

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 a Club licence pursuant to
s. 120 in respect of premises situated at
42 Hamilton Street, Hokitika and known
as the Hokitika Chartered Club by the
Hokitika Club Incorporated.

**DECISION OF THE WESTLAND DISTRICT LICENSING COMMITTEE ON UNCONTESTED
APPLICATIONS**

Authority:

Pursuant to section 191(2) of the Sale and Supply of Alcohol Act 2012 (the Act) 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.

The application:

Decisions relating to the renewal of the Club and Off Licences for the Hokitika Chartered Club were made on 27 April 2019. This application proceeds because the Club omitted to include the area on the first floor of the premises as part of the licensed premises. In addition, the condition relating to the hours and days for the sale and supply of alcohol were found to be deficient and the District Licensing Committee Secretary has made representations to me to have the deficiency corrected. I agree with the Secretary's analysis and the hours and days of operation will be corrected by this decision.

Summary of Evidence

The complete file has been made available to me.

The application is reasonably well documented with one exception considered below and is made with conviction.

A report from the Inspector concludes that the applicant is currently operating in compliance with the Sale and Supply of Alcohol Act 2012 and is a suitable applicant to continue to hold a licence and that the variation sought is appropriate.

The Police advise that there is no objection to the variation of the condition on the club-licence relating to the extent of the licensed area..

The Medical Officer of Health has no opposition to the variation of the club-Licence.

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.

The applicant has requested a variation to the extent of the licensed premises in that the first-floor area (referred to by the Inspector as the upstairs second storey area) should become part of the premises to which the licence refers.

The April 2019 decision records that alcohol may only be sold or supplied on Monday to Sunday from 9.00 am to 1.30 am the next day. With the proviso that *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 or Christmas Day to any person who is not—*

- (i) residing or lodging on the premises; or*
- (ii) present on the premises to dine.*

The proviso is not in accordance with the Act and needs to be altered to reflect the requirements of the Act.

My 27 April decision was based on a strict meaning of Section 43 of the Act which relates to default national maximum trading hours.

“43 Default national maximum trading hours

(1) The default maximum national trading hours—

(a) are the hours between 8 am on any day and 4 am on the next day for the sale and supply of alcohol for consumption on premises for which an on-licence or a club licence is held:

(b) are the hours between 7 am and 11 pm on any day for the sale of alcohol on premises for which an off-licence is held.

(2) Subsection (1) is subject to sections 47 and 48 (which impose restrictions on the sale and supply of alcohol on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day).”

I also considered a leading commentary on the Act which, among other things noted that *the 3½ sacrosanct days that existed in the 1989 Act have been repeated in the 2012 Act, although they apply to all licence holders and not just the hotel and tavern operator.*

On this basis the proviso was added relating to Good Friday, Easter Sunday and Christmas Day. As I noted earlier, the Secretary has asked me to review this aspect on the basis of a reconsideration as to the meaning of section 43(2). I have done so, and I agree with the Secretary. Subsection (2) refers to Sections 47 and 48 which relate to sales on certain sacrosanct days. Section 47 relates to on-licenses and Section 48 relates to Off-licenses.

Although section 43(a) particularly refers to any on licence or club licence; subsection (2) exhorts to a wider view including sections 47 and 48. Clearly, the Act does not, by virtue of sections 47 and 48, allow any general bar or off sales trading on certain days of the year; this must be so because of the specificity of those Sections. Of importance is the fact that there is no similar section to 47 and 48 referring to Clubs. So I am left with the now undoubted view that a Club may provide general bar trade to its members, their guests and associates on the Sacrosanct days where On and Off licenses are prohibited from being exercised. I apologise to The Chartered Club for this error and trust that the inconvenience has been fleetingly brief.

The variation does not impact on the existing designations and so the designation of the casino area will continue to be a restricted one.

I have not identified any amenity and good order issues to be addressed.

In my original decision I did note that the application for the Club Licence renewal advised that the applicant will be updating the list of other clubs with which the applicant has reciprocal visiting rights for members. Apparently, the list was to be updated at the applicant's Annual General Meeting in April. This is an important issue for the applicant as there is a specific requirement of the Act relating to sale to members

only. The application for the variation has not addressed this point and so for the sake of clarity I repeat my comments on section 60 of the Act made in my April 27 Decision.

