

Decision No. QLDLC 0012/14

IN THE MATTER

of the Sale and Supply of Alcohol

Act 2012

AND

IN THE MATTER

of applications by **THE BULLOCK BAR LIMITED and THE LUGGATE HOTEL LIMITED** pursuant to s.137 of the Act for a Special Licence

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin

Members: Ms M W Rose

Mr L Cocks

HEARING at WANAKA on 8 April 2014

APPEARANCES

Mr S M Colbourne – representing both applicants

Ms J Mitchell - Queenstown Lakes District Licensing Inspector – to assist

Sergeant L K Stevens – N Z Police – in opposition

Dr D W Bell – Medical Officer of Health - in opposition

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION.

[1] Before the committee are two applications for special licences. The first is an application brought by the Luggate Hotel Limited trading as “The Luggate Hotel and Bar”. The premises are licensed as a tavern. The Luggate Hotel is the oldest hotel in the region. It provides excellent meals, great hospitality, and live music is a regular feature of the entertainment offered to patrons. The company has requested a special licence to trade on Good Friday the 18th of April from 11:00am to midnight and on Easter Sunday the 20th April from 11:00am to midnight.

[2] The name of the proposed event is “The Luggate Hotel 147th Anniversary” and the principal purpose of the event was said to be “To celebrate the 147th year of the Luggate Hotel”. It is anticipated that up to 80 people would be in attendance on each day. The event is not to be ticketed.

[3] The second application is by The Bullock Bar Limited trading as "The Bullock Bar". The premises are licensed as a tavern. Live music features at the venue from time to time, and the business provides quality food from its kitchen as part of the hospitality service to its patrons. The company has requested a special licence to trade on Good Friday with hours from 11.00am to 12.00pm midnight and on Easter Sunday with similar hours.

[4] The proposed event has no name, but its principal purpose was said to be "To celebrate a history of Warbirds over Wanaka, and a Country Music Festival." It is estimated that up to 100 patrons would attend the two occasions, and neither event would involve the purchase of tickets.

[5] The applications should be viewed against a background of the bi-annual 'Warbirds over Wanaka' major event due to take place in Wanaka over the forthcoming Easter weekend. This event is held at the Wanaka Airport some distance out of Wanaka, where approximately 50,000 people are expected to attend over the three days of Good Friday, Saturday and Easter Sunday. The first day is practice day and the remaining two days comprise continuous entertainment finishing at 4.30pm each day. There will be about eight outlets selling alcohol under special licences at the event. Because of the large numbers of people attracted to Wanaka over this Easter weekend, a group of licensed premises (including these two applicants) have applied for special licences to sell alcohol in Luggate and Wanaka on two of the 3 ½ prohibited days.

The Applications.

[6] Mr S M Colbourne is a director of both companies, and gave evidence on their behalf. He confirmed that the "Luggate Hotel" was the oldest hotel in the region, and a decision had been made to showcase its history with photo displays. Invitations had been made to previous owners and at least 4 former 'publicans' had expressed an interest in attending the event. The plan was to celebrate the 147th anniversary over both Good Friday and Easter Sunday.

[7] He referred to the fact that tens of thousands of people would be in the region because of 'Warbirds over Wanaka', the "Jetsprints", as well as Highands Motorsport events, and he felt that the "Luggate Hotel" would provide a real feel of the oldest hotel in the area. He advised that local musicians would be playing from 5.00pm daily, and that a full kitchen menu would be available from 11.00am until 10.00pm with snack menus available after that. In addition a BBQ was planned for the local card members.

[8] Mr Colbourne freely acknowledged that he had not researched the history of the hotel and that it may have been built two years later than he thought. He accepted that both premises had previously hosted the same musicians that would be playing over Easter. He accepted that in a large part the ambience and fare of both premises would not be dissimilar to the hospitality normally offered to patrons. We were grateful to him for his candour and respect for the process. Mr Colbourne acknowledged that he was personally disappointed that the law in relation to the 3 ½ sacrosanct days had not been over ruled by Parliament when it changed the Act.

[9] In relation to the 'Bullock Bar', Mr Colbourne advised that the music would commence at 2.00pm and go through to midnight. He confirmed that both premises would cease trading at midnight on the Good Friday and Easter Sunday, rather than go through to the legal and normal closure of 2.30am the following day. The plan was for the country music event to showcase Wanaka's best talent with some out of town performers as well. In addition there was a plan to show the history of the 'Warbirds over Wanaka' on the television screen throughout the premises. As with the 'Luggate Hotel' a full kitchen service would be available until 10.00pm.

