

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

AND

IN THE MATTER of an application for an On-licence pursuant to s. 99 in respect of premises situated at 1141 Milltown Road, Arahura Valley and known as Cowboy Paradise Saloon by Cowboy Paradise Limited.

BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE

Chairperson: Commissioner Richard Simpson

Members: Bryce Thompson
Richard Gardiner

HEARING: Held at the Westland District Council Chambers, 34 Weld Street, Hokitika on Tuesday 11 December, 2017, commencing at 9.30am.

APPEARANCES:

Michael Milne	the owner of the applicant company, alone.
Acting Senior Sergeant Paul Watson	New Zealand Police.
Dr. Cheryl Brunton	Medical Officer of Health for the West Coast.
Rodney Beckett	Alcohol Licensing Officer, West Coast.
Wayne Knightbridge	Westland District Licensing Inspector.

RESERVED DECISION

Introduction:

1. The application relates to a new On-Licence for the Cowboy Paradise complex at Milltown. Cowboy Paradise is a shooting range and has become a significant part of the Westland Cycle Way network partly because of the refreshments available at the Cowboy Paradise Saloon. The applicant seeks an On-Licence to complement the range of refreshments available.
2. The application was made on 15 January 2014.
3. The principle purpose of the proposed licence is the sale of alcohol for the purposes of complimenting the hospitality at the saloon where substantial meals and snacks are available.
4. The days and hours sought for the operation of the on-licence are Monday to Sunday each day from 8.0AM until 1.00AM the following day.
5. An objection was received from R Copland which expressed concern as to the impact that the granting of a licence would have on the Milltown area as well as expressing concerns relating to the character and suitability of the applicant.
6. Mr. R Copland did not attend the hearing to speak to his objection.

Applicant's evidence:

1. Michael Kevin Milne is the owner of Cowboy Paradise Limited.
2. Mr. Milne, disappointingly, presented verbal evidence only and in doing so was prompted by many varied questions from us. He did refer to the application and attachments that had been made available to us.
3. He commenced his presentation by advising that much needed to be updated as most of the existing information available to us was "obsolete". By virtue of the work that has been carried out on the site recently. We were advised by Mr. Milne that as recently as the day before Council staff had been on site to discern progress.
4. It is the applicant's intention to employ four other people other than himself at the Cowboy Paradise Saloon. His daughter will join the business and she brings the benefit of a Manager's Certificate and experience in the industry from Christchurch. Other appointments are ready to be made. The staff will be familiar

with “New Zealand alcohol acts”. Mr. Milne made his *Host Responsibility Plan* available to us.

5. The nature of the business at the Cowboy Paradise Saloon was explained to us as being principally the sale of meals, snacks and tea and coffee. The liquor side of the business is not anticipated as being significant. Mr. Milne explained that this is mostly because of the nature of the clientele which comes mostly from the cycle trail experience and they will mostly be residential guests staying at the on-site accommodation.
6. On the question of the proximity of the saloon to the shooting range Mr. Milne held the view that proximity is a non-issue and over-blown. They are separate entities with the range being used up to about 20 times in the last year. The range is governed by standing orders, a copy of which was made available to us. It was emphasized that no other activities, other than shooting events held in accordance with the standing-orders, ever occurred on the same land occupied by the range when the range was in operation.
7. We were impressed with Mr. Milne’s knowledge of and enthusiasm for safe shooting.
8. We were encouraged to look at and consider the application in a serious manner. Mr. Milne acknowledged that because of the time-lapse between the submission of the application and its consideration by the statutory reporting agencies, much had changed. He submitted that the Cowboy Paradise complex was *work in progress* and that enormous progress had been made in advancing a quality outcome. A stage had been reached where the application could be pursued with vigour.
9. Mr. Milne was cross examined by the other parties. He explained the nature of his holding being a farming operation. The shooting range was an interesting hobby which was shared with an enthusiastic group of local people together with people from wider afield.
10. Dr. Brunton went to the nub of the Act and asked questions around the purpose of the Act as well as the type of knowledge required as a staff member in the liquor hospitality industry. We noted that Mr. Milne considered the alcohol component of his business to be minor.

