

Application SP1346

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND
IN THE MATTER of an application by
Graeme Anthony Brier for
an on-site special licence pursuant to
section 22 of the Act

HEARING at the Waitomo District Council Chamber on 14 February 2020

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Cr Whitaker, Mr J Gower

APPEARANCES

Applicant – Mr G Brier
Licensing Inspector – Mr L Norris
Police – Sergeant C Lindstrom

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for an on-site special licence is granted. The special licence may issue immediately.
2. Graeme Anthony Brier is authorised to sell and supply alcohol, on the premises situated at Alladale Farm in Aria to any person attending the Sheep Dog Trial competition hosted by the Aria Collie Club.
3. This licence is subject to the following conditions:
 - (a) A copy of this licence with all the conditions must be displayed in a prominent place so all persons can read it and all volunteers must be familiar with the conditions.
 - (b) Alcohol may be sold under the licence only on the following days and during the following hours:

Friday 28 February 2020, from 12.00 noon to 10.00pm
Saturday 29 February 2020, from 12.00 noon to 8.00pm

- (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 29 January 2020 and no alcohol is to be taken out of this area.
- (d) The person nominated to manage the conduct of the sale and supply of alcohol at all times the premises is open for the sale and supply of alcohol is Graeme Anthony Brier and a sign shall be prominently displayed at the bar which identifies by name the person responsible for the management of the sale and supply of alcohol under the licence.
- (e) The entire premises is undesignated.
- (f) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at the bar appropriate signs detailing these restrictions.
- (g) Drinking water must be freely available from the bar and this must be clear to customers while the premises is open for the sale and supply of alcohol.
- (h) A reasonable range of food must be available for consumption on the premises at all times the premises is open for the sale of alcohol in accordance with the menu submitted with the application for this licence, or variations of a similar range and standard.
- (i) Evidence of age documents must be requested from any person appearing to be under the age of 25.
- (j) A range of low-alcohol and non-alcoholic drinks must be available at all times when the premises is open for the sale of alcohol.
- (k) A list of sober drivers available to transport patrons from the premises shall be displayed in a notice to patrons at the bar.
- (l) The licensee shall conduct a pre-event briefing with all volunteers assisting with the bar.

The Application and reports

1. This is an application by Graeme Brier for a special licence for the annual Sheep Dog Trial competition hosted by the Aria Collie Club on 28 and 29 February 2020 at Alladale Farm in Aria. The application was received on 29 January 2020, more than 20 working days prior to the event as required by section 137 of the Act.
2. The application was originally made in the name of "Aria Collie Club (rep Graeme Anthony Brier)". The Inspector correctly pointed out that the Aria Collie Club is not a legal entity that is entitled to hold a special licence under section 28 of the Act. Section 28(3) states that a club can hold a special licence. A club is defined as body that (section 5):
 - a) is a body corporate having as its objective (or one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or
 - b) is a body corporate whose object is not (or none of whose objects is) gain; or

- c) holds a permanent club charter
3. Aria Collie Club is not an incorporated society and does not hold a permanent club charter, therefore the club is not entitled to hold a special licence.
 4. At the hearing Mr Bier explained that he made a mistake on the application and had intended to make it in his own name. Mr Brier requested that the name of the applicant be amended to Graeme Anthony Brier. This request was granted with the consent of the reporting agencies who agreed that all enquiries and reports had effectively dealt with the fact that Mr Bier had made the application on behalf of the Aria Collie Club, and there would be no disadvantage in the amendment.
 5. Police did not oppose the event. The Inspector and Medical Officer of Health opposed the application on the grounds that:
 - a) Mr Brier is not a suitable person to hold a special licence because he filed the 2019 special licence for the same event late and did not obtain a special licence. However, the Inspector and Medical Office of Health were subsequently advised by the landowners of the venue that alcohol was supplied from a chiller trailer.
 - b) Mr Brier does not have a duty manager and should not be granted an exemption to run the event without a duty manager, due to concerns about suitability and a lack of evidence about staff, systems and training.
 6. Due to the opposition from the Medical Officer of Health and Inspector, the matter was set down to be determined at an urgent hearing.

