

Application	19/016/2018
<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 Roselands Restaurant Farm and Garden (2011) Limited for the renewal of an on-licence pursuant to section 127 of the Act

HEARING at the Waitomo District Council on 24 August 2018 and 1 November 2019

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr J Gower and Ms T McIntyre

APPEARANCES

24 August 2019

Mr R Davies – Counsel, Roselands Restaurant Farm and Garden (2011) Limited
Mr B Whitehead – Director, Roselands Restaurant Farm and Garden (2011) Limited
Mr L Norris - Licensing Inspector

1 November 2019

Miss Kaur – Counsel, Roselands Restaurant Farm and Garden (2011) Limited
Mr B Whitehead – Director, Roselands Restaurant Farm and Garden (2011) Limited
Mr L Norris - Licensing Inspector

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The on-licence 19/ON/006/2018 in respect of the premises situated at 579 Fullerton Road, Waitomo and known as Roselands Restaurant Farm and Garden is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee.

2. The present conditions of the licence are replaced as follows:
- (a) Alcohol may be sold Monday to Sunday from 10.00am to 2.00am the following day.
 - (b) No alcohol may be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person who is not residing or lodging on the premises, or on the premises to dine.
 - (c) The area where alcohol is to be sold and consumed is described in the plan date stamped as received by the Waitomo District Licensing Committee on 1 November 2019 and no alcohol is to be taken out of this area.
 - (d) The entire licenced area is undesignated.
 - (e) A certificated duty manager or a properly notified manager must be on duty at each point of sale or supply of alcohol.
 - (f) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
 - (g) A Host Responsibility Policy must be maintained and displayed, and the licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
 - (h) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions.
 - (i) Drinking water must be freely available and this must be clear to customers, while the premises are open for the sale and supply of alcohol.
 - (j) Food must be available for consumption on the premises at all times when open for the sale of alcohol. A minimum of four types of light meals must be available (excluding nuts, chips and the like). Menus and the availability should be clear to customers and food should be actively promoted.
 - (k) A range of low-alcohol and non-alcoholic drinks must be available at all times when the premises are open for the sale of alcohol.

(l) A telephone must be freely available for patrons to call for transport assistance and if requested staff must help to make these arrangements. Telephone numbers for alternative forms of transport from the premises are to be displayed.

(m) 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 at each point of sale or supply.

REASONS

The application

1. This is an application by Roselands Restaurant Farm and Garden (2011) Limited (Roselands) for renewal of an on-licence in respect of the premises situated at 579 Fullerton Road, Waitomo and known as Roselands Restaurant Farm and Garden. The premises includes a restaurant, gift shop, conference and function centre, farm stay accommodation and a large area of gardens.

The reports

2. The application was advertised, and no public objections were received. The Medical Officer of Health provided a report and did not oppose the application. Police did not provide a report within the required 15 working day period, therefore it can be assumed did not oppose the application (section 103(4)). The Licensing Inspector opposed the application on a number of grounds:
 - a) Activities are carried out on the licensed premises that do not have resource consent.
 - b) A fire evacuation scheme has not been maintained.
 - c) Alcohol appeared to be sold when no duty manager was present.
 - d) There are concerns about amenity and good order in regard to noise complaints about clay bird shooting activities.
 - e) There are concerns about whether the company has adequate staff, systems and training to monitor the whole 6.2 hectare site.
3. Therefore, the application was set down to be heard at a public hearing pursuant to section 202(1) Sale and Supply of Alcohol Act 2012. The licensing committee conducted a site visit before the first hearing on 24 August 2019.

The Act

4. The object of the Sale and Supply of Alcohol Act 2012 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 (section 4).

5. In deciding whether to renew an on-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 premises 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?

Is the applicant suitable? Does the applicant have appropriate systems, staff and training to comply with the law? Will suitable measures will be taken to ensure that alcohol is sold and supplied responsibly, and that harm caused by inappropriate or excessive consumption of alcohol is minimised?

6. The Licensing Inspector has raised questions about the suitability of the company and the basis that company directors Benn Whitehead and Leonie Whitehead have not managed certain aspects of the business properly. Mr Norris alleged that Benn Whitehead and Leonie Whitehead have carried out certain activities at the premises without a resource consent. In addition, the Senior Fire Risk Management Officer wrote a letter dated 17 April 2018, opposing the application because a trial evacuation had not been held at the premises since 15 April 2015. Finally, when Mr Norris inspected the premises on 9 May 2018, the name of the duty manager displayed was Leonie Lamont, however no certified manager was on the premises and no signs were displayed to indicate that alcohol was not available.
7. In terms of staff, systems and training, Mr Norris highlighted the fact that there was no SCAB Intoxication Assessment Tool displayed, the Host Responsibility Tool displayed was different to the one in the application and there was no evidence of staff training having been conducted since the last renewal. Mr Norris also raised concerns about how the consumption of alcohol would be controlled in a such a large licensed area.
8. Counsel for Roselands, Mr Davies, explained that the company contracted a third party to provide fire compliance service and thought that the necessary information was being sent to the fire service. After becoming aware of the problem, a trial evacuation was conducted on 20 August 2018. Mr and Mrs Whitehead acknowledge that they are responsible for compliance with fire safety requirements and that all aspects of fire safety compliance are now up to date.
9. Mr Whitehead explained that the issue with no manager being present occurred because of a medical emergency with their child. Because of the emergency, Mrs Whitehead was not available as expected. Instead, she appointed a temporary manager who was on duty at the time of the Inspector's visit. This was notified to council the next day. However, the only

error was not displaying the temporary manager's name correctly.

