

Application

19/015/2022 & 19/016/2022

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by
Food for Thought Waiuku Limited
for the renewal of an on-licence & off-
licence in respect of the premises
situated at Hotel Access Road, Waitomo
known as The Tomo Bar and Eatery

DECISION OF THE DISTRICT LICENSING COMMITTEE

1. The off-licence 019/OFF/022/2021 and on-licence 019/ON/001/2021 in respect of the premises situated at Hotel Access Road, Waitomo and known as The Tomo Bar and Eatery is renewed for a further period of 3 years. The licences may issue upon payment of the annual fee.
2. The present conditions for the on-licence and off-licence continue to apply.

Reasons

1. This is an application by Food for Thought Waiuku Ltd for renewal of an off-licence and on-licence in respect of the premises situated at Hotel Access Road, Waitomo, known as The Tomo Bar and Eatery.

Late applications

2. The applications were filed on 12 April 2022, only 18 days before the expiry of the licences on 11 May 2022. An application for the renewal of a licence must be made no later than 20 working days before the expiry of the licence. The applicant has requested that a waiver be granted from the requirement to file the application 20 working days before the expiry of the licence and states that Easter was not factored in, and the company director Mr Heka had Covid and had to isolate for 9 days from 1 to 9 April 2022. Evidence has been provided to support this fact.
3. Section 127(2)(b) Sale and Supply of Alcohol Act 2012 provides that a holder of a licence may apply to renew the licence by filing an application with the licensing committee "no later than 20 working days before the expiry of the licence, or by such later date (not being later than the expiry

of the licence) as the licensing committee may allow”.

4. Section 208 provides that where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by the Act, the licensing committee or chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable.
5. Justice Heath in the High Court decision of *Sara v Johns* (HC) CIV-2008-404-7746 states that section 111 (the identical provision to s 208 under the Sale of Liquor Act 1989) cannot be used to “waive non-compliance with the need to file before expiry of the on-licence or off-licence, based on the principle that a specific provision will be given precedence over a general one”.
6. Justice Heath distinguishes between a provision in the Act that provides an express jurisdiction to extend time to do a particular act such as section 111 and a provision with no express jurisdiction to extend time such as section 123 (renewal of manager’s certificates). Heath J states that strict time limits are placed on applications for renewal of an off-licence “to prevent licenced premises from being operated illegally”.
7. Firstly, the renewal application was filed before the expiry date of the licence therefore a waiver can be considered. Secondly, I am satisfied that the applicant had genuine reasons for the late application and the failure was not intentional. Thirdly, the impact of the failure is reasonably minor and will not have any impact on public participation in the process or the obligations of the reporting agencies. Therefore, a waiver is granted from the requirement to file the application more than 20 working days before the expiry of the licence and the renewal application is accepted as if it were filed on time.

The criteria

8. The application was advertised, and no objections have been received from members of the public. The Liquor Licensing Inspector, Police and the Medical Officer of Health have provided reports and do not oppose the application. Accordingly, the application is decided on the papers (s 202(1)).
9. The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4).
10. In deciding whether to renew an off-licence the licensing committee must have regard to sections 131 and 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is the applicant suitable?
 - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - e) Does the applicant have appropriate systems, staff and training to comply with the law?
 - f) Have the police, inspector and medical officer of health raised any relevant considerations?
 - g) Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?
 - h) Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?
 - i) Does the application comply with the Waitomo District Local Alcohol Policy?

11. The licensing committee must have regard to section 116 in deciding what conditions apply to an off-licence.

Should the licence be renewed?

12. The licensing committee is satisfied that Food for Thought Waiuku Ltd is a suitable applicant to hold an off-licence and an on-licence. No variations to either licence have been applied for. The company has demonstrated compliance with the Sale and Supply of Alcohol Act 2012. The premises has a suitable design and layout to meet the requirements of the Act. It is well appointed and able to be monitored effectively by the staff of the premises. There are sufficient Duty Managers employed to ensure compliance with the Act.

13. Food for Thought Waiuku Ltd has an appropriate Host Responsibility Policy and staff training programme. The licensing committee reminds the applicant that there should be a minimum of two training sessions provided for each staff member per year. The committee will expect to see all staff training records for the next three years, with the next renewal application.

14. The licensing committee is satisfied that the renewal of the off-licence and the on-licence will not reduce the amenity and good order of the locality by more than a minor extent. There have been no reports of any nuisance, vandalism or noise problems associated with this premises in the past three years.

15. Alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.

Conclusion

16. The licensing committee is satisfied that the grant of the off-licence with the appropriate conditions will ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol.

17. Therefore, the application for the issue of the off-licence is granted.

Dated this 21st day of October 2022



Sara Grayson
Commissioner
District Licensing Committee
Wai