

Decision No. QLDLC 0013/14

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by **LALALAND
WANAKA LIMITED** pursuant to
s.137 of the Act for a Special Licence

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin

Members: Ms M W Rose

Mr L Cocks

HEARING at WANAKA on 8 April 2014

APPEARANCES

Mr S L W Sanderson – Applicant

Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist

Sergeant L K Stevens – N Z Police – in opposition

Dr D W Bell – Medical Officer of Health - in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the committee are two discrete special licence applications. The applicant for both licences is Lalaland Wanaka Limited represented by Mr s w l Sanderson one of the company's directors. The applicant company operates a small business in Wanaka trading as "Lalaland". It holds a tavern style licence with hours from 8:00am to 2:30am the following

day. The 2:30am closure is generic for all similar premises in Wanaka as part of the district's local policy. The two applications are quite different. One seeks to trade on Good Friday and the other seeks to extend the local closing time by two hours. The business could be described as an entertainment venue, with the emphasis on music as well as alcohol.

[2] The applications should be viewed against a background of the bi-annual 'Warbirds over Wanaka' major event due to take place in Wanaka at Easter. This event is held at the Wanaka Airport some distance out of Wanaka, where approximately 50,000 people are expected to attend on the three days of Good Friday, Saturday and Easter Sunday. The first day is practice day and the remaining two days comprise continuous entertainment finishing at 4.30pm each day. There will be about eight outlets selling alcohol under special licences at the event. Because of the large numbers of people attracted to Wanaka over this Easter weekend, a number of licensed premises have applied for special licences to sell alcohol in Wanaka itself.

The Applications.

[3] The first event to be considered is for Good Friday 18 April 2014. The event involves the presence of an Auckland based DJ who will be in Wanaka over Easter. The principal purpose of the event was described in the application as "Auckland DJ". This DJ is to be the major draw card. The event will run from 6:00pm till Midnight on Good Friday after which the premises can legally trade until 2.30am. The proposal is that local DJs will operate from 6:00pm and that the national DJ will operate from 10:00pm. Tickets will be \$5 presold or \$10 at the door. There will be a menu with food such as pizza and hotdogs that is normally available on the premises. Soft drinks and water will also be available.

[4] Basically the application is to trade as normal, there being little difference in the event structure from what is normally the case. Not only has the lead DJ played before at this venue, but the other local DJs have also played there previously. The applicant uses Facebook as a mechanism to promote the bar. The evidence from Lalaland Wanaka's facebook page showed that similar style 'events' are held there regularly.

[5] The second event is to take place on the Easter Monday 21 April 2014. It is to be a themed Nocturnal Ball based on the prohibition era. It is anticipated that people would dress as 'gangsters' and 'flappers'. It is proposed that the ball will start at midnight on the Monday and continue until 5:00am including the 30 minute drink up time. In other words sales will stop at 4.30am. The intention is to entertain hospitality workers in Wanaka. When he gave his evidence Mr Sanderson stated that he was trying to give Wanaka's hospitality workers an opportunity to relax and enjoy each other's company having worked so hard leading up to Easter. He also stated that he wanted to help put Wanaka on the map.

[6] During the hearing there was a change of emphasis. Mr Sanderson agreed to limit attendance at the ball purely to hospitality workers and their partners. Given the size of the premises (with numbers limited to 80) this new proposal seemed to be appropriate. Initially tickets were to be made available at \$5 or \$10 at the door. However Mr Sanderson agreed to pre-sell all tickets and supply a list of attendees a week prior to the event.

Matters in Opposition.

[7] The Inspector is required by S.137 of the Act to inquire into and file a report on the application. A comprehensive and helpful report was duly received. She concluded with the submission that the opposition brought into question whether the applicant had met the criteria set out in s. 142 of the Act. The Police are required to inquire into the applications and if they have matters in opposition, they must file a report with the committee. The Medical Officer of Health may do so. Both supplied adverse reports.

[8] The Police submitted that the event was 'business as usual' since DJ's played regularly at "Lalaland". Certainly the Facebook extracts showed this to be the case. They submitted that by having door sales, members of the public were part of the target market. Reference was made to the cheapness of the tickets. In relation to the hospitality ball, the Police noted that the business has previously catered for, and targeted, hospitality workers. With ticket sales at the door concern was expressed about the probability of members of the public being admitted. In summary the Police argued that both events were 'business as usual' and therefore contrived.

