

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **HOOK
WANAKA LIMITED** pursuant
to s. 99 of the Act for an
onlicence in respect of
premises
situated at 49 Monteith Road,

Wanaka, to be known as
“Hook Wanaka”

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr J M Mann
Mr L A Cocks

HEARING at QUEENSTOWN on 3 December 2018

APPEARANCES

Mr A R Ross – representing Hook Wanaka Limited - applicant
Mr S J Dickey – representing Mr G and Mrs J Dickey – in opposition
Ms T J McGivern – Alcohol Licensing Inspector – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

- [1] This is an application for a new „restaurant“ style on-licence in respect of premises situated at 49 Monteith Road near Wanaka. The business is to be called “Hook Wanaka”. The application is made by Hook Wanaka Limited (hereafter called the company). The company has three directors, Hayley Lee, John Griffith, and Ken Pawson. The shareholding is made up of the directors and their partners.
- [2] The principal purpose of the new business is to be a salmon fishing experience where visitors can fish for and catch salmon. He or she may then either have the salmon smoked or sashimi-ed or cooked to eat on site, or take the salmon home. The company has created a series of ponds on a large rural property just off the Albertown-Lake Hawea Highway on the southern

side of the Clutha River. Mr and Mrs Lee live on the adjacent property. They have put years of work into developing the concept.

- [3] In addition to the salmon fishing experience, the company intends to supply a variety of tasting platters and wood fired pizzas. The food on offer is to have a focus on fresh local ingredients, and will be positioned at the mid to high end of the market in terms of quality. The application itself is to enable the sale of wine or beer to match the salmon dishes, although patrons will also be able to picnic on the grounds by the salmon pools, and enjoy a glass of wine or beer when they do so. There is no intention to offer alco-pops, spirits or cocktails for sale.
- [4] The company was originally granted resource consent for the project back in 2015. At that time the intention was to build a large restaurant and a manager's house. It was later decided to scale the project down requiring a variation to the consent conditions. Instead of a large restaurant the company sought to establish two small portacoms and an outdoor courtyard. One of the portacoms will serve as a kitchen with a small servery or window hatch at which alcohol can be ordered and served. The other portacom will be used to process the salmon. The courtyard with its tables and seats will effectively replace the restaurant. This amendment was consented to in 2017. The actual resource consent is not uncomplicated and there are at least 80 separate conditions to be fulfilled.
- [5] The application for an on-licence was lodged with the Queenstown Lakes District Licensing Agency in September 2017. Basically the applicant was seeking the right to sell local beer and wine to patrons who would be able to drink the wine with their salmon or platters or pizza or indeed as part of their picnics. At the hearing the applicant acknowledged that casual drinkers would be entitled to purchase alcohol and drink it on the premises.
- [6] Because of the nature of the enterprise, the company sought to licence a large part of the property. This is to enable visitors to enjoy a drink while sitting around the pools, as well as using the seating supplied closer to the kitchen and bar area. At this stage of the development, all the seating is effectively outside. It has taken some time to reach this level of completion, but there is still work to be done before the business can be opened to the public. The company expects to open in late January by which time the relevant resource consent conditions will have been completed, and a building compliance certificate issued.
- [7] The public advertising had two errors. The applicant was shown as Graham Lee rather than the company, and the proposed trading hours were shown as "10.00am to 9.30pm the following day". The hours should have stated 10.00am to 9.30pm daily. We are satisfied that the errors were not wilful, and indeed indicated a much greater period of trading than is actually the case. Accordingly we grant a waiver under s.208 of the Act.
- [8] There were no reports in opposition either from the Police or the Medical Officer of Health. However, an objection was received from Geoff and Janice

Dickey who reside at 31 Monteith Road. They listed their main concerns as (a) noise from music and patrons outside, as well as pedestrians under the influence of alcohol walking home at night; (b) increased traffic; (c) security of their property, and (d) public disorder and the safety of patrons walking along the road. In summary the objectors were concerned with the potential effect that the proposed licence would have on the amenity and good order of the neighbourhood.