[10] In closing Mr Colbourne acknowledged that his main objective and concern was to provide some form of entertainment for the many people who would be in the area over Easter, while at the same time supplying a reason to obtain the special licences. He said that he was concerned about

the word 'contrived' referred to by both the Police and Medical Officer of Health, because his intentions were to provide a service to visitors, and this was the only way of doing so legitimately.

The Inspector.

[11] The Inspector is required by S.137 of the Act to inquire into and file a report on each application. Comprehensive and helpful reports were duly received. She noted the matters in opposition raised by the other reporting agencies which brought into question whether the applicant had met the criteria set out in s. 142 of the Act.

The Reports from NZ Police and the Medical Officer of Health.

[12] Pursuant to s.141 of the Act the Police must inquire into an application and must file a report if they have any matters in opposition. In this case Sergeant L K Stevens provided helpful submissions. She pointed out that the events were clearly open to the public. She noted that the majority of the artists had played at both venues before, and a number of them featured on The Bullock Bar's Facebook page. Her general argument was that both premises often have bands and artists and live music, so that what we were being asked to licence was 'business as usual'. She pointed out that in the last two years the "Luggate Hotel" had celebrated its birthday in March. On that basis she argued that both events had been contrived to allow the premises to trade as normal on days when trade would otherwise be restricted.

[13] Dr D W Bell has been a registered medical practitioner since 1998. He has been the Medical Officer of Health for Otago and Southland since 1998 under designation. We note that under s.141 of the Act he "may" inquire into an application for a special licence, and "may" report if he has matters in opposition. He noted that there a number of occasions when there would be no music or entertainment at either premises. He argued that neither applicant was holding an event that would justify the grant of a special licence. Rather the applications were attempts to get round s.47 of the Act which restricts trading on Good Friday and Easter Sunday.

The Committees Decision and Reasons.

[14] At the conclusion of the hearing the committee gave an interim decision declining both applications but reserving the right to give this fuller and more detailed reserved decision.

[15] Section 47 of the Act provides that the holders of an on-licence are unable to sell alcohol on Good Friday, Easter Sunday, Christmas Day or before 1:00pm on Anzac day. There are 3 basic exceptions. The first exception is where a special licence for the premises is granted. The second exception is where persons are on the premise for the purpose of dining. And the third exception is where people are residing or lodging on the premises. Parliament has therefore decreed that the owners of on-licences have the right to apply to sell alcohol by way of a special licence on the 3 ½ sacrosanct days. However there are obstacles to be overcome.

[16] Special Licences are referred to in S.22 of the Act. A special licence enables the licensee to sell or supply alcohol to people **who are attending an event** described in the special licence. (Emphasis ours). It is not to be granted to enable people to attend the premises primarily to drink. An event is defined in s.5 of the Act as including an occasion or a gathering. There is no substantive difference between an event under the new Sale and Supply of Alcohol Act 2012, and the previous act. Therefore we must rely on previous case law to assist with the Act's interpretation. Over the years a number of principles and guidelines have been established.

[17] First there must be a genuine event and not something that has been contrived. **Alan Robert Christie v Invercargill Licensing Trust LLA PH 1225/2000**. This was a case involving events over Easter. The Authority stated:

“The principal issue for determination is whether or not persons attending the series of occasion or events at the 'Sugar Shack' were attending a particular occasion or event in terms of s.79(1)(a) of the Act, or they were attending a contrived series of events or occasions, contrived solely for the purpose of enabling a tavern to trade at a time when the legislation otherwise required the premises to be closed.”

[18] Secondly the application must not be a means for a tavern to obtain extended trading hours. In ***Bond Street Inn Limited 1997 NZAR 9*** the Authority stated:

“We have a firm view as to what the special licence is not intended to cover. It is not intended to be a means for hotels and taverns to obtain extended trading hours at times when the premises would otherwise be required to be closed.”

[19] Thirdly one of the major changes in the new Act is the dramatic shift in decision making from a national to a territorial level. As a consequence it is likely that a degree of national consistency will be lost. There have been cases where local decisions have been made for local circumstances. In ***David Alan Thomson LLA 1287/97*** the Authority declined to interfere with a local body decision to allow a tavern to trade through to 1.00am on Christmas Day.

[20] It is therefore possible for local decisions to be made to address local needs. But for every case where the Authority has not interfered with a local decision, there are just as many cases where the local decision has been reversed. One of the most significant of those was ***Pirovano [2006] NZLLA 727*** where the Queenstown Lakes District Licensing Agency had granted 22 special licences to trade over Easter because of “Warbirds over Wanaka”, and because Queenstown was a significant tourist destination. All 22 decisions were reversed by the Authority.