[9] The Medical Officer of Health questioned whether providing increased access to alcohol on a sacrosanct day or extending the regular trading hours breached the Act's object. He contended that the application to sell alcohol on Good Friday was an attempt to evade the requirements of S47 of the Act. He submitted that the purpose of a special licence was not to extend normal trading hours.

The Committees Decision and Reasons.

[10] At the conclusion of the hearing the committee gave an interim decision reserving the right to give this fuller and more detailed reserved decision. In this case the application for a special licence to trade on Good Friday was declined. However, the application for a special licence to trade later than 2.30am was granted with conditions.

[11] Section 47 of the Act provides that the holders of an on-licence are unable to sell alcohol on Good Friday, Easter Sunday, Christmas Day or before 1:00pm on Anzac day. There are 3 basic exceptions. The first exception is where a special licence for the premises is granted. The second exception is where persons are on the premise for the purpose of dining. And the third exception is where people are residing or lodging on the premises. Parliament has therefore decreed that the owners of on-licences have the right to apply to sell alcohol by way of a special licence on the 3 ½ sacrosanct days. However there are issues to be overcome.

[12] Special Licences are referred to in S.22 of the Act. A special licence enables the licensee to sell or supply alcohol to people **who are attending an event** described in the special licence. (Emphasis ours). It is not to be granted to enable people to attend the premises primarily to drink. An event is defined in s.5 of the Act as including an occasion or a gathering. There is very little difference between an event under the new Sale and Supply of Alcohol Act 2012 and the previous act. Therefore we must rely on previous case law to assist with the Act's interpretation. Over the years a number of principles and guidelines have been established.

[13] First there must be a genuine event and not something that has been contrived. ***Alan Robert Christie v Invercargill Licensing Trust LLA PH 1225/2000***. This was a case involving events over Easter. The Authority stated:

“The principal issue for determination is whether or not persons attending the series of occasion or events at the 'Sugar Shack' were attending a particular occasion or event in terms of s.79(1)(a) of the Act, or they were attending a contrived series of events or occasions, contrived solely for the purpose of enabling a tavern to trade at a time when the legislation otherwise required the premises to be closed.”

[14] Secondly the application must not be a means for a tavern to obtain extended trading hours. In ***Bond Street Inn Limited 1997 NZAR 9*** the Authority stated:

“We have a firm view as to what the special licence is not intended to cover. It is not intended to be a means for hotels and taverns to obtain extended trading hours at times when the premises would otherwise be required to be closed.”

[15] Thirdly one of the major changes in the new Act is the dramatic shift in decision making from a national to a territorial level. As a consequence it is likely that a degree of national consistency will be lost. There have been cases where local decisions have been made for local circumstances. In ***David Alan Thomson LLA 1287/97*** the Authority declined to interfere with a local body decision to allow a tavern to trade through to 1.00am on Christmas Day.

[16] It is therefore possible for local decisions to be made to address local needs. But for every case where the Authority has not interfered with a local decision, there are just as many cases where the local decision has been reversed. The most significant of those was ***Pirovano [2006] NZLLA 727*** where the Queenstown Lakes District Licensing Agency had granted 22 special licences to trade over Easter because of “Warbirds over Wanaka” and because Queenstown was a significant tourist destination. All 22 decisions were reversed by the Authority.

[17] Fourthly it is likely that any wholesale relaxation of standards will bring the Act into disrepute and could in the long term reflect adversely on the Object of the Act. In ***Universal Liquor Limited and anor [2003] NZLLA 806*** the Authority stated:

“If all taverns (and off-licences) had the right to trade through Easter then in our view the law restraining trading during that time would inevitably be brought into disrepute. Having a law that has no effect may not physically lead to liquor abuse, but could certainly encourage the public to treat the Act with contempt and disrespect. This in turn would in our view undermine any serious attempts to reduce the abuse of liquor.”

[18] To these principles we would add our own. Whether an event is contrived can often be determined by a number of factors. There are several and the list below is not exhaustive;

(a) The price of entry. The lower the price the more people the applicant appears to be encouraging to attend.