- [9] At the instigation of the Licensing Inspector, a meeting between the applicant and the objectors took place at the Council's offices in October 2017, and a number of the issues were addressed. In November 2017 the objectors were advised that the application was to be put on hold while further variations to the resource consent were sought. In October 2018, a certificate was received that the business proposal met the requirements of the Resource Management Act 1991. At this stage the objectors were advised that the application was proceeding, and the company filed a noise management plan as well as a waste management plan. After consideration, the objectors decided to proceed with their objections, and the application was set down for a public hearing.

The Application.

- [10] Mr Adam Ross was the company's primary witness although Mrs Hayley Lee (one of the company's directors) helped to clarify certain matters. Mr Ross had been appointed as the company's General Manager of the business a month previously. He has held a Manager's Certificate for the past two and a half years. He has been managing „Kinross Cottages" at Gibbston with a winery and bar lounge for the past three years without any issues or complaints. He argued that the „Kinross" business was broadly similar to the current proposal in that there were a number of cottages on a large licensed property with rural neighbours. He contended that he had been able to manage the business while complying with the conditions of the noise management plan, as well as the conditions of the resource consent and the licence.
- [11] Mr Ross advised that the business would start with a „soft opening" and would operate for at least a year on a reduced scale, bearing in mind that there was a limit of 25,000 fish that can be traded in the first year. He seemed to be of the view that the resource consent condition number 34 did not allow the cafe to be open if the fishing ponds were not also open at the same time. Currently the company intends to close the business in May and June. Furthermore there will be limited opening hours from July to September. The proposed operating hours for the fishing experience are from 10.00am to 5.00pm with the last rod hire at 4.00pm. In due course there will be special twilight events. The business will be closed on Tuesdays and Wednesdays.
- [12] Mr Ross stated that the business was aimed at families as well as domestic and international tourists. He added that there was a strong ecological theme

running through the business with a constructed wetland treating the water as it leaves the property. Further the number of fish allowed in the pond at any one time was limited. Mr Ross referred us to the company's host responsibility as well as the conditions of the resource consent aimed at ensuring that the salmon fishing remains the core business.

- [13] Mr Ross presented a letter that had been written to the neighbours seeking support for the project in the light of the up-coming hearing. This letter had not been sent to the objectors. In his letter he stated that the company was unable to serve alcohol once the kitchen was closed so that most nights patrons would have departed by 5.30pm. In the event the supportive letters from six neighbours were of little consequence given that two did not live on their land and the others lived on the plateau high above the complex.
- [14] Finally, Mr Ross addressed each of the individual concerns raised by the objectors. Prior to the hearing (and indeed as set out in their written objection), Mr and Mrs Dickey had indicated that they could live with restricted trading hours from 10.00am to 8.30pm. Mr Ross continued to argue for a 9.30pm closure on the basis that any reduction could affect the financial viability of the business.

The Licensing Inspector.

- [15] In addition to her filing a comprehensive report, Ms McGivern took an active part in the hearing and filed final written submissions. She noted that the objectors had stated that they would accept an 8.30pm closure rather than 9.30pm time requested by the company. It was their concern that if the premises were to be licensed to 9.30pm then patrons would not be leaving the premises until 10.30pm. On that basis she recommended that we impose a condition setting the time by which patrons must be off the premises.

The Objectors.

- [16] Mr Stephen James Dickey was effectively standing in for his brother although Mrs Dickey was present. The evidence from the objectors included the letter sent by e mail on 16 October 2018. In this letter the objectors concluded by asking that the licence finish at 8.30pm. At the hearing, Mr and Mrs Dickey confirmed that they had purchased their property 25 years ago to enjoy the rural peaceful amenity of the area. They repeated their earlier assertion that a 9.30pm conclusion would result in patrons being on site until 10.30pm, 365 days a year.
- [17] They concluded their evidence with the following statement:

In summary, we believe the issuing of an alcohol licence will increase the noise resulting in the loss of amenity of our quiet rural property and alcohol filled patron leaving the site will be a security risk. We would prefer that no licence be issued but if it were, restricting the hours would reduce these

effects. The applicant says they only propose to open late occasionally in summer and never in winter, so we could live with hours restricted to 10.00am to 8.30pm in the summer and 10.00am to 7.30pm in the winter. Once the restaurant has been built and the business has been operating for a couple of years without any complaints, then the licensee can always apply for a late closing time.

