

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **THE WINERY NEW ZEALAND LIMITED** pursuant to ss. 38 and 127 of the Act for the renewal of an on-licence with a new caterer's endorsement in respect of premises situated at Shop 109, Ground Floor, O'Connell's Pavilion, Corner Beach and Camp Street, Queenstown, and known as "The Winery".

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

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

HEARING at QUEENSTOWN 11th April 2016

APPEARANCES

Mr R D Nelson - Representing the Applicant
Ms S H Swinney – Licensing Inspector – to assist
Sergeant T D. Haggart – N Z Police – to assist
Dr D Bell – Medical Officer of Health – to assist

Introduction.

[1] In this decision there are four issues to be dealt with. The first is an application by The Winery New Zealand Limited (the company) pursuant to ss.38 and 127 of the Act for the renewal of an on-licence in respect of premises situated at the corner of Beach Street and Camp Street in Queenstown and known as "The Winery".

[2] The second issue concerns a request to increase trading hours. The company currently trades with a licence which authorises the sale and consumption of alcohol from 9.00am to 11.00pm inside the premises, and from 9.00am to 10.00pm outside the premises, seven days a week. It is seeking increased trading hours from 9.00am to 1.00am the following day inside the premises only.

[3] Thirdly, the company is seeking a caterer's endorsement to attach to the on-licence in respect of a modified VW van allowing wine tasting by way of a specially developed Enomatic card system for corporate and other functions and events.

[4] Finally, there is a request to increase the size of the outside area adjacent to the premises on Beach Street. This will basically extend the outside seating area in the footpath and street by some 25.35 square metres to a total of 42.35 square metres. This follows a trial 'pedestrianisation' of the street by the Queenstown Lakes District Council.

The Applications.

[5] The company operates what it claims is “the world's largest tasting of New Zealand's best wines”, and it has been doing so since 2005, when it was called “Wine Tastes Central Otago”. The business is at the premium end of New Zealand wines and trades under an on and an off-licence. For example the average price of a bottle of wine sold over the past twelve months was \$50.83 (inclusive of GST). Wine is sold and shipped to over 40 countries.

[6] What is being marketed is an experience in which New Zealand wines (and some whisky) are showcased and able to be tasted using the Enomatic Wine Serving System. This effectively controls access and manages self-service of the wines. All tastes of all wines can only be accessed using a card which records the amount of the tasting, the type and brand of wine, and the cost. Within the premises there are 83 wines, 8 whiskies and 4 sparkling wines available for tasting. The volume control enables a customer to taste 25mls or half a glass (75mls) or a full glass (150mls), each decision costing an increased amount.

[7] Brochures are available in English and Chinese. There are plenty of qualified staff members available to advise on wine selection. The company has an unblemished eleven year track record. The latest 'Trip Advisor' review rated 'The Winery' as number 9 out of 108 “Things to do” in Queenstown, and it is a major attraction as well as a unique venue in the Queenstown CBD. A view of the premises explained why the business is rated so highly. As stated above, tastings can only be made using a card system. There are cheese and dips platters available. What is being offered is an upmarket and relatively unique tourist, hospitality and retail experience.

[8] The application to extend the trading hours follows a Resource Management consent which was granted on 27th January 2016 which allowed the company to sell alcohol to 1.00am. There are no issues with this aspect of the application. Although the business is run in the nature of a tavern, it is sufficiently expensive and novel and quiet, to ensure that there will be very little, if any, impact on the amenity and good order of the neighbourhood.

[9] Nor are there any issues with the renewal of the licence. The business has a history of being well run. Furthermore, there are no concerns with the application to extend the outside area. Although the proposal had not received final consent at the time the application was set down for hearing, this has now been granted and there are no impediments to the extra land being licensed. However, the proposed 'pedestrianisation' of the street has not yet become a matter of firm Council policy. It is still in the experimental stage, and the proposal is due for review at the end of September. Therefore, although the request to extend

the area will be granted, there needs to be a condition attached to the licence that the extra 25.35 square metres may only be licensed as long as the company holds a valid licence to occupy the land.

The S. 38 Caterers Endorsement.

[10] The issue in this case is whether the Committee is prepared to grant a renewal of the on-licence with an endorsement that s.38 applies. Pursuant to the section we must do so when issuing an on-licence if (and only if) we are satisfied that the holder of the on-licence carries on the business of a caterer.

[11] Central to this aspect of the application is a fully restored 1958 VW single cab pickup called “Amy Winedub”. It was created to “replicate the nature and style” of 'The Winery' experience. The Enomatic Wine Serving System can be fitted and removed from each side. Up to 46 different wines can be presented for tasting using the same system.

