorporated for renewal of an off-licence in respect of the premises at 42 Moa Street, Piopio known as Piopio Cosmopolitan Club pursuant to section 127 of the Act

#### **DECISION OF THE DISTRICT LICENSING COMMITTEE**

1. Piopio Cosmopolitan Club Incorporated is authorised to sell and supply alcohol on the premises situated at 42 Moa Street, Piopio and known as Piopio Cosmopolitan Club for consumption off the premises to any authorised customer as described in the licence conditions.
2. The off-licence 019/OFF/002/2016 is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee.
3. The present conditions of the licence are replaced as follows:
  - a) Alcohol may only be sold and supplied to
    - (i) a member of the club,
    - (ii) any member of any other club where this club has an arrangement for reciprocal visiting rights,
    - (iii) a person who is invited and accompanied by the members listed in (i) or (ii) above.
  - b) The club must always have a secretary.
  - c) Within 10 working days of the appointment of a new secretary, the secretary of the licensing committee is to be told the name of the new secretary.
  - d) All proceeds from the sale of alcohol belong to the club.
  - e) Alcohol may be sold only on Monday to Sunday from 9.00 am to 10.00 pm.

- f) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.
- g) The entire premises is undesignated.
- h) The area where alcohol is to be sold is described in the plan date stamped as received by the District Licensing Committee on 15 May 2019.
- i) The holder of a manager's certificate or a properly notified manager shall be on duty and on the premises at all times alcohol is sold.
- j) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
- k) A Host Responsibility Policy must be maintained and displayed in a prominent place that can be seen by customers and the Licensee must ensure all staff and committee members receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
- l) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be appropriate signs detailing these restrictions at every point of sale.
- m) Drinking water must be freely available and displayed whenever alcohol is being supplied by way of complimentary tastings.
- n) The Licensee must ensure the following are displayed;
  - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
  - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
  - iii) A sign in a prominent place identifying the duty manager.

### **Reasons**

1. This is an application by Piopio Cosmopolitan Club Incorporated for renewal of an off-licence in respect of the premises situated at 42 Moa Street, Piopio known as Piopio Cosmopolitan Club. The club has held an off-licence since 3 April 1991, therefore it is permitted to continue holding an off-licence pursuant to section 28(4). The application was advertised, and no objections have been received from members of the public. The Liquor Licensing Inspector, Police and the Medical Officer of Health have provided reports and do not oppose the application. Accordingly, the matter is decided on the papers (s 134).

### **Late Application**

2. An application for the renewal of a licence must be made no later than 20 working days before the expiry of the licence. This application was filed on 19 March 2019 with the secretary of the District Licensing Committee, 11 working days before the expiry of the off-licence on 3 April 2019. Therefore, this application was filed late.
3. Piopio Cosmopolitan Club has requested that a waiver be granted from the requirement to file the application 20 working days before the expiry of the licence. The application states that the club usually receives notification that the licence is due for renewal but didn't get a reminder this year.

The fact that the off-licence expired in April this year was over looked.

4. Section 127(2)(b) Sale and Supply of Alcohol Act 2012 provides that a holder of a licence may apply to renew the licence by filing an application with the licensing committee “no later than 20 working days before the expiry of the licence, or by such later date (not being later than the expiry of the licence) as the licensing committee may allow”.
5. Section 208 provides that where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by the Act, the licensing committee or chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable.
6. Justice Heath in the High Court decision of *Sara v Johns* (HC) CIV-2008-404-7746 states that section 111 (the identical provision to s 208 under the Sale of Liquor Act 1989) cannot be used to “waive non-compliance with the need to file before expiry of the on-licence or off-licence, based on the principle that a specific provision will be given precedence over a general one”.
7. Justice Heath distinguishes between a provision in the Act that provides an express jurisdiction to extend time to do a particular act such as section 111 and a provision with no express jurisdiction to extend time such as section 123 (renewal of manager’s certificates). Heath J states that strict time limits are placed on applications for renewal of an off-licence “to prevent licenced premises from being operated illegally”.
8. Firstly, the renewal application was filed before the expiry date of the licence therefore a waiver can be considered. Secondly, I am satisfied that a genuine mistake was made, and the failure was not intentional. Thirdly, the impact of the failure is reasonably minor and will not have any impact on public participation in the process or the obligations of the reporting agencies. Therefore, a waiver is granted from the requirement to file the application more than 20 working days before the expiry of the licence and the renewal application is accepted as if it were filed on time. However, the club should ensure that it has appropriate systems in place to ensure that any future renewal applications are filed on time.

### **The Act**

9. The purpose of 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).
10. In deciding whether to renew an off-licence the licensing committee must have regard to sections 131 and 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
  - a) Is the applicant suitable?
  - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
  - c) Is the design and layout of the premise suitable?
  - d) 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?
  - e) Does the applicant have appropriate systems, staff and training to comply with the law?
  - f) Have the police, inspector and medical officer of health raised any relevant considerations?
  - g) Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?

- h) Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?
- i) Does the application comply with the Waitomo District Local Alcohol Policy (LAP)?

11. Section 132 provides that the licensing committee may vary or cancel any conditions applying to the licence before its renewal.

**Should the licence be renewed?**

- 12. The licensing committee is satisfied that Piopio Cosmopolitan Club is a suitable applicant to hold an off-licence. The club has demonstrated compliance with the Sale and Supply of Alcohol Act 2012. The premises has a suitable design and layout to meet the requirements of the Act. It is well appointed and able to be monitored effectively by the staff of the premises. Piopio Cosmopolitan Club has an appropriate Host Responsibility Policy and staff training programme and there are five Duty Managers employed to ensure compliance with the Act.
- 13. The existing licenced hours are Monday to Sunday from 9.00am to 11.00pm, however the LAP restricts an off-licence to a closing time of 10.00pm, therefore, the club has agreed to vary the trading hours to Monday to Sunday, from 9.00am to 10.00pm. The application now complies with the LAP. The licensing committee notes that the reduced hours were not advertised in the public notices, however a waiver is granted from having to re-advertise the reduced trading hours. There is no disadvantage to the general public from this mistake because the hours are reduced from the existing hours.
- 14. The licensing committee is satisfied that the renewal of the off-licence will not reduce the amenity and good order of the locality by more than a minor extent. Alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.
- 15. The conditions for this licence have been replaced to ensure that they are consistent with licences issued since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory obligations relating to clubs, the display of signage and the maintenance of a manager's register. In addition, the licensing committee does not consider that it is necessary to have conditions relating to advertising of alcohol on windows, prohibition of "single serves" and party pills, and packaging in sealed bags, therefore all of these conditions are removed.

**Conclusion**

16. Therefore, the application for the renewal of the off-licence is granted.

Dated this 31st day of May 2019



Sara Grayson  
Commissioner