

Decision No. CL0018 - 2020

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **Hakaru and Districts Memorial Returned Services Association Incorporated** for a variation and renewal of a Club licence pursuant to s.120 and s.127 of the Act in respect of premises situated at 733 Settlement Road, Hakaru Kaipara District known as "Hakaru RSA".

Before the Kaipara District Licensing Committee

Chair: Mr Mark Farnsworth
Members: Mr Gordon Lamberth
Ms Grace Le Gros

Hearing at: Mangawhai Meeting Room, Kaipara District Council Offices
The Hub, 6/6 Molesworth Drive, Mangawhai Commencing at 1300

APPEARANCES

Kaipara District Council

Gavin Dawson, Governance Advisor.
Dean Nuralli, Monitoring and Compliance Services Manager and Chief Licensing Inspector.
Fiona Poyner, Independent Inspector.
Tim Fischer, legal Counsel for the Independent Inspector.
Chris Ryan, Observer Simpson Grierson.
Gina Aylett, Monitoring and Compliance Services Technical Support Officer (observer).
Alison Smith, Environmental Health Officer (observer).

Northland District Health Board:

Wendy Antrobus, Technical Officer,

Applicant Represented by:

Bill Warren, RSA President
Sam Turner, RSA Vice President
Martin Sudbury, RSA Secretary
Neville Andrew, RSA Member

Derek Mason, RSA Member
Mark Davey, RSA Member

Submitters

There were no submitters.

Other

Rachel Sheppard, Former Independent Inspector

DECISION OF THE KAIPARA DISTRICT LICENSING COMMITTEE

Introduction

- [1] We have before us an application by **Hakaru and Districts Memorial Returned Services Association Incorporated** for a variation, and renewal of a club licence in respect of premises situated at 733 Settlement Road, Hakaru.
- [2] The application was filed on 14 January 2020.
- [3] The applicant sought the renewal of its Club Licence and a variation to:
- 3.1 its operating hours of:
- Monday to Sunday 11.00am to 11.00pm; and
 - Christmas Eve and New Year's Eve 12.00 noon to 12.00 mid-night; and ANZAC Day 9.00am to 12.00 mid-night.
- To
- Monday to Sunday 8.00am to 2.00am the following day.
- 3.2 New condition – to include the grassed area at the rear as an area to consume alcohol.

Reporting Agencies

- [4] The Kaipara District's Chief Licensing Inspector has filed report¹ recommending the Kaipara District Licensing Committee should consider and determine the application in a full hearing before the District Licensing Committee. The Inspector proffered the opinion that the granting of the variation of conditions in the renewal application and the issue of a replacement club-licence under the conditions sought would be contrary to the object of the Sale and Supply of Alcohol Act 2012 (the Act). A supplementary Submission was filed by Kaipara District Council Licensing Inspector² addressing the risk posed by the variation sought.
- [5] Medical Officer of Health filed³ a Submission and a brief of evidence in objection, pursuant to section 105 of the Act, to the variation sought. Namely:
- s 105(1)(a) – the Object of the Act;
 - s 105(1)(d) – the days and hours on which the applicant proposes to sell alcohol; and
 - s.105(1)(k) – extensive trading hours compared with other Clubs in Northland, one certified manager when the premises may trade potentially up to 126 hours per week together with uncertainties on how the proposed increased outside grassed area may be managed.
- [6] The Police⁴ did not oppose the application.

Decision Note

¹ Ms Rachel Sheppard retired Chief Licensing Inspector 5 August 2020

² Ms Fiona Poyner Licensing Inspector, 29 October 2020

³ Dr Catherine Jackson Medical Officer of Health Northland District Health Board, 29 October 2020

⁴ Senior Constable Nadine Monk (G635) Alcohol Harm Prevention

- [7] The Committee chair noted that the application for the renewal of the Club License had not been opposed and that the Committee would be granting the renewal of the Club License. The focus of this hearing is on the variation sought by the RSA.

