

Application	19/006/2018
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u> <u>IN THE MATTER</u>	of an application by Dimac Limited for renewal of an on-licence pursuant to section 127 of the Act in respect of the premises at Hotel Access Road, Waitomo, known as The Tomo Bar and Eatery

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The on-licence 019/006/2018 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 licence may issue upon payment of the annual fee.
2. The present conditions of the licence are replaced as follows:
 - (a) Alcohol may be sold only on Monday to Sunday, from 9.00am to 2.00am the following day, EXCEPT THAT on the day before Good Friday, Easter Sunday, Christmas day and Anzac day alcohol may only be sold until 12.00 midnight.
 - (b) No alcohol may be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person other than any person who is present on the premises for the purpose of dining.
 - (c) The area where alcohol is to be sold and consumed is described in the plan date stamped as received by the Waitomo District Licensing Committee on 28 September 2018 and no alcohol is to be taken out of this area.
 - (d) The entire premises is designated as a supervised area (no persons under 18 can be in the area unless with their parent or legal guardian).
 - (e) The holder of a manager's certificate must be on duty and on the premises at all times alcohol is sold. If a duty manager is not present, then there must be no alcohol sales and a notice displayed advising the public of this fact.

- (f) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
- (g) A Host Responsibility Policy must be maintained and displayed, and the licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
- (h) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions.
- (i) Drinking water must be freely available and this must be clear to customers, while the premises are open for the sale and supply of alcohol.
- (j) Food must be available for consumption on the premises at all times when open for the sale of alcohol. A minimum of four types of light meals must be available (excluding nuts, chips and the like). Menus and the availability should be clear to customers and food should be actively promoted.
- (k) A range of low-alcohol and non-alcoholic drinks must be available at all times when the premises are open for the sale of alcohol.
- (l) A telephone must be freely available for patrons to call for transport assistance and if requested staff must help to make these arrangements. Telephone numbers for alternative forms of transport from the premises are to be displayed.
- (m) The Licensee must ensure the following are displayed;
 - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
 - iii) A sign in a prominent place identifying the duty manager.

REASONS

1. This is an application by Dimac Limited for renewal of an on-licence in respect of the premises situated at Hotel Access Road, Waitomo, known as The Tomo Bar and Eatery. This tavern has been operating from its present site for the past 15 years.
2. The application was advertised and no objection or notice of desire to be heard has been received. The Liquor Licensing Inspector and Medical Officer of Health have provided reports and do not oppose the application. No report has been received from Police in the required 15 working day period, therefore it may be assumed there is no opposition to the application (section 103(4)). Accordingly, the matter is decided on the papers (section 134).
3. The purpose of the Sale and Supply of Alcohol Act 2012 is to put in place a new system of control over the sale and supply of alcohol (section 3). 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 (section 4).
4. In deciding whether to renew an on-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?

Should the licence be renewed?

- 5. The Licensing Inspector has advised the licensing committee that the licence was suspended for 24 hours from Saturday May 2016, following a decision of the Alcohol Regulatory and Licensing Authority ([2016] NZARLA 124 – 125 Michael Barry Henwood v Dimac Limited & Ian McErich). This relates to an incident on 1 August 2015, when Police conducted a compliance check and intoxicated persons were found in the premises. As a consequence, Dimac Limited has one negative holding. This breach of the Sale and Supply of Alcohol Act 2012 occurred shortly after the licence was last renewed on 20 March 2015.
- 6. This incident raises concerns about the suitability of the company to hold an on-licence. However, no further breaches of the Act have come to the attention of the licensing committee and it is now more than three years since the incident. Secondly, the Licensing Inspector is satisfied that the Dimac Limited has appropriate staff, systems and training in place to ensure compliance with the Act. It is noted that evidence of staff training is recorded in the staff training log, with the last training conducted in November 2017. Therefore, having regard to these factors, the licensing committee is satisfied that Dimac Limited is a suitable application to hold an on-licence.
- 7. Dimac Limited seeks to continue operating as a tavern from 8.00am to 2.00am the following day Monday to Sunday. However, these hours do not comply with the Waitomo District Local Alcohol Policy, which prohibits an on-licence (for a hotel or tavern) being issued or renewed with hours exceeding Monday to Sunday from 9.00am to 2.00 the following day. No information has been provided by Dimac Limited about why the company should operate outside the hours specified in the Waitomo District Local Alcohol Policy. These hours have been set after extensive community consultation and are consistent across the whole district, therefore the licensing committee considers they should also apply to Dimac Limited. Therefore, it is a condition of the licence that the hours are amended to Monday to Sunday from 9.00am to 2.00 the following day.
- 8. Some other issues have been raised by the Licensing Inspector. Firstly, the manager's register was not filled out correctly and there was some confusion in the application in regard to which certificated duty managers were actually employed at the premises. Secondly, the District Licensing Committee has not been informed about appointments of duty manager's in accordance with section 231 of the Act, despite verbal assurances given by Mr Dimond at a recent public hearing for the renewal of his manager's certificate. Thirdly, the site plan was incomplete and there was confusion about the designation of the premises
- 9. Following a direction of the licensing committee, director of Dimac Limited, Mr Dimond, has provided updated information and has confirmed that the company is seeking a supervised

designation for the whole premises. Mr Dimac has confirmed that five duty managers are employed at the premises, has provided an updated manager's register and has made the appropriate notifications about changes to duty managers.

10. Standing back and considering all information provided, the licensing committee is satisfied that the application is in keeping with the object and requirements of the Sale and Supply of Alcohol Act 2012. The licensing committee is satisfied that suitable measures will be taken to ensure that alcohol is sold and supplied responsibly, and that harm caused by inappropriate or excessive consumption of alcohol is minimised.
11. The licensing committee is satisfied that 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 and 17 CCTV cameras. In accordance with the recommendation of the Licensing Inspector the CCTV monitor has now been moved to sit on the bar where it can easily be viewed by staff and is now operational.
12. The licensing committee is satisfied that the renewal of 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 or vandalism or noise problems associated with this premises in the past three years.
13. The licensing committee is satisfied that alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.
14. The conditions for this licence have been replaced to ensure that they are consistent with licences issued since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory obligations to display signage and the maintenance of a manager's register.

Conclusion

15. Therefore, the application for the renewal of the on-licence is granted.

Dated this 28th day of September 2018



Sara Grayson
Commissioner