The Act

7. 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).
8. In deciding whether to grant a special licence the District Licensing Committee must have regard to the criteria in s 142 of the Act. Therefore, this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) What is the nature of the event? 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?
 - b) Is the applicant suitable?
 - c) Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of the licence?
 - d) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - e) Is the design and layout of the premises suitable? Are any areas of the premises designated restricted or supervised areas?
 - f) Does the applicant have appropriate systems, staff and training to comply with the law? What steps will the applicant take to ensure that alcohol is not sold to prohibited persons? Should an exemption be provided from the requirement to provide a certificated duty manager?
 - g) What proposals does the applicant have in relation to the sale and supply of non-alcoholic drinks and food, low-alcohol drinks and the provision of help with or information about alternative forms of transport from the premises?
 - h) Have the Inspector, Police and Medical Officer of Health raised any relevant considerations?

i) Does the application comply with the Waitomo District Local Alcohol Policy?

9. Sections 146 – 149 of the Act outline the compulsory and discretionary conditions for a special licence.
10. No concerns have been raised about amenity and good order, the proposed days and days and hours of operation, the design and layout of the premises, provision of food, non-alcohol and low-alcohol options or safe transport home from the premises.
11. This leaves three key issues: whether Mr Brier is a suitable applicant to hold a special licence, whether an exemption should be granted from the requirement to appoint a duty manager and whether Mr Brier has appropriate systems in place to comply with the law. Before considering these issues however, it is appropriate to canvas how Mr Briers is proposing to manage the event, to put the application into context.

What is the nature of the event? 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?

12. Mr Brier has applied for a special licence for the annual Sheep Dog Trial competition hosted by the Aria Collie Club to be held on Friday 28 and Saturday 29 February. The competition will start in the morning, however the bar will not open until 12.00 noon each day. While Mr Brier will be responsible for all legal obligations associated with the special licence, he will hand over the proceeds of the sale of alcohol to the Aria Collie Club. The venue is a woolshed on the Alladale Farm and it contains a small kitchen that will be used for catering. Mr Brier gave evidence that the event is very small with approximately 40 – 50 people being the maximum number in the licensed area at any one time. Many people will not be consuming alcohol but will be out watching the competition, competing or eating meals.
13. Club members will be doing the catering. From 9.00am to 4.00pm food will include; sandwiches, filled rolls, home baking, toasted sandwiches, pies and sausages. From 4.00pm to 10.00pm there will also be a BBQ with chops, steak, salads, pasta and bread. Members will be available to be sober drivers to the nearest accommodation if required. Soft drinks and low alcohol beer and cider will be provided. Free water will be provided. Signage regarding licence hours, minors, intoxication and drink driving will be displayed. Sober drivers will be identified. Proof of age will be required from younger patrons.

Is the applicant suitable?

14. Mr Brier says that he has shared the responsibility of managing the bar for Sheep Dog Trial events for over 30 years. Over this period of time he has purchased the beverages to be sold (alcoholic and non-alcoholic), served patrons and managed the behaviour of guests. He has studied the SCAB guidelines for intoxication.
15. Mr Brier states that due to the remoteness of the venue and the size of the event, it is not possible to have a certified Bar Manager. Mr Brier has applied for an exemption from the requirement to appoint a certificated manager and states that he will be the nominated person responsible for ensuring compliance with the Act and the conditions of the licence. Mr Brier says that he has held many responsible positions including five years as chairman of a school board of trustees and membership of the Piopio Lions Club. Mr Brier is currently President of the King Country Sheep Dog Trials Association and Councillor to the NZ Sheep Dog Trial Association. Mr Brier is not currently an

officer holder with the Aria Collie Club but is a member and is helping the club to ensure that the event is a success. Mr Brier will compete in the competition in the morning and be responsible for the bar during the licensed hours. Mr Brier understands that the object of the Sale and Supply of Alcohol Act is to control the consumption of alcohol and to make sure that it is sold responsibly, is not sold to minors and is sold with food. Senior club members will help to monitor the behaviour of customers.