Background

- [5] The Hakaru and Districts Memorial Returned Services Association hold a Club License for a premise located at 733 Settlement Road, Hakaru. The Club currently has 174 members⁵. Its current hours of operation⁶ are:
- Tuesday 1600 – 1800;
 - Thursday 1700 – 2130;
 - Friday 1700 – 2200; and
 - Annual events – ANZAC Day, Armistice Day and military event celebration days

The Evidence and Submissions

- [6] Sam Turner, the Vice President of the RSA, opened the applicant's case. He noted that he was standing in for the RSA's President Bill Warren, who had been unwell. In summary Mr Turner addressed the following:
- The prime mission of the RSA is to remember and care for all those impacted by service for New Zealand;
 - An overview of RSA nationally and its objectives; and
 - Deep commitment to the ANZAC spirit of courage, commitment, comradeship and compassion.
- [7] Turner indicated that the hours applied for – 0800 – 0200 the following day would not change the way the RSA operates. He reminded us of the default maximum national trading hours which they could have applied for.
- [8] Turner explained their purpose in applying for the extended hours:
- To allow the RSA to open the bar in the event of a sporting event or other event of importance that can be screened on our large screen;
 - To carry out the above without the need to apply for a special license; and
 - There would not be more than 15 events a year.
- [9] Turner questioned the need to impose a condition which requires a licensed manager to be on the site for 15 members to be able to watch an event on television for about 2 hours would in effect prevent this happening.
- [10] If the hours are not granted it would force the RSA to apply for Special Licenses, these licenses are not an inexpensive cost to small clubs. Compliance cost are 40% of the RSA's annual profit.

⁵ Sam Turner EiC at page 8

⁶ *ibid* at page 3

- [11] In addressing the Medical Officer of Health's objections, Turner noted that they were not going to trade for 126 hours a week giving an example of how the RSA operates. It is important to note most attendees are widowers aged over 75 who live alone. There is no problem with migration from other areas after 0100 as you have to be a member to enjoy the facilities. He expressed the belief that Dr Jackson's objections were just following the party lines.
- [12] Turner addressed the Council's objection noting that their grounds are not supported by evidence and that they were just pursuing their standard line without considering the facts.
- [13] In concluding his statement Turner noted –
"all we are requesting is a variation to allow us to enjoy our amenity, watch sport and have a drink whilst doing so no matter the time of day. This is what we served for."
- [14] We took the opportunity to put to one-side the normal formality of hearing procedure to allow us to explore, and to help us fully understand, what the RSA was seeking by way of variation with all the participants who were present at the hearing. At the end of this discussion we gave the clear indication that we our preferred option was not to set a trading hour precedent and grant the trading hours variation, rather we would be prepared to align their trading hours with the other RSA's in the Kaipara District. We suggested that a small adjournment was in order so that they could discuss their position prior to them making their closing statement.
- [15] Before taking the adjournment Mr Tim Fischer, Legal Counsel, for the Licensing Inspector tabled legal submissions in support of the Licensing Inspector. Mr Fischer's legal submissions addressed both aspects of the variation.
- [16] Fischer submitted⁷ that the evidence of Ms Poyner and Dr Jackson on the applicant's trading hours highlights a number of concerns and establishes that in terms of section 105(1)(a) of the Act the extension of the trading hours would not be in accordance with the object of the Act because it would not ensure the safe and responsible sale, supply, and consumption of alcohol, nor would it minimise the harm caused by excessive or inappropriate consumption of alcohol.
- [17] Fischer repeated Ms Poyner's recommendation that the Committee is minded to grant the variation extending the licensed hours to 2.00 am, it would be appropriate to impose a condition on the Licence under section 110(1)(e) of the Act requiring manager to be on duty from 10pm on any nights on which alcohol will be sold after 1.00am The existing licence does not require a manager on duty at any time.
- [18] In addressing the variation sought for the grassed area Fischer reminded⁸ the Committee that Section 105(1)(e) of the Act requires the Committee to have regard to the design and layout of any proposed premises. He noted the application seeks to expand the licensed area where alcohol may be consumed to include a grassed area at the rear of the clubrooms and Dr Jackson and Ms Poyner both identify two potential issues arising from the expansion of the licensed area: that the grassed area is unfenced and there is poor visibility of the grassed area from the serving area. The evidence of Dr Jackson is that these risks associated with the expansion of the licensed area would only be exacerbated by the extension in licensed hours also sought by the applicant. Ms Poyner considers that these issues could be resolved by imposing conditions.
- [19] The evidence of Ms Poyner and Dr Jackson establishes that conditions of this nature are appropriate to achieve the object of the Act i.e. to ensure the safe and responsible sale, supply, and consumption of alcohol, and minimise the harm caused by the excessive or inappropriate consumption of alcohol.

