

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

AND

IN THE MATTER of an application by **ELLIS
HOSPITALITY GROUP
LIMITED** pursuant to
Sections 137 and 138 of
the Act for a special licence
in respect of premises
situated at 41 Ballarat
Street, Queenstown, known
as "The Pig & Whistle Pub
"

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING
COMMITTEE**

Chairman: Mr E W Unwin

Members: Mr L Cocks

Ms M W Rose

HEARING at QUEENSTOWN on 19 October 2015

APPEARANCES

Mr B F Ellis – representing the applicant company

Ms J Mitchell – Queenstown Lakes Licensing Inspector – to assist

Sergeant L K Stevens – N Z Police – in opposition

Ms L M Grace – Medical Officer of Health – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

- [1] This decision involves an application by Ellis Hospitality Group Limited (hereafter called the company) for a special licence in respect of premises situated at 41 Ballarat Street in

Queenstown, and known as "The Pig & Whistle Pub". The original application was lodged in July and was to cover the screening of eight of the 2015 Rugby World Cup (RWC) events that fell outside the tavern's normal trading hours. It included the final game due to be screened at 5.00am on Sunday 1 November 2015.

- [2] The application was largely overtaken by Parliament passing the Sale and Supply of Alcohol (Rugby World Cup 2015 Extended Trading Hours) Amendment Act 2015 on 1 September 2015. This legislation allowed eligible licensed premises to open an hour before any Rugby World Cup game commenced, and remain open for the sale of alcohol until half an hour after the game finished, without a special licence and without a ticketing system, and without the need to decorate the premises or provide a special menu, and even without any requirement to have security at the door.
- [3] The need to pass the legislation arose from the Act's default national trading hours from 8.00am to 4.00am the following day. The company has since shown games in accordance with the amendment, and to date there has been no issues with regard to intoxication. Security staff have reported no incidents and very few refusals at the door. The general wisdom is that the people who are attending these televised events are primarily interested in the sporting contest.

The Application.

- [4] This application is restricted to the final which is due to be televised live at 5.00am (local time) on Sunday morning 1 November 2015. Furthermore the company will be trading under the amended legislation for the final. It will be open for the sale of alcohol from 4.00am to approximately 7.20am. The company only seeks to continue trading after the end of the game between approximately 7.20am and 8.00am when it can trade normally under its licence. The period of time for the special licence is approximately 40 minutes.
- [5] If the game results in extra time then there will be no need to operate under a special licence, and accordingly the special licence will become nugatory. The purpose of the application

is to enable patrons who are present at the venue to watch the game to continue to enjoy the moment, and potentially savour it, and discuss the game and the result. Mr Ellis argued that the final was different in that it marked the end of a long tournament.

- [6] Mr Ellis provided us with figures to show that the company has to date sold more food and coffee than alcohol at games that have taken place in the early morning and particularly the 'breakfast' games at 7 and 8.00am. For example the company sold 81 breakfasts and 63 teas/coffees during the Australia v England game with total patronage at around 110 people.
- [7] Mr Ellis confirmed that the company has security at the door, breakfast menus for patrons, flags and bunting and wearing of national colours is encouraged. What he was trying to avoid was having to put the patrons out on the street for a relatively short period of time before they were allowed to return at 8.00am. He confirmed that on the Saturday night the premises would close at 1.00am and not 2.30am as allowed by the licence. He acknowledged that a one way door policy would help in preventing non participants from using the premises to drink although his perception of the timing of any one way door policy was different to ours.

The Medical Officer of Health

- [7] Ms L M Grace made submissions in opposition. The Medical Officer of Health's view was that the application was an attempt to have an extension of trading hours, and was not in line with the provisions of the amendment which had been put in place specifically to cover the RWC. Under the amendment trading was required to cease 30 minutes after the game. She conceded that the company complied with most of the conditions set out in the Pog Mahone decision of QLDC 18/2014, apart from the selling of tickets.
- [8] Ms Grace was concerned that the premises would be open from 4.00am on the Sunday morning to 2.00am on the following Monday morning, a period of 22 hours thereby increasing the risk of excessive and inappropriate alcohol consumption and consequential harm. Her primary

submission was that the purpose of the application was to attract 'walk in' members of the public and was business as usual.

New Zealand Police

- [9] Sergeant L K Stevens suggested that the most obvious risk was from migrating drinkers 'wishing to celebrate or commiserate' leaving bars that were closed, and seeking out premises that were still open. She also referred to the absence of ticketing and submitted that the public would not be excluded from the premises, which is a standard requirement when considering an application for a special licence.
- [10] The Sergeant submitted that had Parliament considered it necessary to extend trading hours after the final game even further, then it had every opportunity to do so. She recommended a one way door policy from half time in the final. Finally she argued that by the time people had had their last drink, the RWC final would be well and truly over, and therefore the application was no more than a request for an extension of trading hours for business as usual.