(b) Whether there is some generic factor with the customers (such as guests at a wedding or people with a special interest in the actual event). Whether the people attending the event have a commonality of interest.

(c) Whether it is anticipated that members of the public will attend. It will be noted that under s.147(1) (h) of the Act a licensing committee may impose a condition excluding members of the public from the premises. And see the discussion about the comparison with club licences at para [26] below.

(d) Whether the intrusion into Good Friday and/or Easter Sunday is significant or restrained. In other words whether the applicant seeks to trade for as many hours as possible and whether there is a connection between the hours requested and the nature of the event.

(e) Whether a reasonable person attending the event would immediately notice a difference between the ambience of the occasion and any other trading day.

(f) The extent of the planning that has taken place, and the thought that has been given to the way the event is to be run. The less organised the applicant, the more likely that the event has been thought about after the decision has been made to apply for a special licence. Applicants were generally critical of the lack of time brought about by the public hearings, but the committee's staff has been at great pains to encourage the filing of early applications to enable them to be dealt with in an orderly way.

[19] The criteria to which we must have regard in deciding whether to issue a special licence are set out in S.142 of the Act. The relevant conditions in this case are: (a) the object of the Act, (b) the nature of the particular event for which the licence is sought, and (f) the days on which and the hours during which the applicant proposes to sell alcohol. There is no issue about the applicant's suitability to hold the licence.

[20] We would have been keen to try and assist the attempt made by this and other licensees to provide hospitality to the many visitors to the area, to help showcase Wanaka, and to support the 'Warbirds over Wanaka' festival, and to provide much needed revenue when the summer tourist season comes to a close. It was argued by many of the applicants that the law was outdated, and that the committee had the ability or jurisdiction to interpret and apply the law in a more flexible manner.

[21] However instead of being asked to bend the law in a reasonable way, the effect of the seven applications was that we were presented with a full assault on the provisions of the new Act. We were literally asked to ignore the Act's restriction on the sale of alcohol on Good Friday and Easter Sunday. While it is true that S.3(2)(a) of the Act requires that we act in a reasonable way we are unable to break the law to please licensees. To do what we were asked to do would in our view destroy the Act's integrity. It would enable the people of Wanaka to change the law outside Parliament. Applicants have the right within ten working days to appeal to the licensing authority if dissatisfied with this decision. (S.154 of the Act).

[22] There may be ways of enhancing the 'Warbirds over Wanaka' event, and at the same time give Wanaka an edge. There would need to be consultation and co-operation with the 'Warbirds over Wanaka' management as well as the agencies. Since the event closes at the

airport at 4.30pm it may be possible as part of the event to offer hospitality at taverns in Wanaka for say two hours giving visitors to the town an opportunity to relax before dining. Such an opportunity would no doubt become part of the Warbirds programme and part of the actual event. Such an idea cannot be judged until it has been thought through and presented. We simply flag the proposal as an illustration of the way that the aspirations of licensees could become reality. We suggest that planning starts now.

[23] None of the applicants had made submissions on the new Act or indeed on the Law Commission's publication "Alcohol in our lives. Curbing the harm" presented to Parliament on 27 April 2010, and forming the framework on which the new Act was based. We therefore think it important to trace the way that the matter was considered by Parliament. In 2009 the Law Commission produced an issues paper entitled "Alcohol in our Lives". In Chapter 9 the prohibited days were discussed. The commission wrote:

"Undoubtedly, the prohibited days adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. For many people, rules around the prohibited days are outdated and inconvenient.

On the other hand, many would argue that the remaining sacrosanct days should continue to be respected, and that the three and a half days are the only days on which workers are guaranteed time off to spend with their families. However, these arguments are not so apt for bars that are only open in the evening and early hours of the morning. Although New Zealand is a largely secular society, in the 2006 census, just over two million people affiliated with a Christian religion. Recent attempts to change the general Easter shop trading hours have failed in Parliament."

Mention was also made of the practical difficulty of specifying the hour at which the prohibited days began. The Commission suggested it would be less disruptive if a starting time of 2.00am on the actual day was legislated.