⁷ Fischer Legal Submissions at [6.3 – 6.5]

⁸ Ibid at [7.1 -7.6]

- [20] In presenting his closing statement for the RSA Mr Turner noted:
- They would accept an alignment of their trading hours with the trading hours of other RSA's in the Kaipara District;
 - They did not want the imposition a condition which requires a licensed manager to be on the site at all times;
 - They wanted ability to hold a specified number of special events (at short notice) without having to apply for Special Licences;
 - They would be prepared to adopt conditions which would allow them to use the grassed area.

Committee Decision and Reasons

- [21] In making a decision on the variation application we must have regard to section 105 of the Act, in particular the following elements:
- (a) the object of the Act;
 - (b) any relevant local alcohol policy;
 - (c) the days on which and the hours during which the applicant proposes to sell alcohol;
 - (d) whether the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence; and

Trading Hours

- [22] The applicant has agreed that their trading hours should align with the other RSAs⁹ in the Kaipara District. Alcohol must be sold only on the following days and during the following hours:
- Monday to Sunday 10.00am until 01.00am the following day; and
 - ANZAC Day 06.00am until 01.00am the following day.

Special Licences

- [23] The Committee is not prepared to grant an exemption from the need to apply for Special Licences for special events. The granting of such an exemption would be *ad hoc*, not meet the requirements of section 22 of the Act and would be contrary to section 105(1)(a) the objective of the Act.

Grassed Area

- [24] The committee is prepared to place on the license a new condition to include the grassed area at the rear as an area to consume alcohol subject to specific conditions. The applicant has recognised the concerns of the objectors that conditions (fencing etc) are appropriate to achieve the object of the Act.
- [25] The following conditions will apply:
A suitable paling fence is to be constructed to a minimum height of 1.5 meters but not greater than 1.8 meters high. The fence is to run along the perimeter of the car park from the edge of the

⁹ Maungaturoto RSA has an opening time of 10.00am, Northern Wairoa RSA has an opening time of 11.00am.

building, including the deck and ramp to the end of the car park. (as per the purple line in the attached photo)

Advice Note: Should you wish to confirm the Kaipara District Councils Monitoring and Compliance Manager is willing to discuss the construction and placement of the fence, prior to the licence being issued.

When the grassed area is in use the screen which obscures the view from the serving area to the grassed area will be raised.

Restriction

The grassed area cannot be used for the consumption of alcohol until the required fencing is completed. Please ensure the construction and location of the fence is carried to the satisfaction of Kaipara District Councils Monitoring and Compliance Services Manager (Chief Licensing Inspector).

Renewal of Club Licence

[26] As noted above:

The Club licence in respect of the premises located at 733 Settlement Road Hakaru, Kaipara District, and known as **'Hakaru and Districts Memorial RSA'** is renewed on the terms and conditions set out in the replacement Licence.

Dated at Mangawhai this 18 day of November 2020



Mark C Farnsworth MNZM, JP
Chairperson
Kaipara District Licensing Committee

On behalf of: - Grace Le Gros & Gordon Lambert