11. Mr. Milne also responded to queries as to the time taken from the lodging of the application to this hearing. As we understand it, Mr. Milne came under some significant pressure of some sort (“my life was made hell”) from a neighbor, R Copland. He acknowledged the long lag in time and told us that with a major capital investment exceeding \$1M the time had come to exercise a greater imperative to lift the standards and operate in an appropriate manner.
12. As with the substantive discourse, questions relating to the proximity of the saloon and shooting range were addressed with the assurance that they will not be anything other than separate entities. The whim of a drinker to “have a shoot” is not an eventuality that needs to be planned for as there will never be any shooting that did not comply with the range standing orders.
13. The Inspector drew our attention through his questions to a series of irregularities concerning Mr. Milne’s food service at Cowboy Paradise as well as the potable water quality.
14. Mr. Milne’s overall response to us after cross examination is that he did what he thought was necessary to maintain an integral part of the Westland Wilderness Cycle Trail. He holds the view that he was forced to provide a service at his Cowboy Paradise property with a booming industry that partially terminated at his place and that he was not ready for it. He reiterated that he now believes that he is in a position to put everything in place to comply with all relevant standards and be an enhanced part of the cycle way experience. Mr. Milne acknowledges that the application was submitted under pressure and that it, with hindsight, is somewhat inadequate; it has taken to now to get things right. Mr. Milne was hoping that the results of the Council inspection the day previous would be positive.

The Police:

1. Acting Senior Sergeant Paul Watson presented formal evidence.
2. The Police hold that the applicant is unsuitable to hold an on-licence at Cowboy Paradise.
3. Of specific concern to the Police was the sale on two separate occasions of alcohol. The first was a Controlled Purchase Operation (CPO) to an off duty police officer and the second was a formal CPO. No prosecutions resulted from

either incident but the second operation did result in the issue of a written pre-charge warning.

4. The Police are also concerned with the availability of alcohol in close association with the shooting range.
5. The Police did note that Mr. Milne seemed to be wise as to the law and was ensuring that sales of alcohol were now limited to guests staying in his tourist accommodation as guests.
6. In response to a question, the Senior Sergeant confirmed that the Police had, in fact, been very helpful to the applicant by not pursuing a prosecution.

The Medical Officer of Health:

1. Dr. Cheryl Ruth Brunton presented formal evidence.
2. The Medical Officer of Health was of the opinion that the applicant has demonstrated behavior that shows that he is unlikely to carry out the responsibilities of a licensee. Dr. Brunton referred to the Police CPO's and the applicant's tenuous reliance on the *homestay provisions* of the Act.
3. Dr. Brunton's evidence also noted that there had been a very long delay in bringing the application to formal consideration "despite the best efforts of the reporting agencies" and that the application failed to demonstrate those appropriate systems, staff and training that are essential to the compliant operation of a licensed premises.

The Alcohol Licensing Officer:

1. Rodney Edward Beckett presented formal evidence.
2. Mr. Beckett has serious concerns about the grant of a licence because the applicant has consistently failed to satisfactorily explain how a safe a responsible alcohol service will be provided within close proximity to a shooting range.
3. In particular, Mr. Beckett was concerned with the quality of the water supply and the general building standards that he observed at Cowboy Paradise.

4. Mr. Beckett did observe that he had been “encouraged” by some of what he had heard from Mr. Milne earlier in the hearing. He remained, however, unsatisfied as to the abilities of the applicant.

Westland District Licensing Inspector:

1. Wayne Harry Knightbridge presented formal evidence.
2. The Inspector has multiple concerns about the standards at Cowboy Paradise. Such concerns are around the issues of food hygiene, the water supply quality, the lack of a Code Compliance Certificate for the buildings and the unprecedented lack of effort on the part of the applicant to make meaningful progress.
3. Helpfully, the Inspector had been on the site the day previous in the company of another Westland District Council staff member.
4. We were advised that a further Certificate of Public Use could be issued and that there were some minor issues that can be quickly addressed to allow the issue of a food licence issued.

Applicant’s summing up:

1. Over the lunch break we gave Mr. Milne an opportunity to prepare submissions for a summing up of what had been said during the morning session.
2. Mr. Milne admitted that some of what had been said did not sound very good and he did not have any excuses.
3. He apologised to the reporting agencies and advised that he now accepts that he missed opportunities for help and assistance.
4. When Cowboy Paradise first started he had high hopes for success with the shooting range and the other activities which could have been positive as a result of the initial success. He knew that Cowboy Paradise was a great concept.
5. What he did not realise was what he referred to as the real blood, sweat and tears and the 1000 times more dollars needed to make the success a reality. The biggest miscalculation was the time involved.