10. In addition, at the second hearing, Mr and Mrs Whitehead presented a letter from Alex Bell, Senior Planner, Waitomo District Council, that confirms that the original on-licence application on 27 February 2013 was accompanied by a certificate pursuant to section 100(f) Sale and Supply of Alcohol Act 2012 dated 27 February 2013. This certificate confirmed that the restaurant and function centre complied with the Resource Management Act 1991 and the Building Code. Mr Bell noted that Mr and Mrs Whitehead have advised that clay bird target shooting was no longer being undertaken on site. Therefore, the current activities on site are restaurant, gift shop, sheep shearing experience, conference and function centre and farm stay accommodation. Mr Bell concluded that the section 100(f) certificate on 27 February 2013 confirmed that the restaurant, gift shop, sheep shearing experience and conference and function centre complied with the Operation District Plan.
11. The licensing committee has reached the conclusion that aspects of the management of the premises have been less than satisfactory, however there have been no instances of alcohol related harm arising from these management issues. After the first hearing, Mr and Mrs Whitehead provided further evidence that now satisfies the committee that a comprehensive staff training plan has been put into place, on-site signage has been updated and both Mr and Mrs Whitehead have completed refresher training.
12. The licensing committee accepts that all activities provided at the premises and included in the licensed area have appropriate resource consent.
13. Therefore, the licensing committee is satisfied that Roselands Restaurant Farm and Garden (2011) Limited is a suitable applicant to hold an on-licence and has suitable staff, systems and training in place to ensure compliance with the Act. The licensing committee is satisfied that suitable measures will be taken to ensure that alcohol is sold and supplied responsibly, and that harm caused by inappropriate or excessive consumption of alcohol is minimised.

**Are the days and hours during which the applicant proposes to sell alcohol reasonable?
Does the application comply with the Waitomo District Local Alcohol Policy?**

14. Roselands Restaurant Farm and Garden (2011) Limited proposes to continue operating as a hotel from 10.00am to 2.00am the following day, Monday to Sunday. The licensing committee is satisfied that these are appropriate hours of operation. The operation of the premises complies with the Waitomo District Local Alcohol Policy.

Is the design and layout of the premises suitable?

15. The licensing committee agreed with the concern raised by the Licensing Inspector that the licensed area was extremely large and therefore difficult to supervise. Mr and Mrs Whitehead have submitted an amended plan that now reduces the licensed area down to the restaurant and function centre, farm stay and various gardens that are mainly used for wedding ceremonies and the carpark area. The carpark is included because wedding parties often like to have a photo taken with the wedding car.
16. However, the carpark is also used for freedom camping campervans. This raises a concern for the licensing committee that people could take drinks back to their campervan and then potentially drink and drive, resulting in alcohol related harm. However, at the hearing on 1st November, Mr Whitehead gave an undertaking that campervan people who eat and drink at

the restaurant will not be allowed to take alcohol back to their campervans. This has always been the policy at Roselands and is monitored by staff when customers pay and leave the restaurant. Staff are trained to ensure that no one takes alcohol back to their campervans. Mr Whitehead will ensure that this issue is included as a specific topic in the staff training programme. At the next renewal the staff training records will confirm that this topic has been covered.

17. Therefore, the licensing committee accepts that the design and layout of the premises is now suitable. With appropriate staff training and monitoring by certificated duty manager's at each point of sale or supply, the sale of alcohol will be monitored within the large area, to ensure that no alcohol related harm occurs.

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? Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?

18. The Waitomo District Council received complaints from neighbours about noise from clay bird shooting on 14 August 2017 and 1 September 2017. However, Mr Whitehead stated that the clay bird shooting took place outside the licensed area and was a very infrequent activity. It is no longer taking place on site.
19. Given that there have been no further noise complaints in the past two years and there have been no public objections to the application, the licensing committee is satisfied that the renewal of the on-licence will not reduce the amenity and good order of the locality by more than a minor extent.
20. The licensing committee is satisfied that alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.

Conditions of the licence

21. As discussed at the hearing, 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 to display signage and the maintenance of a manager's register.
22. As discussed at the hearing, a new condition has been added as follows:

A certificated duty manager or a properly notified manager must be on duty at each point of sale or supply of alcohol.
23. This condition will ensure that when a function is taking place in the gardens away from the main restaurant, a duty manager will be present at the point of sale or supply of alcohol, such as a table supplying alcohol to a wedding party or wedding guests, as well as the main restaurant bar. Mr Whitehead consents to this condition being included as a condition.

Conclusion

24. Therefore, the application for the renewal of the on-licence is granted with new conditions.

Dated this 5th day of November 2019



Sara Grayson
Commissioner
Waitomo District Licensing Committee