

Decision	19/017/2023
<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 Waitomo Distillery Limited for an off-licence in respect of the premises at 144 Maraetaua Road, Te Kuiti known as Waitomo Whisky pursuant to section 40 of the Act

DECISION OF THE DISTRICT LICENSING COMMITTEE

1. The application for an off-licence endorsed for the remote sale of alcohol by using an internet site (pursuant to section 40) is granted. The licence may issue upon payment of the annual fee.
2. This licence continues in force until the close of the period of 12 months after the day it is issued.
3. The licence is subject to the following conditions:
 - (a) Alcohol may be sold at any time, on any day, while always trading as a remote seller.
 - (b) Alcohol must not be delivered on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day, or between 11:00pm and 6:00am the following day.
 - (c) The licensed premises is described in the plan date stamped as received by the Hamilton District Licensing Committee on 21 April 2023.
 - (d) The licensee must take reasonable steps to verify that the buyer and the receiver of an alcohol delivery is not under 18 years of age, and that the receiver (where present) is not intoxicated.
 - (e) The outside of the delivery package must contain a label with the following words:
CONTAINS ALCOHOL
 - Do not leave at destination without proof of delivery.
 - Do not deliver to intoxicated persons or persons under 18 years of age.
 - (f) A copy of the licence must be displayed on the Waitomo Whisky internet site in a prominent place.

- (g) Every receipt for the sale of alcohol by remote sale must contain the licence holder's name, licence number and the date on which the licence expires.

REASONS

1. This is an application by Waitomo Distillery Limited for an off-licence endorsed for the remote sale of alcohol by using an internet site in respect of the premises situated at 144 Maraetaua Road, Te Kuiti known as Waitomo Whiskey. Waitomo Distillery Limited plans to primarily sell whisky via the Waitomo Whisky website.
2. 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 matter is decided on the papers (s 134).
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 (s 4).
4. In deciding whether to grant an off-licence endorsed for the remote sale of alcohol by using an internet site the licensing committee must have regard to sections 40, 49, 59 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) Does the applicant have appropriate systems, staff and training to comply with the law?
 - d) Does the applicant have a copy of the licence displayed in a prominent place on their internet site?
 - e) Does the applicant have the licence holder's name, licence number and the date on which the licence expires printed on each receipt for the remote sale of alcohol?
 - f) Has the applicant taken reasonable steps to ensure that alcohol is not sold to or received by persons under the age of 18 years?
 - g) Is the design and layout of the premises suitable?
 - h) 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?
 - i) Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of licence?
 - j) Should it be a condition of the licence that a manager be on duty for particular days and times?
 - k) Have the police, inspector and medical officer of health raised any relevant considerations?
 - l) Does the application comply with the Waitomo District Local Alcohol Policy?

Is the applicant suitable?

5. The licensing committee is satisfied that Waitomo Distillery Limited is a suitable applicant to hold an off-licence endorsed for the remote sale of alcohol by using an internet site. The company directors are a local school teacher and quantity surveyor respectively and Mr Voyce has an application for a Manager's Certificate that has been assessed in conjunction with this application. The intention is to sell only whisky for the time being, though the product line may expand in the future. Waitomo Distillery Limited is not involved in the manufacture of the product but may consider bottling it in the future. We understand that

tourists are the intended main market, and the product will be advertised at tourist spots in the district and via web based social media platforms.

6. The Licensing Inspector reports that the application does comply with the Waitomo District Local Alcohol Policy.

Are the days and hours during which the applicant proposes to sell alcohol reasonable? Does the applicant have appropriate systems, staff and training to comply with the law? Does the applicant have a copy of the licence displayed in a prominent place on their internet site? Does the applicant have the licence holder's name, licence number and the date on which the licence expires printed on each receipt for the remote sale of alcohol?

7. Waitomo Distillery Limited has applied for a licence with sales permitted at any hour. This is appropriate because the holder of a licence endorsed for remote sales can sell alcohol at any time (section 49). However, alcohol cannot be delivered on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day, or between 11.00pm and 6.00am the following day (section 59(1)).
8. The licensing committee is satisfied that Waitomo Distillery Limited will employ 1 certificated duty manager who is qualified to ensure that all remote sales of alcohol comply with the Act.
9. The licensing committee is satisfied that Waitomo Distillery Limited will display the licence on the internet site and will ensure that the appropriate details are displayed on receipts.

Has the applicant taken reasonable steps to ensure that alcohol is not sold to or received by persons under the age of 18 years?

10. Waitomo Distillery Limited is taking appropriate steps to ensure no sales are made to or received by persons under the age of 18 years. When a customer enters the website, they will be asked to confirm that they are over 18 years of age. Age verification will also be required at the point of purchase. Alcohol will be packaged with an 18+ sticker to identify the goods are restricted. Delivery agents must check identification on delivery should the recipient looks under 25 years of age. In addition, if the recipient is assessed as being intoxicated, then the package will not be delivered, and a call card will be left at the address.
11. In order to ensure that these promises are complied with, it a condition of the licence that each package contains a warning label (condition (e)).

Is the design and layout of the premises suitable?

12. The premises where the whisky will be stored is the garage of the residential address of Mr Draper. The alcohol is to be kept in a lockable cabinet in the garage, which is adjoined to the house. Processing orders and packaging will occur within this area. Security cameras are to be erected around the property. The property is rural and approximately 1 km from the next property. The inspector reports that there is no signage, and the premises is completely obscured from the road. The licensing committee is satisfied that the design and layout of the premises presents no concerns.

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?

13. Waitomo Distillery Limited does not engage in the sale of goods or services other than those directly relating to the remote sale of alcohol.

Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of licence?

14. The licensing committee is satisfied that the grant of an off-licence endorsed for the remote sale of alcohol by using an internet site to Waitomo Distillery Limited will not have a negative effect on the good order of the locality.

Should it be a condition of the licence that a manager be on duty for particular days and times?

15. The holder of a licence endorsed for remote sales is not required to have a manager on duty at all times when alcohol is being sold unless it is a condition of the licence (section 215). If it is not a condition of the licence that a manager be on duty when alcohol is sold, there is no requirement to maintain a manager's register (section 232).
16. The licensing committee does not consider that it is necessary to have a manager on duty when alcohol is sold. There is simply nothing that needs to be monitored in a remote sale process provided that appropriate systems are in place and maintained. However, it will be advantageous for the company directors and any staff employed to receive training in the requirements of the Act, to ensure that appropriate systems are maintained.

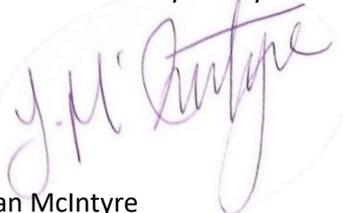
Remote sale conditions

17. Under Section 18(1) of the Act, the holder of an off licence is entitled to sell alcohol on or from the premises the licence is issued for and deliver it somewhere else.
18. The proposed remote sale conditions reiterate the provisions in sections 18 & 49 of the Sale and Supply of Alcohol Act 2012 and regulations 14 & 15 of the Sale and Supply of Alcohol Regulations 2013 in a general sense. The Licensing Committee has formed a view that there is a benefit in adding remote sale conditions that repeat statutory requirements because they draw the licensee's attention to the statutory requirements and serve as a useful reminder and training tool for staff. Therefore, remote sale conditions are included in the licence as a reminder about general obligations when providing this service.
19. Waitomo Distillery Limited have consented to these conditions.

Conclusion

20. Therefore, the application for an off-licence is granted.

Dated this 18th day of July 2023



Tegan McIntyre
Commissioner
Waitomo District Licensing Committee