

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

AND

IN THE MATTER of an application by Robert
Kenneth Gamble for the renewal
of an on licence and off licence
pursuant to s.127 of the Act in
respect of premises situated at 2
The Crescent, Taupiri known as
Taupiri Tavern.

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Quorum: Chairperson Andrew Baker
Members: Patsi Davies
 Jason Howarth

HEARING at Ngaruawahia on 19 September 2023

APPEARANCES

Mr Robert Kenneth Gamble – applicant
Ms Sarah Rawcliffe – legal counsel for the applicant
Ms Anna Suckling – legal support for the applicant

REPORTING AGENCIES

Mrs Nicole Zeier – representing Medical Officer of Health
Ms Clare Sturzaker – Waikato District Council Licensing Inspector
Sgt Hayden Martin – NZ Police

DECISION OF THE WAIKATO DISTRICT LICENSING COMMITTEE

Introduction

[1] We have before us applications from Robert Kenneth Gamble for an on licence **and** an off licence for the premises situated at 2 The Crescent, Taupiri known as Taupiri Tavern.

[2] Having considered the objections from the Medical Officer of Health as the sole objector to both applications, the Committee determined that both applications will be dealt with together and not with two separate hearings. This was explained to those attending the hearing.

[3] Neither the Inspector nor Police opposed the application and there were no public objections.

Evidence of the Applicant

[4] Mr Gamble was sworn in and read his statement of evidence that had previously been circulated to all.

[5] As he read the statement, he added comments in regard to the following:

- (i) The TAB promotion poster that had covered the host responsibility notices as raised by the M.O.H had been put up in error by a staff member and was subsequently removed and staff advised of the requirement to have the notices visible.
- (ii) Admitted that *"my training has been a bit slack over the years but I am picking up the slack now."*
- (iii) The spin the wheel promotion had existed for many years prior to Covid 19 and then stopped. He had only recently reactivated it and it was for 1 hour on Friday evenings only. He also stated that having his licence was more important than the spin the wheel promotion.

[6] When questioned by the Committee, Mr Gamble provided the following information:

- (i) For any spin the wheel session during the one hour per week he would give away on average two or three at most free handles and that people had to purchase a handle to be eligible to spin the wheel but if a person bought ten handles, they would get ten spins.
- (ii) The shots advertised on the shot list (which he described as a menu and not specials) would be the same volume as a standard single or double spirit pours. He added he would be willing to remove the price from the menu if required.
- (iii) While he did informal training by way of discussing the business with staff every day he would try to do formal training twice a year however that he had been "a bit slack" over this.
- (iv) He explained how he has a certified manager shadow and mentor new staff members and gave an example of a recent new employee.
- (v) He advised that along with his grandson who was 15 years old when he failed the controlled purchase operation (CPO), he had another young staff member (16 yrs old) at the time but that she no longer works for him.
- (vi) The failed CPO was in regard to the on-licence part of the business.

[7] Sgt Martin questioned Mr Gamble as to whether the spin the wheel promotion was a game of chance and thus subject to controls of The Gambling Act 2003. Mr Gamble was unsure.

[8] Mrs Zeier questioned Mr Gamble at length eliciting the following information:

- (i) His grandson had never received any training about the sale and supply of alcohol, he had no formal training records and he repeated that his training had been "a bit slack".
- (ii) Harkness Henry had subsequently been engaged to assist him put in place appropriate training and record keeping regimes and provide specific up to date training for Mr Gamble and staff.
- (iii) Clarity about the number of certified managers; currently two; but with another currently undertaking the required certification process. He added that certified managers are sought after in this wider area by other premises.

- (iv) He would be prepared to remove the spin the wheel promotion if it meant he was able to retain his licence. He felt that people were coming in to buy alcohol anyway so the promotion was not changing their behaviour.
- (v) Clarified that often either he or the other current duty manager would be in the kitchen preparing food as that was what they did but that they were always on duty and on site to oversee the bar staff.

[9] Mr Gamble clarified to the Committee that that when the spin the wheel promotion was being offered it “probably” resulted in more handles being sold.

Evidence of the Medical Officer of Health

[10] Mrs Zeier’s statement of evidence was accepted by all as distributed and read. Ms Zeier was sworn in to speak to her statement.