[12] This new concept was developed in response to requests from conference and event organisers who wanted to host larger groups than 100 people. Currently that is about the limit that can be accommodated at 'The Winery'. What Mr Nelson is trying to achieve is to take his wine tasting concept “off-shore”. There will be specialist wine tasting glasses as well as chilly bins for pre-chilling white wines and bottled water, and spittoons. Either wine tasting cards will be purchased at an event enabling patrons to select and pay for the wines, or a selection of wines will be purchased by the Event Organisers and presented for tasting.

[13] The difference between the “Amy Winedub” experience and home base is that no food will be supplied by the company when it is hired to assist at an event. Neither is it intended to supply other alcohol such as beer, low alcohol or non-alcohol drinks. In each case an agreement will be signed with the event organiser to ensure that these items are available (particularly food) but the provision of food and other beverages will not be the company's responsibility. In other words the company is supplying the wine tasting experience. It seemed to us that at many of the events, it will be necessary to utilise two licences.

[14] One of the problems associated with the application is that “Amy Winedub” has not yet been used at an event, and no application has been filed for a special licence. It is therefore difficult to gauge how popular or successful the enterprise will be, and how such a tourist attraction can supplement or enhance another company's own enterprise. Mr Nelson submitted that the sort of events that would be attracted to the idea of having wines available for tasting, would be conferences, as well as public and private events, or wine tasting before lunches or dinners, or wine and food events.

The Reporting Agencies.

[15] Initially both the Medical Officer of Health and the Police reported with matters in opposition. Both submitted that the company had not shown that it was a caterer. However, both withdrew the opposition after discussions following which

the company agreed not operate independently, and further, that the van would only be used as part of a larger event.

The Committee's Decision and Reasons.

[16] In a minute dated 4th June 2015 we granted the renewal of an on-licence to Moonlight Country Limited (the company). In that case the company had been carrying on the business of a function centre for 16 years. It had also been carrying on the business of a caterer and had held a caterer's licence in association with an off-licence since 2007.

[17] In that case, there was an issue about the supply of food. The evidence was that the company did not actually supply the food. This aspect was subcontracted out. However, in each case the subcontractor did not meet the client. The clients dealt with and paid the company. Because of changes in the Act the company applied to have a caterer's endorsement with the renewed on-licence. There were flaws with the way that the new Act was worded, but we took the view that it was not Parliament's intention to close down a business that had been part of the hospitality scene in Queenstown for 16 years.

[18] In our minute decision we made the following comments:

Pursuant to s.38 of the Act, the onus is on the company to satisfy us that it carries on the business of a caterer. Catering is not defined in the Act. We believe that in the context of the Act it means the activity of providing food, entertainment and alcohol at events.

In this case the company always deals with the client. It invoices the client in every case. In those circumstances we have been satisfied that the company carries on the business of a caterer. The application for renewal of the on-licence is therefore granted 'on the papers' for three years with the requested catering endorsement, and the requested operating hours, as well as the existing conditions.

[19] As stated above it is the company's obligation to prove that it is a caterer. It has failed to do so by a significant margin. As stated above, a caterer is not defined but we accept the Inspector's definition. In her report she quoted from the Concise Oxford Dictionary and submitted that a caterer was

"A person or company providing food and drink at a social event or other gathering."

[20] In our view the company is not only, not providing food, in many cases it will not be providing drink in the current socially acceptable way. It is providing 'a tasting experience'. We accept that such an experience is a novel and enjoyable way in which to taste wines. But in a number of cases it will mean that another licensee will have to supply beer and low alcohol wines and beers, as well as non-

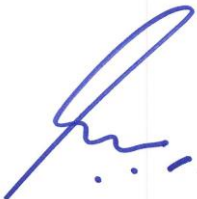
alcohol beverages and probably food. In such circumstances, the question might well be asked "Who is the caterer?"

[21] There is a difference between subcontracting one's obligations, and contracting out of them altogether. By granting an endorsement for what amounts to a portable bar that has limited supplies, we would be inviting other entrepreneurs to take advantage of an opportunity to avoid obtaining special licences and this we are not prepared to do.

[22] There is of course the current lacuna in the Act restricting the grant of a caterer's endorsement to an application for a new on-licence, but hopefully Parliament will see fit to amend the Act in due course. If the company finds itself applying for a significant number of special licences over the years it would be welcome to re-re-apply for an endorsement, but the style of its proposed operation would have to change.

[23] For the reasons we have set out we grant a renewal of the company's on-licence for three years with the increased trading hours for inside the premises from 9.00am to 1.00am the following day seven days a week. The application to attach a caterer's endorsement is declined. All other conditions will remain the same except that the defined licensed premises will now contain a further 25.35 square metres as per the plan produced, and subject to the condition referred to in paragraph [9] above.

DATED at QUEENSTOWN this 28th day of 2016



E W Unwin
Chairperson