6. Mr. Milne advised that he was grateful for the assistance given to him.
7. In Mr. Milne's opinion, Cowboy Paradise is an important shooting range but is fundamentally important as a unique and interesting part of the cycle way network.
8. Mr. Milne concluded his summing up statement with the undertaking that if his application is granted and a licence is issued for the Cowboy paradise Saloon; it will not be a decision that will come back and haunt anyone in the room.

Evaluation and Discussion:

1. The success or otherwise of a licence application is determined, almost entirely, by an applicant. It is the applicant that must make a case. It is the applicant that must demonstrate that there are appropriate systems, staff and training to comply with the law. We hold the view that the importance of the application became an obvious paramount with the commencement of the 2012 Act.
2. The application was dated 15 January 2014. There has been an extraordinary delay in bringing the application to a conclusion. The reasons for this remain somewhat unclear to us but we have gained some understanding that involves some difficulties that Mr. Milne was having with a neighbour, changes of staff in all the reporting agencies and expediency with the establishment of the cycle trail.
3. We would have liked to have seen a greater amount of imperative shown, particularly on the part of the Secretary and the Inspector. There was some but everything appeared to go quiet again from November 2016. It may well be that the agencies were attempting to be helpful by letting things take a natural course rather than hurry an application along that was destined to failure because of financial circumstances and the important relationship that Cowboy Paradise has with the cycle way.
4. Whatever the circumstances, we would have preferred to have had a scenario before us where an application was, perhaps, replaced with a more robust document that reflected the progress that had been made and the knowledge that had been gained over the years. We are, however, left with what we have and we do hope that there is never a repeat of the delays that that have been experienced with this application. We think that the Secretary and the Inspector have an important role to play with regard to this.

5. We do accept that the application came about in a climate of some confusion.
6. At the outset of the hearing we made it clear that our consideration related to section 105 of the Act. A recurring theme during the hearing was one of the suitability of the applicant; the Agencies had some severe doubts and, in our opinion and based on the application, they were doubts with some validity.
7. We were dismayed that the hearing opened with only verbal submissions from Mr. Milne. It did, however, give us the opportunity to see him in action defending his actions, extolling the virtues of the application and responding to cross examination.
8. A telling moment occurred while Dr. Brunton was cross examining Mr. Milne. The Medical Officer of Health was asking Mr. Milne about the training he had received and how that was going to be conveyed to staff. In particular, he was asked to explain his understanding of the object of the Act (sec 4). His response was something like "it's obvious" but we think that at that moment a "penny dropped" and he saw what the issues were for him. He then went on in his response to use words such as "safe", "responsible", "not excessive", and "alternatives". It was not a comprehensive response but one that allowed us to have a glimpse of his understanding. We observe that some practice will be essential.
9. We share the concerns relating to the proximity of the range. If there was one thing that we were very impressed with at the hearing it was the forthright and confident way that Mr. Milne dealt with concerns relating to firearm safety and access to alcohol, activities in and around the range and the possibility of shooting activities occurring on a whim.
10. We are confident that the concerns expressed will be met by the range standing orders and the inherent responsibility that club shooters have when it comes to firearm safety. Mr. Milne's knowledge and experience concerning firearm and range safety became self-evident to us. If his alcohol management skills grow to become second nature to him as his range and firearm safety skills are then the Cowboy Paradise Saloon would appear to be in a safe set of hands. We do not underestimate the ability of Mr. Milne to perform adequately.
11. We were pleased that the Inspector was able to update us as to the status of work required to be undertaken at Cowboy Paradise. The work is now covered by a Certificate of Public Use which is a precursor to a Code Compliance

Certificate. We can take it that the building is safe for public occupation. We have also learned from the Inspector that only very minor things stand in the way of the food premises side of things becoming operational.