[24] The Issues Paper was the subject of 50 public meetings and a record 2939 written submissions were received. The submissions were duly analysed and considered and the final report was duly prepared. In that report the Commission felt that the 3 ½ sacrosanct days should be the same as the general law affecting retailing in New Zealand. It stated:

"We think the licence conditions regarding the prohibited days should reflect the general law relating to business in New Zealand. Currently, the Shop Trading Hours Act Repeal Act 1990 requires almost all shops to be closed on these three-and-a-half days. We do not think the new sale of alcohol legislation should apply different rules relating to trading days than applies to other types of stores.

We acknowledge the prohibited days do adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. Many submitters, particularly from the retail and hospitality industries, were in favour of the prohibited days being removed for the reason that this law is no longer necessary or relevant. For a

significant number of people, the rules around the prohibited days are outdated and inconvenient.

However, many other submitters argued the prohibited days should be retained. It was considered these days provide a further limit on the availability of alcohol. They allow many people who work in the hospitality industry to have a day off to spend with their families. It was felt that three-and-a-half days per year is not a large limitation on the commercial right to sell alcohol. Many also argued the sacrosanct nature of these days should be respected for historical or religious reasons. As mentioned in our Issues Paper although New Zealand is a largely secular society, a significant proportion of New Zealanders affiliate with the Christian religion and recent attempts to change the general Easter shop trading hours have failed in Parliament”.

[25] In December 2012 after lengthy debate and select committee hearings Parliament passed the Act in its present form. It had the opportunity to change the law by allowing a more liberal approach but chose not to do so. In fact the law affecting the 3 ½ days has become even more restrictive as it now affects all on-licences such as entertainment and cinema style licences. The Act now specifies that persons who are present on premises to dine may drink for an hour before and an hour after their meal.

[26] It is pertinent to ask why Parliament allowed club licences the continued right to trade on Good Friday and Easter Sunday as well as on Christmas Day and Anzac Day. Two logical reasons come to mind. (a) That members of the public are not legally able to be present at a club unless as a guest of a member, and (b) that members of clubs have an obvious commonality of interest.

[27] To be fair to Mr Sanderson he did not make a great play of the fact that over this particular weekend there would large numbers of visitors to Wanaka for the 'Warbirds over Wanaka' event. On the other hand if he had the opportunity to trade during Easter then clearly there would a significant advantage to him. He carries the onus of proving on the balance of probability that the event proposed in his tavern will not be business as usual and that there will be real changes in what happens on this particular night. As far as we were concerned he fell short of the mark. The tickets are cheap and members of the public are welcome to attend. In our view the ambience of the tavern will be the same as a normal evening. We believe that with the exception of the Auckland based DJ the music will be the same as has been previously. People will be eating and drinking the same as before. The applicant has failed to prove that there will be an event in terms of the Act warranting the issue of a special licence. Accordingly the application for a special licence to trade on Good Friday is refused.

[28] The second application seems to be somewhat different. It is acknowledged that the applicant company entertains hospitality staff on a regular basis during normal working hours. It appears that hospitality staff are part of its target market. Our understanding is that the tickets will be presold and the list of those attending will be available to the committee. We proceed on the basis that no one other than the ticket holders will be able to attend. We have some concern with the proposed hours of trading. In our view the longer the trading hours under the special licence and the fact that such hours extend into the early

hours of the morning, the greater the opportunity for the object of the Act to be compromised. In other words there is a greater risk that the sale and supply and consumption of alcohol will not be undertaken safely and responsibly, and the harm caused by excessive consumption of alcohol may not be minimised. On the other hand the applicant company has had no problem to date that we are aware of.

[29] In those circumstances we are prepared to grant a special licence if Mr Sanderson wishes to abide by the extra conditions we now impose. Those conditions are:

- (i) That the only persons who may exercise the right to attend the event will be hospitality workers in Wanaka and their partners.
- (ii) That all tickets are to presold prior to the event and that one week before the event a list of all those attending will be supplied to the District Licensing Committee.
- (iii) The bar will close at 3:30am. That in our view means that the people will be out of there by 4:00am. Effectively the trading extension will be for one hour only.

DATED at QUEENSTOWN this 22 day of April 2014



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E W Unwin
Chairman