16. The Medical Officer of Health, Mrs Zeier, stated in her report:

In 2018 the applicant held this event and sold and supplied alcohol without a special licence. The applicant had applied for specials for this event in previous years.

In 2019 the club failed to obtain a special licence because the application was lodged within 20 working days of the event. The applicant tried to sell alcohol via a koha system. The applicant arrived at the event site with a chiller trailer of alcohol. The landowner of the property where the event was held refused to allow alcohol on site without a licence. This stopped the sale or supply of alcohol for this event. We have concerns about whether the applicant can comply with the Act and conditions of the licence given these breaches.

We have concerns as to how patrons are able to get home safely from this event given its remote location and wish to ensure drinking driving does not occur ...

17. The Medical Officer of Health did not attend the hearing or provide any evidence.

18. In his report, the Inspector Mr Norris states that an application for a special licence was filed by Mr Brier on 25 February 2019, for the Sheep Dog Trial event to be held on 15 and 16 March 2019. The application was filed late as it was only filed 14 working days before the event. Mr Norris sent Mr Brier an email advising him that the application was too late for the proposed event because it was not filed at least 20 working days before the event. Mr Norris explained that this meant that the club would not be able to sell alcohol at the proposed event.

19. Mr Norris went on to say that he was subsequently advised by the owners of the event venue, Donna and Todd Oliver, that the club took a chiller trailer of alcohol to the site and implemented a koha system "as a means to circumvent the law so as to allow patrons to purchase and consume alcohol". Mr Norris also suggests that a chiller trailer of alcohol indicates an excessive amount of alcohol was to be consumed by just 40 people attending. Mr Norris states that the annual event "is apparently known historically for its drink-driving culture and incidents of upturned vehicles on roads or vehicles being driven into ditches on the event site by patrons after drinking at the venue are not unknown".

20. At the hearing, Mr Norris confirmed in his submissions that a special licence in the name of Pamela Bryan was granted for the 2015, 2016 and 2017 events. No special licence was applied for in 2018. The Inspector suggests that "on the basis of the applicant clubs propensity to disregard the law that alcohol was also sold and supplied at this event without a special licence".

21. Mrs Oliver gave evidence that on 1 February 2019 she and her husband Todd took ownership of the farm that had been the venue for the Aria Collie Club's clubhouse and annual trials since the 1980's. Mr and Mrs Todd drew up a detailed access agreement that was signed off by the club's president Anita Kendrick and the president of the King Country Dog Trial Association, Graeme Brier. It was a requirement of the agreement that the club produce a current liquor licence if they intended selling, supplying or serving alcohol on the property. However, less than 24 hours before the event, Mrs Oliver was at the farm and saw a vehicle enter the property towing a large chiller trailer. Mrs Oliver asked the driver, Pam Bryan, whether it contained alcohol. Pam Bryan confirmed that it was loaded

with alcohol that was to be supplied for the dog trial event under her “koha system”. Mrs Oliver then sent an email to Mr Briers and the club President, Anita Kendrick, advising that the access agreement had been breached because alcohol was brought onto site without a liquor licence and as a consequence access to the property would be revoked immediately. Mr and Mrs Oliver were subsequently advised that the alcohol was being removed. Access to the property was reinstated and the event proceeded. Mrs Oliver visited the property on Friday night and Saturday morning and did not see any signs of alcohol. She did see a sign on the notice board directing everyone to the Aria Cosmopolitan Club for the prize-giving drinks at 7.30pm on Saturday evening, 16 March 2019.