[11] Ms Zeier highlighted the following points:

- (i) Significant concern about the lack of staff training and keeping of associated records which was obviously a factor in the recent failed CPO.
- (ii) Belief that the spin the wheel promotion was in breach of s.237(1)(e) of the Act and that a responsible licensee would not permit or have such promotions.
- (iii) The particular the way in which the promotion is advertised on social media
- (iv) That a tavern style licence is a high-risk environment with expectations of a high level of adherence to the object of the requirements of the Act
- (v) These concerns and examples are issues related to the suitability of the applicant.

[12] Under questioning from the Committee, Mrs Zeier covered the following:

- (i) The lack of training and records are indicative of poor standards when meeting the requirements of the Act.
- (ii) That the opposition of the M.O.H relates to both the on and off licenses equally as the lack of training and records in particular are required no matter the licence type and Mr Gamble has not provided sufficient evidence or information for either application.

[13] When questioned by Mrs Rawcliffe for the applicant, Mrs Zeier advised the following:

- (i) She was unsure when reading the wording of s.237(1)(e) of the Act and in particular the exception wording “*otherwise than by means of an offer made only on licensed premises*)” that the spin the wheel promotion was actually a breach of that section of the Act.
- (ii) She believed that s.237(1)(a) and (d) of the Act were however being breached by the promotion in that it encouraged people to consume alcohol to an excessive extent and that depending on how you viewed the social media posts, that there was an opportunity to win a prize when buying alcohol.

Closing Submissions

[14] Mrs Zeier presented a verbal closing reaffirming the previously recorded opposition from the M.O.H; namely lack of training and records, breaches of s.237 (1)(a), (d) and (e) which also brought into question the suitability of the applicant.

[15] Reference was made to the following case law. Copies were subsequently provided to all parties post the hearing at the request of the Committee:

- (i) *Young v Lyger Investments Limited - The Bahama Hut* [2018] NZARLA 299 (12 November 2018) at [112]
- (ii) *Holco Holdings Limited - Mainstreet Sports Bar v Deo* [2019] NZARLA 184 (1 October 2019)
- (iii) *NBT Ltd* LLA PH584/05, 6 September 2005
- (iv) *Deejay Enterprises Limited - Dee Jays Off License* [1997] NZLLA 531 (15 April 1997)

[16] Mrs Zeier stated that s.237 was directly linked to the object of the Act and that promotions undertaken by Mr Gamble were also directly linked to the object of the Act adding that the removal of the promotion would go a long way to meeting the object of the Act in this instance.

[17] She believed that a responsible licensee would make changes to how they did things if issues became apparent. In this case Mr Gamble has failed a CPO in 2022 but has subsequently admitted that he has been “a bit slack” implementing any training or recording any training.

[18] Mrs Rawcliffe provided a written closing submission including the following points:

- (i) Admitted that the inability to provide training records does not assist in mitigating the M.O.H concerns however that Mr Gamble has sought professional assistance from his legal counsel to provide expert advice and improved systems.
- (ii) The M.O.H had moved from there being “a breach” to the “possibility of a breach” of s.237 of the Act and that there was a clear difference of opinion as to whether the spin the wheel promotion actually breached the Act or was a permitted exemption when considering the wording of the Act.
- (iii) Mr Gamble is prepared to cease or change the promotion and the type of social media advertising if his licence depended on it.
- (iv) The list of shots was a menu and not a promotion of anything special.

Committee’s considerations and decision

Legislation the Committee must have regard to:

[19] Section 3 of the Act describes the purpose of the Act.

[20] Section 4 of the Act sets out its object relating to safe and responsible sale, supply, and consumption of alcohol; and minimisation of alcohol related harm caused by excessive or inappropriate consumption of alcohol.

[21] For the purposes of section 4(1) of the Act, the harm caused by the excessive or inappropriate consumption of alcohol includes –

- a) 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
- b) Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[22] Section 105 (1)(a) to (g), (j) and (k) of the Act set out the criteria to be considered for the renewal of a licence.

[23] Section 106 (1) & (2) of the Act set out the effects on amenity and good order of a locality by an application of this type.

[24] Section 131 defines the criteria a District Licensing Committee must have regard to when deciding whether to renew a licence of this type.

[25] Section 132 of the Act sets down what conditions may be imposed when the District Licensing Committee considers any renewal of a licence of this type.