[21] Fourthly it is likely that any wholesale relaxation of standards will bring the Act into disrepute, and could in the long term, reflect adversely on the Object of the Act. In ***Universal Liquor Limited and anor [2003] NZLLA 806*** the Authority stated:

“If all taverns (and off-licences) had the right to trade through Easter then in our view the law restraining trading during that time would inevitably be brought into disrepute. Having a law that has no effect may not physically lead to liquor abuse, but could certainly encourage the public to treat the Act with contempt and disrespect. This in turn would in our view undermine any serious attempts to reduce the abuse of liquor.”

[22] To these principles we would add our own. Whether an event is contrived can often be determined by a number of factors. The following examples are not exhaustive;

- (a) The price of entry. The lower the price the more people the applicant appears to be encouraging to attend.
- (b) Whether there is some generic factor with the customers (such as guests at a wedding or people with a special interest in the event) or whether it is anticipated that members of the public will attend. (It will be noted that under s.147(1) (h) of the Act a licensing committee may impose a condition excluding members of the public from the premises).
- (c) Whether the intrusion into Good Friday and/or Easter Sunday is significant or restrained. In other words whether the applicant seeks to trade for as many hours as possible.

- (d) Whether a reasonable person attending the event would immediately notice a difference between the ambience of the occasion and any other trading day.
- (e) The extent of the planning that has taken place, and the thought that has been given to the way the event is to be run. The less organised the applicant, the more likely that the event has been thought about after the decision has been made to apply for a special licence. Applicants were generally critical of the lack of time brought about by the public hearings, but the committee's staff has been at great pains to encourage the filing of early applications to enable them to be dealt with in an orderly way.

[23] The criteria to which we must have regard in deciding whether to issue a special licence are set out in S142 of the Act. The relevant conditions in this case are (a) the object of the Act, (b) the nature of the particular event for which the licence is sought and (f) the days on which and the hours during which the applicant proposes to sell alcohol. Mr Coulbourne correctly pointed out that his companies comply with the majority of the criteria. There are no issues about the applicants' suitability to hold a special licence.

[24] The Act's object is to be found in s.4 of the Act. It states 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. Given the closure hour of midnight, and the provision of quality food until 10.00pm, and the entertainment on offer, (this is a matter that Mr Colbourne believes reduces levels of intoxication), we believe that the object of the act has much less relevance.

[25] We would have been keen to try and assist the attempt made by this and other licensees to provide hospitality to the many visitors to the area, to help showcase Wanaka, and to support the 'Warbirds over Wanaka' festival, and to provide much needed revenue when the summer tourist season comes to a close. It was argued by many that the law was outdated and that the committee had the capacity to interpret and apply the law in a more flexible manner.

[26] However instead of being asked to bend the law in a reasonable way, the effect of the seven applications, was that we were presented with a full assault on the provisions of the new Act. We were literally asked to ignore the Act's restriction on the sale of alcohol on Good Friday and Easter Sunday. While it is true that S.3(2)(a) of the Act requires that we act in a reasonable way we are unable to break the law to please licensees. To do what we were asked to do would in our view destroy the Act's integrity. It would enable the people of Wanaka to change the law outside Parliament. The applicants have the right within ten working days to appeal to the licensing authority if dissatisfied with this decision. (S.154 of the Act).

[27] There may be ways of enhancing the 'Warbirds over Wanaka' event, and at the same time giving Wanaka an edge. There would need to be consultation and co-operation with the 'Warbirds over Wanaka' management as well as the agencies. The applicants in this case currently have a commercial arrangement with the Warbirds organisers, but it has never been suggested that the licensed premises form part of the festival. Since the event closes at the airport at 4.30pm it may be possible as part of the event, to offer hospitality at taverns in Wanaka and Luggate for say two hours giving visitors to the town an opportunity to relax before dining. Such an opportunity would have to become part of the Warbirds programme and part of the actual event. In this way there would be no need to dress the hospitality up, since the ability to drink at bars would be part of the major event. Such an idea cannot be judged until it has been thought through and presented. Whether members of the public should be included or not would be one issue to be resolved. We simply flag the proposal as an illustration of the way that the aspirations of licensees could become reality. We suggest that planning starts now.

[28] Many licensees including Mr Colbourne thought the law was outdated yet none of the applicants made submissions on the new Act, or indeed on the Law Commission's publication "Alcohol in our lives. Curbing the harm" presented to Parliament on 27 April 2010, and forming the framework on which the new Act was based. We therefore think it important to trace the way that the matter was considered by Parliament. In 2009 the Law Commission produced an issues paper entitled "Alcohol in our Lives". In Chapter 9 the prohibited days were discussed. The Commission wrote:

"Undoubtedly, the prohibited days adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. For many people, rules around the prohibited days are outdated and inconvenient.

