

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **PERKY'S
LIMITED** pursuant to S.127 of the
Act for the renewal of an on-
licence in respect of a conveyance
situated at Butson/Lapsley Jetty,
Queenstown, known as "Perky's"
Bar & Coffee Shop"

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr L A Cocks
Mr J M Mann

HEARING at QUEENSTOWN on 31 October 2017

APPEARANCES

Mr G M Todd – for the applicant
Ms S H Swinney – Queenstown Lakes Licensing Inspector – to assist
Sergeant T Haggart – N Z Police – to assist

MINUTE OF THE COMMITTEE

[1] Before the Committee is an application by Perky's Limited (hereafter called the company) for the renewal of its on-licence in respect of a conveyance situated at Butson/Lapsley Wharf, Queenstown and known as "Perky's Bar & Coffee Shop".

[2] This is the company's first application for renewal, the licence having fallen due to expire on 7 October 2016. The public notification of the renewal was not made within the required timeframe. We are satisfied that the error was not willful and there are no natural justice issues and a waiver is granted under s.208 of the Act.

[3] The licence was first issued by the Committee 'on the papers' in a minute dated 28 September 2015. In the minutes the concerns of the Police relating to safety matters were addressed. Reference was also made to the Inspector's report and her concerns about whether the vessel was a premises or a conveyance.

[4] Under the Building Act 2004, a building does not include a conveyance. Consequently the company was unable to obtain a certificate from the territorial

authority that the proposed use of the vessel met the requirements of the building code. (s.100 (f)). Under the Sale and Supply of Alcohol Act 2012, the definition of premises includes a conveyance. However a conveyance is defined in s.5 of the Act as an aircraft, coach, ferry, hovercraft, ship, train, or other vehicle used to transport people.

[5] In its minute the Committee made the following comments at paragraph (6).

No more charter trips are to take place on this vessel although it will need to be maintained on a regular basis. Every three months the vessel has to be taken to the Frankton Arm for engine checks and to eliminate potential "Didimo" growth from the hull. Every two years the vessel needs to be put into dry dock for a full service. The vessel still holds current Maritime New Zealand certificates to indicate it is able to sail in New Zealand waters. It is also the emergency backup assistance boat to the "Earnslaw" and takes part in training exercises with the "Earnslaw" when required.

[6] Because of issues raised by the Inspector in her latest report the application was set down for a public hearing. Regrettably time did not allow for a full discussion to take place. Our understanding is that the vessel in question no longer takes part in training exercises with the "Earnslaw" and there have been no calls for emergency back-up assistance. This is a matter that now assumes some importance because in our original decision, we determined that the vessel was a conveyance based on its backup assistance with the "Earnslaw".

[7] We know that the vessel must go into dry dock for its survey every two years. What we do not know is whether the vessel is taken to Frankston Arm every three months as was stated in the original minute.

[8] There are problems with the interpretation of the new Act partly because of an apparent desire to reduce the number of rules surrounding each type or style of licence. There are only four kinds of licence (s.13). Apart from BYO and caterers on-licences, the rules for all other on-licences (including on-licences for conveyances) are generic for all. Consequently, there is no requirement that alcohol can only be supplied while the conveyance is in motion; there is no guide as to how often people should be transported and there is no requirement as to who such people should be. People could include the crew. The law of unintended consequences strikes again.

[9] Our concerns about setting a precedent no longer apply because a condition of the present licence states that alcohol may only be sold or supplied when the vessel is moored and held in its present position. This is truly a unique licence.

[10] During the hearing there were suggestions made as to how a renewal could legally be granted. After consideration we have decided that the licence can be renewed as a conveyance style licence if the company continues with the quarterly trips referred to in the original minute. Accordingly we require an undertaking from

the company that the vessel will be taken to Frankton Arm (or a similar destination in terms of distance) at least once every three months. If this undertaking is received by the Agency we will be satisfied that the company is doing enough to warrant the vessel being categorised as a conveyance and accordingly we will renew the licence.

[11] If the company is unable to provide such an undertaking, we will reconsider the application. We may set the matter down for a further hearing or ask the Inspector to investigate the ramifications of the proposal made by Mr Todd in paragraph 22 of his submissions.

DATED at Queenstown this 3rd day of November 2017



Mr E W Unwin
Chairman