Onus and standard of proof

[26] An applicant for the renewal of a licence must prove its case regarding the criteria set down in s. 105(1)(a) to (g), (j) and (k), and s.131(1)(d) of the Act. If it fails to do so, then the Committee is unable to grant the application. The standard of proof is the civil standard, namely on the balance of probabilities.

Criteria

[27] As with any application, some of the criteria are of more relevance than others. It is appropriate that each of the relevant criteria be considered; but not necessarily in the order they are set out in s.105 (1) of the Act.

[28] In this case, when considering the legislation, the M.O.H has focussed their opposition through their initial report and evidence during the hearing to the following:

- (i) s.105(1)(a) – Suitability of the applicant
- (ii) s.105(1)(j) – Appropriate staff systems and training
- (iii) s.105(1)(k) – Any matters deal within any report
- (iv) s.131(1)(d) – Manner in which the applicant has sold, displayed, advertised, or promoted alcohol
- (v) x

[29] The other criteria found in s.105(1) and other parts of the Act have not been contested or raised within any reports or the hearing and are found to have been satisfied by the Committee.

[30] Having considered those parts of the Act listed in paragraph [28] above and the associated evidence we make the following comments.

Suitability

[31] We accept that Mr Gamble’s knowledge and understanding of the requirements of the Act and his performance against those requirements have quite rightly been raised as issues of

suitability by the M.O.H, we consider this in the the context of the premises type, location and that neither the Police or Inspector have raised any concerns in regard to suitability.

[32] We accept Mr Gamble has been forthcoming about his need to improve staff training. We note that he acknowledged he did not mean to come across not co-operating, wished he had given the Police the training records and that he has contracted his legal counsel to provide alcohol licensing training for the staff and himself.

[33] In this content, we are satisfied Mr Gamble is a suitable person to hold an on-licence and off-licence.

Appropriate staff systems and training

[34] Mr Gamble accepts he has not maintained appropriate training records and states he has employed legal counsel to help him.

[35] We are aware that the Alcohol Regulatory Licencing Authority (ARLA) has yet to consider the CPO and we have been careful not to pre-determine that result.

[36] We consider that Mr Gamble's stated commitment to making changes will be apparent at any future renewal applications. We anticipate that reporting agencies will consider the progress of these changes.

[37] We note that the premises has a relatively small number of employees and accept that Mr Gamble is a hands on owner and manager.

[38] Having regard to the evidence and submissions, and Mr Gamble's stated commitment to improving staff training with legal counsel's involvement in the training, we are satisfied that Mr Gamble has sufficient staff, systems and training to ensure compliance with the Act.

Other Matters - Manner in which the applicant has sold, displayed, advertised, or promoted alcohol

[39] Firstly dealing with the previous cases raised by the M.O.H as listed in paragraph [15] we make the following comments:

- (i) *Young v Lyger Investments Limited* – There has been no evidence to support any assertion there has been significant harm, noting that the failed CPO is yet to be dealt with.
- (ii) *Holco Holdings Limited* – whilst there was mention of a terse and less than helpful reaction from Mr Gamble to the Police following the failed CPO, there was no evidence from the Police or opposition from them to these applications.
- (iii) *NBT Ltd* – There was insufficient evidence to support any direct relevance between these applications and the findings of this case.
- (iv) *Deejay Enterprises Limited* – Whilst we accept the relevance of the comments in that “Self-imposed standards in accordance with the law must be set by licensees” and that Mr Gamble has several shortcomings in regard to certain standards, we are satisfied that his statements and promises to change how he does things when considering the general manner the businesses operate and lack of opposition from other reporting agencies deserve some degree of faith. In these circumstances we

expect his ability to put in place adequate and appropriate standards will be put under the spotlight for any future renewal applications.

[40] Having considered the relevance of those cases, we are of the opinion that the circumstances of the application before us are sufficiently different from those within each of those cases and accordingly, having considered the evidence, do not believe they are relevant.

In regard to the promotion of shots we do not believe the list of shots is anything other than a menu however accept Mr Gamble's offer to remove the price from the board and expect that change to happen immediately upon receipt of the renewal and be reported on by the reporting agencies in any future applications for renewal.

