

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

AND

IN THE MATTER of an application for the variation of a
condition to On-licence 56/ON/105/2016
pursuant to s. 120 in respect of
premises situated at State Highway 73,
Kumara and known as the Kumara
Race Course by the Kumara Racing
Club Incorporated.

**DECISION OF THE WESTLAND DISTRICT LICENSING COMMITTEE ON AN UNCONTESTED
APPLICATION**

Authority:

Pursuant to section 191(2) of the Sale and Supply of Alcohol Act 2012 and a Council resolution dated 28 November 2013, the functions, powers and duties of the Westland District Licensing Committee are delegated to the committee chairperson where no objection has been filed, and no matters of opposition have been raised by the Police, the Medical Officer of Health or an Inspector. There is no Local Alcohol Policy in place for the District.

Summary of Evidence

The complete file has been made available to me.

The application appears to be two-fold; on the one hand there is an "application for variation or cancellation of conditions of licence" and on the other is an "application for On-Licence or renewal of On-licence". The applications have all the hallmarks of being well made with helpful attachments and comprehensive responses to questions about the responsible provision of alcohol. One of the documents attached to the application is an Alcohol Management Plan for the annual Kumara Races.

I gather that the applicant is requesting that all the outdoor bar areas be deleted from the "Licenced area" and replaced with a 6m X 6m marquee to be erected on the Southern side of the Grandstand.

A report from the Inspector "does not oppose the applicants (sic) request".

The Medical Officer of Health has exercised the right to not report on the application "because it was somewhat null-in-void"(sic).

The complete file does not include any report from the Police although the Inspector's report advises that the Police do not oppose the application.

Evaluation of Evidence

I have considered the application on the basis of the uncontested reports received. The matter is able to be dealt with on the papers.

For the record, The On-Licence for the Kumara Racing Club was renewed in March 2018 and expires in December 2020; accordingly there is no need for an application for renewal at this time and I have no knowledge as to why the application has been made.

I have reviewed three plans that form part of the complete file. One is titled "Existing" and shows an area of a little in excess of 400M² of land designated as "Outdoor R18 area" with an alcohol service area on the

south side of the grandstand building servicing the R18 area. My assessment is confirmed by the Alcohol Management Plan for the Kumara Races which limits alcohol sale, supply and consumption to the bar area under the Grandstand and the outdoor area described above. A further plan accompanying the file is titled "Proposed" and shows a 6m X 6m marquee adjoining the south west corner of the Grandstand with bar sales being within the marquee from the south west corner of the grandstand. The marquee is in the area described as the "Outdoor R18 area" on the plan titled "existing".

It appears to me that the "variation" is a marquee established in an area already set aside for the sale, supply and consumption of alcohol. The response of the Medical Officer of Health is making sense to me.

A further plan accompanying the file is titled "Kumara Racing Club Site Plan". It shows a large area coloured green and described as "areas covered by the On-licence" None of the area shown green is designated except for the Bar area under the Grandstand and a fenced area adjacent to the south side of the grandstand which are restricted areas on Kumara Race days and unrestricted at any other time.

In-so-far as the application for variation is concerned; the form purports to be "Form 14" but Form 14 is designed for the use of a constable or an inspector This is not the case in relation to the matter before the Committee which appears to be an application by a licensee for a variation to a condition. The relevant section of the Act is S120. This section at subsection (2) provides that an application for a variation must be made in the prescribed form. I have checked the Act but I can not find a form prescribed to be used for S120. That may well be the end of the matter but clearly the contents of the complete file are all about a variation to a condition in the nature of changing the "Licenced area". In the first instance, the Kumara Racing Club have gone to some trouble to document the desire to vary a condition; secondly, the inspector has considered the "application" and the Medical Officer of Health has decided not to report on the "application" because it is "somewhat null-in-void"(sic) which is a statement that I take to mean of "little relevance". The most vexing question that confronts me is the one of "which" condition is being applied for variation. None of the documents in the complete file actually considers the question of specifics. ie. Which specific condition is to be varied and by what means? I have spent some time considering the form of the substantive licence and the renewal granted in March 2018; neither of those documents has a specific condition that appears to relate to the extent of the licensed area.

I am left with the awkward reality that there is no particular condition identified as being requested to be varied. However, I am happy to proceed on the basis of "Concept" and the recognition and acceptance that the Kumara Racing Club Committee want to improve the way the sale and supply of alcohol is managed on Race Day and that the three statutory agencies do not oppose the changes sought.

I am especially guided by the "application" which includes the statement that reason for the variation is that the "committee believes that the changes will be an improvement and more easily managed". I commend the committee for wanting to take the sale and supply of alcohol at the Kumara Race Course seriously. Although I am not readily able to identify the reality of the changes sought as the marquee is in an area already described in Club documents as an area "covered by the licence" I have empathy with the intentions of the Club which is to have better control even if I can't see how that better control will be specifically achieved.

I am assuming that the application for renewal is a wise choice of application form to be used because it does require a response to the question "are any changes sought to the present conditions of the existing licence?" In the absence of the Act appearing to not stipulate a specific application approach the renewal form does seem sensible. I have noted that the application for renewal in the Variation complete file is dated 6 October 2017; I have concluded that the application was prepared for the 2018 renewal year and somehow fell by the wayside.

I observe that there may be some work for the Secretary that comes as a consequence of this application. In the first instance is the question of which form should be used for variation applications (certainly Form 14 should not be used). In addition is the issue of a condition being attached to all licenses that adequately defines the extent of the licensed premises concerned. This is a policy issue but the Secretary may wish to include the District Licensing Committee in the search for a solution that will work for the future.

Decision and Reasons

I am satisfied as to those matters provided for in ss.105 and 120 of the Act.

The application is granted on the papers pursuant to s.120 (1) of the Act as Decision Number **017-2019** subject to the following conditions.

1. The area covered by the licence is that area shown on three plans titled "Kumara Racing Club Site Plan", "Proposed" and "Existing" accompanying an application for variation dated 21 November 2018.
2. The plans referred to in Condition 1. Above are to be incorporated into the "Kumara Racing Club Alcohol Management plan for Race Days."

For the purposes of clarity and continuity the following conditions apply from 2 March 2018:

- (a) Alcohol may be sold only on the following days and during the following hours:
 1. On the annual race day (second Saturday in January) 10.00am to 7.00pm the same day.
 2. Monday to Sunday (excluding the annual race day) 9.00am to 12.00 midnight.
- (b) except when the licensee also holds a special licence for the premises, 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—
 - (i) residing or lodging on the premises; or
 - (ii) present on the premises to dine.
- (c) Pursuant to section 110(2)(c) of the Act, drinking water shall be freely available from the café and from the bar to all customers at all times that the licence is being exercised.
- (d) The principal entrance is to be described as "the entrance on the northern wall of the grandstand".
- (e) the following steps must be taken to promote the responsible consumption of alcohol:
 - (i) There shall be an "Alcohol Management Plan", similar to that which accompanied the application dated 6 October 2017, in place at all times.
- (f) Each of the following parts of the premises are designated as:
 - (i) Restricted Area: The bar under the grandstand (Kumara Race Day).
 - (ii) Supervised Area: The bar under the grandstand (all other days).

Dated at Hokitika this 20th day of February, 2019



Chairperson, Westland District Licensing Committee