On the other hand, many would argue that the remaining sacrosanct days should continue to be respected, and that the three and a half days are the only days on which workers are guaranteed time off to spend with their families. However, these arguments are not so apt for bars that are only open in the evening and early hours of the morning. Although New Zealand is a largely secular society, in the 2006 census, just over two million people affiliated with a Christian religion. Recent attempts to change the general Easter shop trading hours have failed in Parliament.

Mention was also made of the practical difficulty of specifying the hour at which the prohibited days began. The Commission suggested it would be less disruptive if a starting time of 2.00am on the actual day was legislated.

[29] The Issues Paper was the subject of 50 public meetings and a record 2939 written submissions were received. The submissions were duly analysed and considered and the final report was duly prepared. In that report the Commission felt that the 3 ½ sacrosanct days should be the same as the general law affecting retailing in New Zealand. It stated:

"We think the licence conditions regarding the prohibited days should reflect the general law relating to business in New Zealand. Currently, the Shop Trading Hours Act Repeal Act 1990 requires almost all shops to be closed on these three-and-a-half days. We do not think the new sale of alcohol legislation should apply different rules relating to trading days than applies to other types of stores.

We acknowledge the prohibited days do adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. Many submitters, particularly from the retail and hospitality industries, were in favour of the prohibited days being removed for the reason that this law is no longer necessary or relevant. For a significant number of people, the rules around the prohibited days are outdated and inconvenient.

However, many other submitters argued the prohibited days should be retained. It was considered these days provide a further limit on the availability of alcohol. They allow many people who work in the hospitality industry to have a day off to spend with their families. It was felt that three-and-a-half days per year is not a large limitation on the commercial right to sell alcohol. Many also argued the sacrosanct nature of these days should be respected for historical or religious reasons. As mentioned in our Issues Paper although New Zealand is a largely secular society, a significant proportion of New Zealanders affiliate with the Christian religion and recent attempts to change the general Easter shop trading hours have failed in Parliament".

[30] In December 2012 after lengthy debate and select committee hearings Parliament passed the Act in its present form. It had the opportunity to change the law by allowing a more liberal approach but chose not to do so. In fact the law affecting the 3 ½ days has become even more restrictive as it now affects all on-licences. Previously entertainment licences and cinema licences (for example) were exempt. The Act now specifies that persons who are present on premises to dine may drink for an hour before and an hour after their meal. Both the "Bullock Bar" and the "Luggate Hotel" have reasonably extensive menus and provide good food to patrons. There is nothing to prevent people being present on the premises over Easter to dine, and they may of course drink as well.

[31] It is difficult for taverns to obtain a special licence where the event happens on the premises, unless of course the occasion is restricted to persons having a common interest such as a wedding or birthday party. This is because taverns will tend to look the same, the alcohol that is sold will generally be the same, the bands that may play may well have played previously, the ambience in the bar will be the same, and the food on offer will generally be the same. There is not the obvious characteristics that one might find in all the other special licences that are granted by the committee, and there are many such grants.

[31] Applying the factors set out in paragraph [22] above to the two applications, the applicants have failed to prove any entitlement on most of them. There are no tickets. The general public is welcome to attend the occasions. It could be argued that some of the patrons attending might have an interest in the music, or the country music or the "Luggate Hotel's" anniversary, but if they only intended to drink they would be welcome. Thirteen hours drinking on Good Friday and Easter Sunday could not be said to be a gentle intrusion into the prohibited hours. It is a full scale request to trade on two of the sacrosanct days. And it is quite clear that a reasonable person would not notice much difference between what was happening on each day and night compared to any other day and night when music was being played.

[32] In both applications there was an element of planning but it has been difficult for us to escape the conclusion that the applications were inspired by an initial decision to combine to provide hospitality to a large number of visitors to Wanaka over the Easter 'Warbird' weekend. And further, that once that decision had been made, there was an effort to dress up the applications as separate events or occasions. Evidence to support such a conclusion can be found in the similarity of all the applications, the lack of any form of co-operation and co-ordination with the 'Warbirds' organisation, the desire to use up all or most of the available time on Good Friday and Easter Sunday, the lack of significant entry fees, and the inability to find other ways of making the application a true event.

[33] In summary we have not been persuaded that these proposals fall within the ambit that s.22 of the Act was designed for. As stated above the applicants carry the onus of proving on the probabilities that the proposed events will not be business as usual, and that there will be real difference to what happens on these particular days and nights compared to what happens on any other days and nights. After reviewing the evidence we conclude that the applicants have fallen short of the mark. The applicants have failed to prove that there will be an event in terms of the Act warranting the issue of a special licence. Accordingly the applications for a special licence to trade on Good Friday and Easter Sunday are refused.

DATED at QUEENSTOWN this 24th day of April 2014



E W Unwin

Chairman