

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

AND

IN THE MATTER of an application by Ngaruawahia Rugby League Football Club Incorporated for renewal of an on-licence pursuant to s.127 of the Act in respect of premises situated at 19A Whatawhata Avenue NGARUAWAHIA known as “Ngaruawahia Rugby League Football Club”.

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Commissioner: Dr Michael Cameron

DECISION

The application by Ngaruawahia Rugby League Football Club Incorporated for renewal and variation of a club licence in respect of premises situated at 19A Whatawhata Avenue NGARUAWAHIA, known as “Ngaruawahia Rugby League Football Club” is granted, subject to additional conditions.

[1] This is an application by Ngaruawahia Rugby League Football Club Incorporated for renewal and variation of a club licence in respect of premises situated at 19 A Whatawhata Avenue NGARUAWAHIA, known as “Ngaruawahia Rugby League Football Club”. The application for renewal was filed with the Waikato District Council on 30 July 2021. The application for variation of the conditions of the licence was filed with the Waikato District Council on 14 September 2022.

[2] The general nature of the business to be undertaken is that of a rugby league club. The premises has been licensed for a number of years.

[3] The application and variation were duly advertised in accordance with section 101. No objections were received to either the renewal or variation. Reports from the Police, Medical Officer of Health and an Inspector raise no matters in opposition to the application for renewal or the variation. However, while the Inspector did not oppose the granting of the renewal application, in his report on the renewal application dated 13 December 2021 he suggested additional conditions be added to the licence.

[4] The matter was set down for a hearing on 11 March 2022. The applicant submitted affidavits of Eugene Patterson (President of the club), and Christopher Paul Cummings (Secretary of the club), prior to the hearing date. In the affidavits, the club agreed to additional conditions on the licence,

and in subsequent discussions with the Inspector, the club agreed to submit a variation application to include the garden bar area within the licensed area. The hearing date was consequently cancelled.

[5] Accordingly, with no outstanding matters in opposition, the application is determined on the papers.

Reports of the Inspector:

[6] The Inspector prepared two reports, dated 13 December 2021 and 11 January 2023. The first report did not oppose the grant of the renewal, but made note of two significant noise complaints during the year prior to the report. The report also made note of the garden bar area at the premises, which did not appear to be within the licensed area.

[7] The second report also did not oppose the renewal or the variation to include the garden bar area, and recommended additional conditions in relation to a manager being on duty “when there are more than 50 patrons present and after 10pm”, as well as discretionary conditions in relation to noise, and restricting the use of the garden bar to the time before 10pm.

Affidavits of the Applicant:

[8] The affidavit of Eugene Patterson noted that the lack of licence for the garden bar area “must be an administrative oversight that occurred sometime in the past”, and that “The Club seeks that the garden area being included in its licence. It will assist in the safe and orderly functioning of the Clubrooms”.

[9] In his affidavit, Mr Patterson also accepted that “it is appropriate for the licence of the garden area to conclude at 10pm. This will limit the noise effect on the four properties within 100m of the Clubrooms”. He also noted that the Club “is in the process of employing a Club Manager who will be tasked with ensuring strict compliance with the alcohol licence”.

[10] The affidavit of Christopher Cummings also agreed that “It also appears appropriate that the licence to the garden area end at 10pm to limit the risk of disruption to the few neighbouring residential premises on the Uenuku St side of the Club premises”.

Further matters:

[11] Subsequent to the submission of the variation application, the Club (through its Secretary) agreed to conditions on the licence:

- (1) that the garden bar area is not to be used after 10pm on any night; and
- (2) that the Club will adhere to an approved Noise Management Plan at all times.

Criteria for determining the application:

[12] In deciding whether to issue an on-licence the committee must have regard to the matters detailed in s.131 of the Act. These are:

- (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1);

- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased by more than a minor extent, by the effects of a refusal to renew the licence;
- (c) any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health made by virtue of section 129;
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[13] The relevant matters in section 105(1) are:

- (a) the object of the Act;
- (b) the suitability of the applicant;
- (c) any relevant local alcohol policy;
- (d) the days on which and the hours during which the applicant proposes to sell alcohol;
- (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 goods;
- (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;
- ...
- (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 made under section 103.

[14] I am of the view that section 105(1) paragraphs (d), and (e), and section 131 paragraph (b) are most relevant when considering this application, along with the provisions of section 106. I have considered the other criteria in section 105(1), being paragraphs (a), (b), (c), (f), (g), and (j), and the other criterion in section 131, being paragraphs (a), (c), and (d), and I am satisfied in regard to those criteria. I note that the criterion in section 105(1)(k) does not apply, as the reporting agencies provided their reports as required under section 129.

Reasons and Decision:

S105(1)(d) and (e) Days and hours, and design and layout of the premises

[15] There was some confusion as to whether the garden bar areas was included within the licensed area. This confusion is now resolved, with the applicant having submitted a variation to the licence, to explicitly include the garden bar area within the licensed area of the premises. There were no objections to this variation from the public, and no opposition from the reporting agencies.

[16] However, the noise issues raised in the Inspector's first report seem to relate to the operation of the garden bar area, particularly late at night. To minimise disruptive noise emanating from the premises, the applicant has accepted an additional condition, limiting the use of the garden bar area to 10pm each night.

S131(b) and S106(1) Amenity and Good Order

[17] Section 106(2) of the Act outlines the matters that the Committee must have regard to, in relation to amenity and good order:

“In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

(a) current, and possible future, noise levels:

(b) current, and possible future, levels of nuisance and vandalism.”

[18] The club was the subject of two significant noise complaints in the year prior to the Inspector’s first report. This is of concern to the Committee. However, no public objections to the renewal or variation were received, and none of the reporting agencies specifically raised opposition to the renewal or the variation.

