

<b>Application</b>	19/026/2019
<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 Taharoa Tourism Limited for the renewal of an on-licence pursuant to section 127 of the Act

HEARING at the Waitomo District Council on 6 September and 31 October 2019

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson  
Members: Mr R Murphy, Mr R Johnson

APPEARANCES

6 September 2019

Miss S Serau – Manager - Taharoa Tourism Limited  
Miss R Hepi – Duty Manager - Taharoa Tourism Limited  
Mr L Norris - Licensing Inspector

31 October 2019

Mr B Coffey – General Manager – Taharoa Tourism Limited  
Miss J Tukana – Manager Waitomo Caves Hotel  
Mr L Norris – Licensing Inspector

**DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE**

1. The on-licence 19/026/2019 in respect of the premises situated at Hotel Access Road, Waitomo and known as Waitomo Caves Hotel 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 from 11.00am to 11.00pm Monday to Sunday.
  - (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 bar area is designated as a restricted area (no persons under 18 can be in the area) and the restaurant and outside terrace area is undesignated.
  - (e) The holder of a manager's certificate must be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the public of this fact.
  - (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.

## **REASONS**

### **The application**

1. This is an application by Taharoa Tourism Limited for renewal of an on-licence in respect of the premises situated at Hotel Access Road, Waitomo and known as Waitomo Caves Hotel. The premises is an established hotel with accommodation, a restaurant with an outdoor dining area, and a small bar. The restaurant and bar is mostly used by patrons residing at the hotel, but the premises is also used for a range of functions including weddings.
2. The application was filed on 18 March 2019, 15 working days before the expiry of the licence on 7 April 2019. An application for the renewal of a licence must be made no later than 20 working days before the expiry of the licence, therefore this application was filed late.
3. Taharoa Tourism Limited has requested that a waiver be granted from the requirement to file the application 20 working days before the expiry of the licence. Miss Tukana states that the application was filed late because the company was waiting for the payment to be made from head office in Wellington.
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. Firstly, the renewal application was filed before the expiry date of the licence therefore a waiver can be considered. Secondly, I am satisfied that 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.

### **The reports**

8. The application was advertised, and no public objections were received. Police and the Medical Officer of Health provided reports and do not oppose the application. The Licensing

Inspector opposes the application on the grounds that:

- a) There is no structured staff training on the Sale and Supply of Alcohol Act 2012 and no records of staff training conducted since the last renewal.
- b) A manager's register is not maintained.
- c) Certain other requirements of the Act and conditions of the licence have not been complied with.

9. 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 hearing on 6 September 2019.

### **The Act**

10. 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).
11. 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?**

12. The licensing committee is satisfied that Taharoa Tourism Limited is a suitable applicant to hold an on-licence. The company has held an on-licence for this hotel since 7 April 2015 and the reporting agencies are not aware of any non-compliance with the Sale and Supply of Alcohol Act 2012 since the licence was granted.

### **Are the days and hours during which the applicant proposes to sell alcohol reasonable?**

13. Taharoa Tourism Limited proposes to continue operating as a hotel from 11.00am to 11.00pm Monday to Sunday. The licensing committee is satisfied that these are appropriate hours of operation.

**Is the design and layout of the premises suitable?**

14. The licensing committee is satisfied that the premises has a suitable design and layout to meet the requirements of the Act. The licensed restaurant and bar area is reasonable small and easy to supervise. There is suitable signage advising that the bar area is a restricted area.

**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? Does the application comply with the Waitomo District Local Alcohol Policy?**

15. 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. There have been no reports of any nuisance or vandalism or noise problems associated with this premises in the past three years.
16. 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.
17. The licensing committee is satisfied that the application complies with the Waitomo District Local Alcohol Policy.

**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?**

18. Condition (g)(i) of the licence states "All staff will be trained in their responsibilities under the Act". However, the Licensing Inspector raised concerns that there was no structured staff training on the Sale and Supply of Alcohol Act 2012 and no records of staff training conducted since the last renewal. A manager's register was not maintained. Certain other requirements of the Act and conditions of the licence have not been complied with. At an inspection on 23 April 2019, the Licensing Inspector observed that the two Host Responsibility Policies displayed were not able to be seen easily by customers, the full name of the Duty Manager was not displayed, the only food advertised in the bar servery was nuts, there was no SCAB Intoxication Assessment Tool displayed for staff, there was only one low-alcohol option and there was no copy of the on-licence displayed at the principal entrance.
19. The licensing committee observed signage during the site visit that stated that the restaurant was a 'Supervised Area' and that this meant "Person/s under the age of 15 years MUST BE SUPERVISED AT ALL TIMES BY A PARENT/GUARDIAN". This clearly showed a misunderstanding of what a supervised designation means.
20. The duty managers who represented the company at the first hearing were a little unclear on the meaning of a supervised designation and how to use the SCAB Intoxication Assessment Tool. However, their ability to explain these concepts may have been affected by nerves and unfamiliarity with a formal hearing process.

21. However, the licensing committee is satisfied that the company now has a suitable staff training plan in place, conducts monthly staff training and maintains records of staff training conducted. Miss Tukana, the Manager of the Waitomo Hotel, conducts all staff training for the duty managers and bar staff. She demonstrated a good understanding of the SCAB Intoxication Assessment Tool and explained that patrons, especially those attending functions, are closely monitored to ensure they do not become intoxicated. The concerns raised by the Inspector have now been rectified. In particular appropriate signage, including a Host Responsibility Policy is now appropriately displayed. An up to date manager's certificate is now maintained.
22. 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.

### **Conditions of the licence**

23. 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. Unnecessary conditions such as the condition (i) which talks about Food Hygiene Regulations, have been removed. The new conditions include information about the statutory obligations to display signage and the maintenance of a manager's register.
24. Condition (h) states that the whole of a bar is a restricted area and the whole of the restaurant and outside terrace is a supervised area. As discussed at the hearing, the licensing committee considers that this is an overly restrictive designation for a low risk premises where dining is the primary activity and families with children are commonly present. Section 119 requires that when issuing an on-licence, a licensing committee must impose a condition designating at least part of the premises as an area to which minors must not be permitted unless accompanied by a parent or a guardian. The licensing committee considers that the small bar area should remain a restricted area, where minors are not permitted. There is no reason for minors to be in this area. However, the restaurant and outdoor dining area can become an undesignated area. The Licensing Inspector and applicant agree that this is more appropriate, given the low risk nature of the premises.

### **Conclusion**

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

Dated this 1st day of November 2019



Sara Grayson  
Commissioner  
Waitomo District Licensing Committee