22. Mrs Oliver also gave evidence about the fact that the club made a very poor effort to fulfil the health and safety recommendations set out in the access agreement. These included highlighting all traffic hazards, especially during daylight hours. Mrs Oliver also stated that the Aria Dog Trials is known for its “excessive drinking and drink-driving culture with people driving into drains, failing to negotiate bridges and it is also known to result in vehicles found upturned on our country roads where the driver was previously drinking at the clubhouse ... These lucky escapes are all kept in-house with no Police involvement and tractors arrive to remove the vehicles out of sight”.
23. Following questioning by the licensing committee, Mrs Oliver clarified that the vehicles found in ditches were on the farm and not on the road. However, Mrs Oliver gave evidence that in 2013 her husband Todd saw an upturned vehicle in the ditch. He knew the vehicle was owned by a 20 year old male, who had worked at the event all day and had been drinking at the event. Mr Oliver called the young man’s parents who said he had walked home and was unharmed. They asked Mr Oliver if they could use his tractor to remove the car. Mrs Oliver also gave evidence that her husband recalled going to the 2018 event and seeing an ice-cream container where people were putting money to pay for their drinks. Mrs Oliver also recalls seeing their farm workers coming home intoxicated after attending the annual Aria Dog Trial event.
24. Mr Brier responded that Mrs Oliver was correct in stating that Pam Bryan delivered a chiller with alcohol on Thursday 14 March 2019. This happened because of a misunderstanding because Pam had been sidelined from the organization of the Trial due to conflict with the Olivers. Mr Brier and Mrs Kendrick had each thought the other person had told Pam Bryan that the special licence had been declined and that alcohol would not be sold. However, Pam Bryan was not aware that the club did not have a special licence.
25. Mr Brier is adamant that the alcohol was not sold using a koha/donation system. Mr Brier said that the club did supply sixty 350ml bottles of beer to club members, sponsors and judges. All other attendees supplied their own alcohol.
26. Mr Brier stated that he has never heard of a vehicle accident involving Aria Collie Club and he asked the previous four presidents, and no-one knew of an accident over the past 12 years. Mr Brier raised a concern that some of the evidence given by Mrs Oliver was hearsay evidence and he was not aware of a drink-driving culture associated with the club.
27. Mr Norris drew the licensing committee’s attention to the *Capital Liquor*¹ decision in which the High Court introduced the concept of trustworthiness when assessing the suitability of an applicant to hold a licence. Justice Clark stated that:

Evidence of suitability includes not only evidence of an applicant’s past conduct, processes and understanding of risk but, importantly, evidence bearing on trustworthiness. Reporting agencies can only sporadically and infrequently supervise the supply of alcohol. Because the licensing system fundamentally turns upon honesty,

¹ Capital Liquor Limited v New Zealand Police [2019] NZHC 1846

or trustworthiness, the Authority has, “quite rightly and not surprisingly, regarded it as one of the prime obligations”.