[19] The lack of public objections might lead me to conclude that there is a lack of community desire for change. However, the Authority noted in *Paihia Saltwater (2001) Limited* [2001] PH391/2001 that:

[27] It is our view that no-one should have to put up with persistent interference with their sleep patterns. We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or the Noise Abatement Officer. We have heard enough evidence to suggest that making such calls in the early hours of the morning is unpleasant and often unrewarding.

[20] The Authority’s decision suggests that the issue of noise extends beyond an assessment of the number of noise complaints. The seriousness of noise was highlighted in the Authority’s decision in *Paihia Saltwater*, at [28-29]:

[28] Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority’s duty to monitor the hours of opening, if not the existence of the licence.

[29] We have already heard from licence holders who have either installed air conditioning so they can keep doors and windows closed, or have employed security people to monitor outside noise, or they have installed automatic sound control systems. We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term ‘host responsibility’ does not exclude the people who live nearby.

[20] Thus, with the garden bar now explicitly included within the licensed area, it seems prudent to ensure that the noise emanating from the premises and disturbing residents at neighbouring properties, is limited as far as reasonably practicable.

[21] The applicant, through its President and Secretary, agreed to a condition limiting the use of the garden bar area to 10pm each night. However, that leaves the issue of noise prior to 10pm, or after 10pm but not from the garden bar area, unresolved. In such circumstances, adherence to a Noise Management Plan should help the licensee to ensure that unwelcome noise from the premises is limited.

[22] The applicant has agreed to a condition requiring that they adhere to an approved Noise Management Plan at all times. I consider that, in order to limit noise issues, the variation allowing the use of the garden bar area, should not come into force until an approved Noise Management plan is in place.

Section 105(1)(a) Object of the Act

[23] The Committee is required to undertake the evaluative exercise as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749. The steps in this exercise are outlined in paragraph [56] of *Vaudrey*:

“[56] So, in my view, the position can be summarised as follows:

- (a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.*
- (b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:*
 - (i) consider any objections made by persons who have a greater interest in the application than the public generally;*
 - (ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;*
 - (iii) have regard to the criteria stipulated in s 105 of the Act (for present purposes including the design and layout of the premises); and*
- (c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.*
- (d) It must impose the conditions required by s 116(2) and in the case of a supermarket or grocery store, the single area condition (which I discuss in more detail below).*
- (e) It may impose further conditions in accordance with ss 116(1) and 117 (which I discuss in more detail below).”*

[24] Having inquired into the application, and having received the reports of an Inspector and affidavits from the applicant, I have evaluated the application against the criteria in section 105 of the Act.

[25] I now turn my attention to cross-checking whether the application is capable of meeting the object of the Act. The object of the Act is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[26] Overall, and as outlined in paragraphs [12] to [25] above, I am satisfied that the application is capable of meeting the object of the Act, and that the licence can be renewed subject to conditions. In relation to the variation to the licence, to include the garden bar area within the licensed area, I am satisfied that the variation is capable of meeting the object of the Act, and that the variation can be come into force once a Noise Management Plan has been submitted to the Committee Secretary, and accepted by the District Licensing Committee.

Conclusion:

[27] I renew the licence for premises situated at 19A Whatawhata Avenue NGARUAWAHIA known as “Ngaruawahia Rugby League Football Club” until 31 July 2024, being three years from the most recent date of expiry, and authorise the issue of a notice of renewal and replacement licence.

[28] For clarity, alcohol may not be consumed in the garden bar area until a Noise Management Plan has been submitted to the Committee Secretary, and accepted by the District Licensing Committee.

Conditions

[28] Sections 110 and 111 of the Act detail compulsory and discretionary conditions that may be imposed on the licence. Section 133 also provides that particular conditions may be imposed if any relevant local alcohol policy is in force and that the renewal of the licence without those conditions would be inconsistent with the policy.

[29] Section 135 provides that, subject to section 133, the licence may be renewed on the conditions presently attaching to it or on any different conditions, relating to any matter, that the committee thinks fit.

The licence will be subject to the following conditions:

- (a) Alcohol may be sold under the licence only on the following days and during the following hours:
Wednesday 5.00 pm to 12.00 midnight
Friday, Saturday and Sunday 1.00 pm to 12.00 midnight
- (b) 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. A minimum of three types of food should be available. The range or style of food will be as shown on any menu submitted. Alternatively the range of food should include such items as paninis, pizzas, lasagna, toasted or fresh sandwiches, wedges, pies, filled rolls, and/or salads.
- (c) The licensee must have available for consumption on the premises, at all times when alcohol may be sold under the licence, a reasonable range of non-alcoholic and low-alcohol beverages.
- (d) Drinking water must be freely available at the following places while the premises are open for business:
At the bar
- (e) 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; and
 - (ii) Evidence of age documents will be requested from any person appearing to be under the age of 25.
- (f) 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; and
 - (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 licence.
 - (iii) A manager must be on duty at the following times when alcohol is being sold or supplied under the licence:
 - from 10.00pm

- when there are more than 50 patrons present
- (iv) The consumption of alcohol shall not be permitted in the garden bar area from 10.00 pm on any day when alcohol is being supplied under the licence.
- (v) An approved Noise Management Plan will be adhered to at all times.
- (g) The sale, supply and consumption of alcohol is authorised on the premises generally. The premises situated at 19A Whatawhata Ave, Ngaruawahia are more precisely identified in a plan date stamped as received by the Waikato District Licensing Committee on 30 July 2021.
- (h) The consumption of alcohol shall not be permitted in the garden bar area until an appropriate Noise Management Plan has been submitted to, and accepted by, the District Licensing Committee.

DATED at Ngaruawahia on 10 February 2023



Michael Cameron
Commissioner
Waikato District Licensing Committee