60 Sale and supply in clubs to members and guests only

(1) The holder of a club licence must ensure that no alcohol is sold or supplied to any person for consumption on the premises unless the person is—

(a) an authorised customer; or

(b) if the licence issued subject to a condition allowing alcohol to be sold or supplied to people of that kind, a person who is on the premises at the invitation of an authorised visitor who is also on the premises.

(2) If a club licence and an off-licence are held for the same premises, the holder must ensure that no alcohol is sold or supplied to any person for consumption off the premises unless the person is an authorised customer.

The Act goes further to define an authorised customer and an authorised visitor.

The Inspector in his report refers to the applicant's premises including an area upstairs that can be hired out to various community groups. The Inspector advises that this area is not an area that is licensed for the supply, sale or consumption of alcohol. I take it from the complete files that the applicant hires out the area for the use of community groups but because the area is not licensed alcohol is not sold or consumed in that upstairs area set aside for wider community use. The application for the Club Licence renewal includes two documents entitled "Arrangement with the Hokitika RSA Re: Use of Club Facilities for meetings and Functions" and "Arrangement with the Westland Community Center Incorporated Re: Use of Club Facilities for meetings and Functions"; both documents are signed by representatives of the applicant Club, the Westland Community Centre and the Hokitika RSA. The documents have all the hallmarks of a contractual arrangement between the applicant Club and the two parties referred to. The arrangement appears to be that the Westland Community Centre and the RSA members are welcome to use the applicant Club's facilities subject to abiding by the Hokitika Chartered Club "rules and regulation". The application is silent as to this issue as is the Inspector's report and the other reporting agencies. It seems to me that Section 60 of the Act is absolute in that alcohol must not be sold or supplied to any person other than authorised customers or authorised visitors. The "Arrangements" made with the Community Centre and the RSA are not, in my view, able to be used to give the authorisation required to allow people other than members to purchase or consume alcohol at the Hokitika Chartered Club. It may well be that person's subject to the "arrangements" are not served alcohol while at the premises but I have no way of determining the way that the arrangements that are in place are managed from the complete files in my possession. The Club should be very careful about the way in which visitors to the premises are managed. In addition, because the existing licenses do not have a condition anticipated by Section 60 (1)(b) and there is insufficient information in the application relating to reciprocal visiting rights (because of an impending AGM), this renewal will not have such a condition either.

The current situation is that the application for the variation changes nothing in this regard and, so, at this stage alcohol is only able to be supplied to members of the Club. Visitors and associates are precluded. The Club can apply for a further variation when the club has made its decisions relating to reciprocal visiting rights.

Decision and Reasons

I am satisfied as to those matters provided for in s.120 of the Act.

The application is granted on the papers pursuant to s.202 (1) of the Act as Decision Numbers **097-2019** and I direct that new licenses may be issued replacing Club-licence 56/Club/021/2016 and renewed Off-Licence 056/OFF/020/2016.

The licences are issued for a period of three years from the date of this decision and are subject to the following conditions:

Club Licence:

- (a) alcohol may be sold only on the following days and during the following hours:
Monday to Sunday from 9.00AM to 1.30AM the following day.
- (b) Alcohol may only be sold or supplied to Club Members.
- (c) the following steps must be taken to promote the responsible consumption of alcohol:
 - (i) There shall be food available, similar to that described in the menu which accompanied the renewal application dated 19 March 2019, at all times that the premises are being used for the sale and supply of alcohol.
- (d) The Principal Entrance is to be described as "The entrance on the southern side of the building leading from Hamilton Street".
- (e) The Gaming area is to be designated as a restricted area.
- (f) Pursuant to section 110(2)(c) of the Act, drinking water shall be freely available to all customers from the bar at all times that the licence is being exercised.
- (g) The extent of the Licensed premises shall be those areas shown on plans dated July 2010 and submitted with the application.

Off-Licence:

- (a) alcohol may be sold only on the following days and during the following hours:
Monday to Sunday from 9.00AM to 10.00PM the same day.
- (b) No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday, Christmas Day or before 1.00pm on ANZAC Day.
- (c) While alcohol is being supplied free as a sample, drinking water shall be freely available at any tasting location.
- (d) The Principal Entrance is to be described as "The entrance on the southern side of the building leading from Hamilton Street".
- (e) The extent of the Licensed premises shall be that area shown on plans dated July 2010 and submitted with the application.
- (f) Alcohol may only be sold or supplied to Club Members.

Dated at Hokitika this 12th day of June 2019



Chairperson, Westland District Licensing Committee