28. The concept of suitability has been discussed by the Licensing Authority and the High Court on many occasions. In *Re Sheard* Justice Holland explained that “The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence”². This test remains highly relevant under the 2012 Act. Suitability is intricately linked to the object of the Act in that a licensee must ensure that the sale, supply and consumption of alcohol is undertaken safely and responsibly and harm caused by excessive or inappropriate consumption of alcohol should be minimised.
29. The licensing committee acknowledges that the past running of the annual Aria Collie Club Sheep Dog Trial event has been called into question and that this directly reflects on the suitability of Mr Brier to hold a special licence, as he was the Bar Manager. The only evidence in front of the licensing committee, is that of Mrs Oliver. We found the evidence of Mrs Oliver to be clear and credible. However, some of the evidence involved generalisations that lacked specific detail and could not be backed up with examples. In addition, much of the evidence was hearsay evidence because it involved matters related to her by her husband or other people. Therefore, very little weight can be placed on this evidence, because it has not been verified from the original source. For example, the fact that the young man (whose car was seen on the side of the road) had become intoxicated at the Aria Collie Club event, was not substantiated by anyone with direct knowledge of the event that year. In addition, the incident occurred seven years ago and therefore lacks some relevance to the recent actions of the Aria Collie Club.
30. We accept that the Aria Collie Club breached the access agreement that it held with Mr and Mrs Oliver, because it supplied alcohol without a special licence. This shows a disregard for a legally binding agreement, and this is of concern to the licensing committee. The fact that a chiller load of alcohol arrived at the venue without the knowledge of the President or Mr Brier, shows a serious flaw in the planning processes of the club. However, we are not satisfied that the Aria Collie Club or Mr Brier breached the Sale and Supply of Alcohol Act 2012. There is no reliable evidence to prove that alcohol was sold by Mr Brier under a koha/donation system in 2018 or 2019, in breach of section 233 of the Act. The licensing committee notes that the Inspector, Medical Officer of Health and Police did not speak to Mr Brier about these concerns when they received the information from Mrs Oliver in March 2019 and no action was taken by Police.
31. In addition, we have not had any convincing submissions persuading us that supplying 60 bottles of beer in 2019 to club members, sponsors and judges was an offence under section 235 because it involved using the premises as a place of resort for the consumption of alcohol. In any event, the Police did not make an application to the Licensing Authority regarding a breach of section 235.
32. In conclusion, while Mr Brier has not had a great deal of training in the obligations of a special licence holder, we were satisfied that that he has an adequate grasp of the key concepts and has made arrangements to run the event in a responsible manner. We are also satisfied that Mr Brier is a responsible person, who can be trusted to comply with the conditions of the licence and the Act. Sergeant Lindstrom confirmed that Mr Brier has no convictions and that Police are not aware of any traffic crashes or incidents related to the Aria Collie Club or the King Country Sheep Dog Trial Association.

² *Re Sheard* [1996] 1NZLR 751, Holland J at 758

Does Mr Brier have appropriate systems in place to comply with the law? Should an exemption be provided from the requirement to provide a certificated duty manager?

33. 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. The licensing committee is satisfied that Mr Brier and his support team of club members will provide sufficient food, low alcohol and non-alcoholic refreshments. Free water will be provided at the bar. Assistance with transport home from the premises will be provided by nominated sober drivers. As discussed at the hearing sober drivers for each day should be identified and displayed on a notice before the event starts. The application complies with the Waitomo District Local Alcohol Policy.
34. The licensing committee is satisfied that an exemption may be granted from the requirement to appoint a duty manager (s 213). The event is relatively small, and we are satisfied that Mr Brier is capable of managing it without a certificated duty manager due to his previous experience managing the bar at this event. Mr Brier will take responsibility for the management of the event and ensure that it complies with the Act. However, as suggested at the hearing it is highly recommended that Mr Brier and at least one other club member completes the on-line Servewise course before the event starts, to enhance their knowledge of the responsibilities of a licensee under the Act.
35. In addition, it is a condition of the licence that Mr Brier carries out a pre-event briefing with volunteers assisting with the bar to go over the object of the Act, the conditions of the licence, the licensed area and designation, the SCAB Intoxication Assessment Tool, ID checking, and key Host Responsibility matters such as food, low and non-alcohol beverages, provision of free water and identified sober drivers and anything else he considers to be important. The licensing committee notes that an important part of the object of the Act is the minimisation of harm caused by the excessive or inappropriate consumption of alcohol. This aspect should form part of the pre-event briefing as well. Ideally all of the things covered in the pre-event briefing should be on a checklist and signed off by all members attending the briefing. This checklist will be a useful resource to provide when the special licence application is submitted in the future and for future events. It would be helpful for all club volunteers working at the event to do the Servewise course before the next event. Again, evidence of this will be useful for the next special licence application to show that the club volunteers have completed some training.

Conclusion

36. The application for a special licence for the annual Sheep Dog Trial competition hosted by the Aria Collie Club on 28 and 29 February 2020 at Alladale Farm in Aria is granted.

Dated this 25th day of February 2020



Sara Grayson
Commissioner
Waipa District Licensing Committee