12. We do seriously acknowledge the concerns of the Police. The indiscretions uncovered at Cowboy Paradise are serious. We have not got a good understanding as to Mr. Milne's personal role relating to those indiscretions. One thing that did come clear to us was that Mr. Milne was very aware of the Act's *homestay provisions*. We are unsure that they have been entirely met but the issue did allow us to see Mr. Milne explain his understanding and elucidate his understanding. We were, again, left with the impression that Mr. Milne is able to perform adequately.
13. We can take some comfort that a new licence lasts for a maximum of 12 months before being required to be renewed. We believe that we can also take some comfort in the supposition that the reporting agencies will be showing more than a cursory interest in this somewhat unique undertaking. The options that lie with Mr. Milne are a straight forward renewal or a renewal that is fraught with difficulty. His response to the grant of a license will dictate the renewal process.
14. We anticipate that the *Host Responsibility Plan* will constitute "work in progress" and that an enhanced document will be available at the time of renewal which reflects the way the Cowboy Paradise Saloon is actually managed on a day to day basis.

The Committee's Decision:

1. The Committee is satisfied as to those matters provided for in s.105 of the Act.
2. The nature of the undertaking being a restaurant and café associated with the Westland Cycle Trail rather than an established community is a limiting factor and we accept that the provision of an alcohol service will be a minor component of the operation.
3. Staff are due to be appointed. Mr. Milne is a manager, his daughter is a manager and she is currently involved in the hospitality industry in Christchurch. Three other appointments are to be made. Mr. Milne did give us a modicum of comfort that he has and can impart knowledge to his staff to ensure that the sale, supply and consumption of alcohol can be undertaken safely.

4. We were impressed with the knowledge of and the ability of the applicant to speak confidently about the range and shooting activities. We can conclude that the ability of Mr. Milne to learn practical applications of his theoretical knowledge is not in jeopardy.
5. The hours of operation are requested to be from Monday to Sunday each day from 8.0AM until 1.00AM the following day. Given that the alcohol operation is very much part of a food service we conclude that the hours are appropriate.
6. The design and layout of the premises did give us concern in relation to the proximity to the shooting range. The applicant satisfied our concerns by virtue of his confidence, competence and knowledge of range shooting standards and requirements.
7. We have been unable to identify any concerns relating to amenity and good order.

Conclusion:

The application by Cowboy Paradise Limited for an on-licence for premises at 1140 Milltown Road, Arahura Valley and known as Cowboy Paradise Saloon is granted pursuant to s.211 (1) of the Act as Decision Number 216-2017 and the Committee directs that a licence is to be issued at the expiry of ten (10) working days from the date of this decision; that period of time is the time provided under s.155(1) of the Act for the lodging of a notice of appeal.

The terms and conditions are to be:

1. Notwithstanding the appeal period, a licence is not to be issued until:
 - a. The premises is compliant with the requirements of the Food Act 2014
 - b. The premises is compliant with the requirements of the New Zealand Building Code and either a Certificate of Public Use or a Code Compliance Certificate has been issued by the Westland District Council.
 - c. A certificate from an appropriately recognized laboratory has been received by the Westland District Council that attests as to the potability of the water supply.

2. Except when the licensee also holds a special licence for the premises no alcohol is to be sold on the premises on Good Friday, 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.
3. Alcohol may be sold only on the following days and during the following hours:
-Monday to Sunday from 8.00AM to 1.30AM the following day.
4. The following steps must be taken to promote the responsible consumption of alcohol:
 - a. There shall be a “Host Responsibility Policy”, similar to that which was tabled at the hearing on 11 December 2017, in place at all times.
 - b. There shall be food available, similar to that described in the menu which accompanied the application dated 15 January 2014, at all times that the premises are being used for the sale and supply of alcohol.
5. The Principal Entrance is to be “The entrance on the East side of the Saloon on to *Main Street*.”
6. That the area inside the saloon be designated as follows:
 - a. Supervised Area between the bar server and the wooden leaner running parallel with the bar.
 - b. Undesignated being the remainder of the saloon area including the rear deck (area immediately behind and as an extension of the saloon) and dining area.
7. Pursuant to section 110(2)(c) of the Act, drinking water shall be freely available to all customers from the bar and the kitchen at all times that the licence is being exercised.

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

(a) either—

(i) until the close of the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but

(b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—

(i) until the close of the period of 3 years after the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Hokitika this 15 day of December, 2017



Chairperson, Westland District Licensing Committee