[40] We do not believe there is sufficient evidence to conclude that Mr Gamble has breached any part of sections 131 or 237. However do have concerns at the practice of relating the number of spins of the wheel to the number of handles purchased at any one time. We accept Mr Gamble's statement he is prepared to limit the spin to one spin per purchase (no matter how many handles are bought during that transaction) per person and expect that change to happen immediately upon receipt of the renewal and be reported on by the reporting agencies in any future applications for renewal.

[41] Whilst accepting the evidence of Mr Gamble and the submissions of his legal counsel, we also accept that the M.O.H was correct in raising the concerns. This has highlighted to Mr Gamble that holding these licenses is a privilege and not a right and that notwithstanding the outcome of the issue before ARLA, he **must take immediate action to improve the management of the premises.**

[42] We have included a new sentence within relevant sections of both licenses to reflect the requirements related to training and record keeping to ensure Mr Gamble retains visibility of the expectations of him from this Committee.

[43] We are satisfied as to the matters which we must have regard as set out in s.105 of the Act and are satisfied that the application meets the purpose and object of the Act.

[44] Accordingly, we grant the applicant a renewal of the underlying **off licence** with the following conditions:

- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1.00 pm on Anzac Day.
- (b) Alcohol may be sold on the premises only on the following days and during the following hours:
Across the bar sales:
Monday to Sunday 9.00am to 10.00pm
- (c) Drinking water must be freely available to customers at the following places while alcohol is being supplied free as a sample on the premises:
At the lounge and public bar service areas.

- (d) 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.
- (e) 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 an up-to-date record of training maintained and be available for inspection by reporting agencies upon request.
 - (ii) A sign must be prominently displayed inside the premises, which identifies by name the manager on duty responsible for the management of the sale and supply of alcohol under the licence.
- (f) The sale or delivery of alcohol is authorised on the premises generally. The premises situated at 2 The Crescent, Taupiri are more precisely identified in a plan date stamped as received by the Waikato District Licensing Committee on 8 November 2016.

[45] We grant the applicant a renewal of the underlying **on licence** with the following conditions:

- (a) Alcohol may be sold only on the following days and during the following hours:
On such days and during such hours as the premises are being operated as a tavern but not other than on the following days and hours:

Monday to Sunday 9.00am to 1.00am the following day
- (b) No alcohol is to 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 present on the premises to dine.
- (c) A reasonable range of food shall be available at all times when alcohol may be sold or supplied under the licence. Menus must be visible, and food should be actively promoted. A minimum of three types of food should be available.
- (d) The licensee shall have available for consumption on the premises, at all times when alcohol may be sold and supplied under the licence, a reasonable range of non-alcoholic refreshments and low alcoholic beverages.
- (e) Drinking water is to be freely available to customers from the lounge and public bar service areas.
- (f) The public bar and garden bar areas are designated as supervised with the remaining areas of the premises undesignated.
- (g) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons and responsible consumption of alcohol are observed:

- i. Ensure that no intoxicated persons are allowed to enter or to remain on the premises.
 - ii. Ensure that appropriate signs are prominently displayed detailing the statutory restrictions on the supply of liquor to minors and intoxicated persons.
 - iii. Ensure that appropriate signs are prominently displayed detailing information about alternative forms of transport from the premises.
 - iv. The licensee must ensure that all staff comply with a host responsibility plan detailing the steps to be taken by the licensee to ensure a safe drinking environment
- (h) 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 an up-to-date record of training maintained and be available for inspection by reporting agencies upon request.
 - ii. A sign shall be prominently displayed inside the premises, which identifies by name the manager on duty responsible for the management of the sale and supply of alcohol under the licence.
- (i) The sale or delivery of alcohol is authorised on the premises generally. The premises situated at 2 The Crescent, Taupiri are more precisely identified in a plan date stamped as received by the Waikato District Licensing Committee on 8 November 2016.

[46] The licenses may issue for a period of three (3) years upon payment of any outstanding fee and to **take effect from the expiry of the underlying licenses namely 24th September 2022.**

[47] We refer any party who wishes to appeal this decision or part of this decision to sections 154 through to 158 of the Act.

DATED at Auckland this 29th day of September 2023



Andrew Baker
Commissioner
Waikato District Licensing Committee

On behalf of:

Patsi Davies
Jason Howarth