The Inspector

- [11] Ms Mitchell submitted that with the amendment to the Act, Parliament had ruled that the watching of certain televised sporting events was a legitimate reason for extending trading hours, and therefore gave tacit approval for special licences to be issued for the same reason. She noted that the company had met most, if not all the criteria that we had set out in the 2014 'Pog Mahone' decision. She questioned whether a grant of the application could form the basis of a precedent for the future.
- [12] In terms of the Object of the Act, Ms Mitchell submitted that the question of whether the application would result in the unsafe or irresponsible consumption or supply of alcohol could only be measured by the evidence of behaviour at the televised games that had already taken place at the company's premises. Finally Ms Mitchell drew the parallel between

Parliament legislating to extend trading hours to watch a sporting contest, and opposition to an application for a special licence because it was for trading hours to be extended.

The Committee's Decision and Reasons

[13] At the conclusion of the hearing we took time to consider the respective arguments. We gave a short oral decision to confirm that the application would be granted subject to certain conditions, and that a formal decision would follow.

[14] It is accepted that if extra time is required for the game in question, the special licence will become nugatory. It is also accepted that the company retains the right not to proceed with the special licence if it decides that the conditions are too onerous. We expect the company to advise the Committee's staff of any such decision. We said that a more reasoned decision would be issued as soon as possible. We record our gratitude to all parties for their thoughtful and well researched arguments.

[15] Pursuant to S141 of the Act we are required to have regard to the following matters in deciding whether to grant the application:

- (a) the object of this Act;**
- (b) the nature of the particular event for which the licence is sought and, in particular, -**
 - (i) whether the applicant is engaged in, or proposes at the event to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcohol refreshments, and food, and if so, which goods; and**
 - (ii) whether the applicant is engaged in, or proposes at the event to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcohol refreshments, and food, and if so, which services;**
- (c) the suitability of the applicant;**
- (d) any relevant local alcohol policy;**
- (e) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by**

more than a minor extent, by the effects of the issue of the licence:

- (f) the days on which and the hours during which the applicant proposes to sell alcohol;
- (g) the design and layout of any proposed premises;
- (h) whether the applicant has appropriate systems, staff, and training to comply with the law;
- (l) any areas of the premises that the applicant proposes should be designated as restricted areas or supervised areas:
- (j) any steps the applicant proposes to take to ensure that the requirements of this Act in relation to the sale and supply of alcohol to prohibited persons are observed:
- (k) the applicant's proposals relating to -
 - (i) the sale and supply of non-alcoholic drinks and food; and
 - (ii) the sale and supply of low-alcoholic drinks and food; and
 - (iii) the provision of help with or information about alternative forms of transport from the premises:
- (l) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 141;

[16] We do not regard the grant of this special licence as setting any form of precedent. As Mr Ellis has pointed out there will be many years before a similar event occurs at this time of the day. We think that Mr Ellis may well be right that little thought would have been given to what happens when the final game is over. He has clearly considered potential issues if required to close a short time before all premises will open again. It is a Sunday morning and we don't think it unreasonable to expect that people might want to continue to socialise a little longer than Parliament's suggestion of 30 minutes after the game has ended.

[17] There are no issues about the company's suitability nor the way in which the company has operated the premises and shown games on television since the RWC started on the 19th September 2015. There has been monitoring of the premises during the last month or so without consequences. We

believe that a one way door system is an excellent way of ensuring that there will not be any migratory problems. We are reasonably confident of the company's ability to comply with the law and the conditions of the licence.

[18] Mr Ellis made a concession for an early closure on the Sunday night and this went some way towards alleviating the concerns of the Medical Officer of Health. Finally there is the issue that for the 40 minutes or so, it will be business as usual at "The Pig & Whistle". We note that Parliament has legislated precisely for premises to operate beyond the default hours as business as usual. In effect the company has adopted a number of stratagems which will make a difference, Therefore we have little difficulty in granting what we see as a common sense result.

[19] A special licence will issue to enable the company to trade from 30 minutes after the final whistle of the final until 8.00am on Sunday 1st November 2015. The company will institute a one way door policy from 6.00am until 8.00am. The company will cease trading at 1.00am on the morning of Sunday 1st November prior to opening at 4.00am in accordance with the amendment to the Act. It will also cease trading at 11.00pm on Sunday evening 1st November.

DATED at Queenstown this 27 day of October 2015


Mr E W Unwin
Commissioner