- [18] When it came to final submissions, Mr Dickey changed tack. He had read the letter sent to neighbours in which the Lees had indicated that they were unable to serve alcohol once the kitchen was closed. He had also heard Mr Ross state the restaurant was not able to be open unless the pools were open. Given that the hours of operation were said to be 10.00am to 5.00pm, he then argued for a closing time of 5.00pm or 5.30pm.

The Committee's Decision and Reasons

- [19] The criteria to which we must have regard when considering an application for an on-licence are set out in s.105(1) of the Act. The relevant criteria are:

- (a) *The object of this Act.*
- (b) *The suitability of the applicant.*
- (c) *The days on which and the hours during which the applicant proposes to sell alcohol.*
- (d) *The design and layout of any proposed premises.*
- (e) *Whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods.*
- (f) *Whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services.*
- (g) *Whether (in the Committee's opinion) 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.*
- (h) *Whether the applicant has appropriate systems, staff, and training to comply with the law.*
- (i) *Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

[20] The current wisdom is that in forming an opinion as to the likelihood of the amenity and good order being reduced to more than a minor extent, we are required to act in an essentially inquisitorial way.

[21] As to the first criteria, the object of the Act is set out in s.4 as follows:

The object of the Act is that - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[22] The appointment of Mr Ross, the training of other potential managers, the systems to be put in place, as well as the type of business that is going to be conducted on the site leaves us in no doubt that the object of the Act will not be compromised in any way. This is a low risk enterprise. As the company has already identified, the greatest risk relates to the possible sale and supply to minors and the company has planned to avoid that possibility. That the company is a suitable entity to operate an on-licence was not challenged in any way.

[23] The objectors have identified two relevant criteria as follows:

The days on which and the hours during which the applicant proposes to sell alcohol, and 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 issue of the licence;

[24] Section 106(1) of the Act is relevant and reads:

In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to –

- (a)** *The following matters (as they relate to the locality):*
 - (i) current and possible future, noise levels;*
 - (ii) current and possible future, levels of nuisance and vandalism;*
 - (iii) the number of premises for which licences of the kind concerned are already held; and*
- (b)** *The extent to which the following purposes are compatible:*
 - (i) the purposes for which land near the premises concerned is used:*
 - (ii) the purposes for which those premises will be used if the licence is issued.*

[25] Under S.5 of the Act amenity and good order of a locality is defined as:

In relation to an application for a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated, is pleasant and agreeable.

- [26] Of course at this stage of the development, and in the absence of expert evidence, any assessment must to some extent be speculative. We are aware that the original plan met resistance, and a hearing in another jurisdiction was necessary. It has been established that a salmon fishing operation is a suitable commercial operation in a rural residential area. In other words the proposed salmon fishing business is not expected to impact adversely on the rural residential environment. The issue is whether the sale of beer and wine as part of a lunch or an evening meal might have a greater impact. The answer to that question depends to some extent on the trading hours, as well as focusing on the principal reason why people will be attracted to the site.
- [27] We are aware that there will be some noise, particularly as people will be outside. Noise is likely to be more significant and intrusive in a rural environment. With most licences, there are different closing times for the indoor and outdoor operations. Outdoor licensing hours are generally more restrictive, and we think that principle should be applied in this case. Subject to the trading hours being reduced, we have come to the opinion that the amenity and good order of the locality would not be reduced to more than a minor extent by the effects of the issue of the licence. If and when the restaurant is built then no doubt it may have extended trading hours, because the noise can then be contained.
- [28] There are concerns about the possible drunken behaviour of patrons. As we understand the proposal, the patrons will be seated when drinking either in the outdoor courtyard, or around the pools. They are more likely than not to be eating. There is strong management. We therefore do not see intoxication and its associated behaviour as being an issue in this case.
- [29] There is also the troubling issue concerning the interpretation of the resource consent conditions. We do not agree with the statements made by the company linking the hours of trade with the hours of operation of the core business. Nor do we accept there is a similar link between the opening of the kitchen and the selling of alcohol. Since the new Act was passed this type of interpretation no longer exists. The resource consent dealt with the issue under the heading **“Operating Conditions – Commercial Salmon Fishing Activity and Restaurant”**.
- [30] The consent then set out a series of conditions to ensure that the restaurant did not become a separate „stand-alone“ enterprise disconnected from the company’s core business. The conditions are as follows:

32. The Restaurant and the fishing activity shall be run as one business entity and will be managed by one operator.

33. *The hours of operation of the activities on the site shall be as follows:*

a) *Salmon Fishing Activity*

10 am to dusk

b) *Restaurant: 10 am until 11 pm provided that the kitchen shall close by 9.30 pm and all customers shall vacate the Restaurant by 11 pm.*

34. *The Restaurant shall only open on those days that the fish ponds are open to the public.*

35. *The Restaurant shall not be available for exclusive hire for weddings or functions.*

36. *All salmon in the Restaurant shall be sourced from the on-site ponds.*

- [31] The issue is complicated by the fact that there is no restaurant at present but all parties accepted that at present the „restaurant“ is presently the outdoor seating area. This is a factor that needs to be considered under the design and layout criteria. Food and beverages will be ordered either via the window hatch of the „kitchen“ building or by table service.
- [32] When the conditions are looked at together, we believe that condition 34 means exactly what it says that the „restaurant“ cannot open on those days (such as Tuesdays and Wednesdays, and during the winter). when the pools are closed to the public. There is no link to time nor can there be. After all one of the main purposes of the „restaurant“ is to serve the salmon after it has been caught, processed and prepared for consumption. In other words it will be inevitable that at the end of the day when fishing has ceased, (say 5.00pm), salmon may be in the process of being prepared for an evening meal.
- [33] Nor do we accept the suggestion that if the kitchen is not in operation then sales of alcohol must cease. As mentioned above, this used to be the case under the former Act. This means that it is possible to sell alcohol to customers or patrons at any time during the trading hours that are granted.
- [34] We have had regard to the criteria listed above, and we are satisfied that a licence is justified as there no evidence to suggest that the granting of the application would be contrary to the object of the Act. However we consider that a similar condition to the resource consent linking the fishing experience to the sale of alcohol should be imposed. In other words alcohol may only be sold on those days that the fish ponds are open to the public.
- [35] As to the trading hours we start with the company"s proposal to operate the fishing experience from 10.00am to 5.00pm in the summer with the last rod hire at 4.00pm. Let us assume that a customer catches a salmon near closing

time which he or she would like processed and served as an evening meal. The customer requests a glass or bottle of wine to form part of the meal. Both the meal and the wine will be consumed outdoors probably in the courtyard, and we consider that two and half hours is reasonable for this to take place.

[36] We therefore intend to restrict the closing time to 7.30pm. There are a number of reasons for this including the outside noise factor, the need for customers to be off the premises by say 8.30pm and because the fishing experience finishes at 5.00pm.

[37] As can be seen, we have adopted a „precautionary approach“ as set out by the Court of Appeal in the decision of **My Noodle Ltd v Queenstown Lakes District Council [2010] NZAR 152** at Para [74] as follows:

In our view, the Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective (as the Authority found there was in this case), then it is entitled to test whether that possibility is a reality. In this case, it clearly intended to test its hypothesis and keep the matter under review.

[38] This application is complex and unusual and accordingly, the first year will be something of a trial. We are keen to keep the licence under review and foreshadow the possibility of a further hearing even though there may be no issues raised on renewal after one year's trading. We believe it may be necessary to reconsider a number of aspects of the operation including for example the boundaries of the licensed area, the trading hours, the issue of casual drinkers, any changes to the way that the fishing venture is being operated, and whether it is practical to impose a time by which persons who have been drinking must be off the premises.

[39] The application for an on-licence is granted with trading hours from 10.00am to 7.30pm daily. The licence will not issue until a certificate of compliance that the buildings meet the requirements of the building code has been received. In addition to the standard conditions there will be the following special conditions to the licence:

Alcohol may only be sold and supplied on those days that the fish ponds are open to the public.

DATED at QUEENSTOWN this 10th day of December 2018


Mr E W Unwin
Chairman

