

Decision number: 059-2024

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

AND

IN THE MATTER of an application
by **Waiho Investments
Limited**
pursuant to s.127 of
the Act for the renewal
of the ON Licence
for premises situated at 44 State Highway 6, Franz Josef
known as “**Scenic Hotel Franz Josef Glacier.**”

HEARING BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Jacqui Low
Member: Miriama Johnsen

HEARING at Hokitika on 24 August 2024

APPEARANCES

Mr. Simon Johnston– counsel for the applicant **Waiho Investments Limited**
Ms. Lianna-Merie Hagama – for the applicant
Mr. Richard Anton de Graaf- for the applicant
Mr. Carey James Lister- for the applicant
Mr. Kimberley John Smith- for the applicant

Mr. Wayne Knightbridge– Alcohol Licensing Inspector – to assist.

Sergeant Russell Glue – Police Alcohol Harm Prevention Officer (AHPO)– in
opposition

Mr. Rodney Beckett – delegated officer the Medical Officer of Health- (MOoH) in
opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 24 October 2023, Waiho Investments Limited applied for the renewal of an On Licence that was due to expire on the 22nd of December 2023. It was duly advertised, and no public objections were received within the prescribed time.
2. The applicant sought the rollover of the existing conditions including the licensed hours of **Monday to Sunday 11.00am to 3.00am the following day**. These hours are within the default national maximum trading hours for on-licensed premises.
3. The hotel contains two restaurants and the Moa Bar. The current designation of the premises has the restaurants and the bar as Supervised Areas. The correct designation of the premises should have the Moa Bar as a Supervised Area and Caravans Restaurant, Glass House Restaurant and the guest rooms as undesignated.
4. The renewal application was prepared by the Asset & Compliance Manager for the SHG group, Kimberley John Smith, and was reported on by the agencies.
5. There was a fully approved Fire Evacuation Plan provided with the application and comprehensive menus and the drink lists that were on offer.
6. Both the MOoH and the Police lodged identical reports in opposition posing a number of questions that they required further information on so they could be “satisfied” that the application met the provisions of the Act. As we will outline later in this decision that is not the role of the Police and MOoH in the licensing regime.
7. It appears there was some attempt to negotiate a resolution with the agencies but on 16 April 2024 the Inspector reported on the application with no matters in opposition. He did believe that the guest rooms were outside of the licensed area and that the applicant was now seeking to include them as they intended to place mini bars in them.

8. The renewal was set down for a public hearing as we needed to clarify the actual 'licensed area' and consider the introduction of mini bars against the alleged deficiencies raised in opposition by the Police and the MOoH.

Applicant's Evidence

9. Counsel for the applicant provided a brief outline of his client's case and was quite critical of the stance taken by the Police and the MOoH in Westland.
10. He first called Lianna-Merie Hagaman who is the company director of Scenic Hotel Group Limited (SHG) who told us that the company is the largest New Zealand owned hotel group in NZ and has 18 hotels here and one in Niue.
11. They employ 750 staff across the group and have mini bars in most of their hotels and none have been subjected to opposition from the Police or the MOoH elsewhere.
12. They have a head office in Christchurch with 65 staff including HR teams and Corporate Policy people. She was at a loss as to why the Police and MOoH believe that the law should be administered differently on the West Coast compared with the rest of NZ.
13. In a supplementary brief of evidence, she explained the management structure that operates in all their hotels and how guests are supervised and managed.
14. Kimberley John Smith told us that he is the Asset and Compliance Manager for SHG. Scenic Hotel Franz Josef is operated by Waiho Investments Limited, which is a fully owned subsidiary company of SHG.
15. He outlined his role in the company, and said he was responsible for the alcohol licensing for the hotels. He said he had provided the answers to the questions that were posed by the Police, and it was his evidence that he forwarded them on the Westland DLC Admin in May when they were requested.
16. He too, could not understand why the Westland Police and MOoH had a different view to their counterparts in other parts of the country on the issues raised in opposition.
17. Carey Lister is the Area Manager for the Scenic Group, and he told us he oversees the running of the four hotels on the Coast. He said he too had answered the questions posed by the Police and the MOoH.

18. Richard Anton de Graaf is a Hotel Manager for the SHG group. He currently works in Dunedin in one of the group's other properties. He outlined his experiences with mini bars and firmly believed that they did not pose a risk due to the small quantities offered and the pricing structure.
19. He said it was company policy to remove mini bars from rooms if they were to be occupied by unaccompanied minors.

Police Evidence

20. Sergeant Russell Glue is based in Greymouth and one of his portfolios is that of the Alcohol Harm Prevention Officer for the West Coast. In his letter of 'opposition' dated 15 January 2024 he posed a series of questions about the management of the premises generally and queried how the applicant was going to manage guests bringing their own alcohol on site and consuming it in the guest rooms.
21. Some 5 months later, In May of 2024 he sought a response from the applicant, and he said, in evidence, he got no reply.
22. One would have thought a timely phone call to the applicant, or the Inspector many months ago might have revealed those answers
23. As we explain later in this decision the role of the Police is to inquire into, and report on applications IF they have matters in opposition.
24. Sergeant Glue is quite correct when he says they only have 15 working days to conduct their enquiries and lodge an opposition if they choose to do so.
25. However as outlined in **KAPITI SUPERMARKET LIMITED [2015] NZARLA PH 194 paragraph 15¹** ARLA has made it very clear as to the level of reporting expected of agencies:

In terms of s.103(3)(b) of the Act the Police (read MOoH as well) must decide within 15 working days after receiving a copy of the application whether or not they have any matters in opposition to it.

Whether or not the Police have matters in opposition must be determined within the timeframe stated in the Act and the Police are bound by the indication that they give.

There is nothing in the Act to prevent the Police altering their stance within the 15-day period. Likewise, it is permissible for the Police to withdraw their opposition at any time.

¹ KAPITI SUPERMARKET LIMITED [2015] NZARLA PH 194 paragraph 15

If the Police do have matters in opposition to an application, they must state those matters within the 15 working day period.

Merely to state that they oppose an application without setting out the matters in opposition is not adequate as this fails to tell an applicant the nature of the case it must answer at the subsequent hearing

Helpfully in **PAULIN v SCOTT [2013] NZARLA 489**² the Authority provided further guidance when they said:

“The Authority accepted that the Police may not be able to express their grounds for opposition with adequate particularity within 15 working days....it would be permissible for the Police to state their grounds in opposition in more detail within a very short period of time. The Authority envisages that this would be within 15 working days of the initial report.”

26. Sergeant Glue’s response was to state that the application remained opposed “until I’m satisfied that my grounds of opposition are mitigated, and all the requirements of the Sale and Supply of Alcohol 2012 are met.”
27. As we explained at the hearing, this is not the correct interpretation of the reporting role of the Police. The evaluation of the application is the role of the DLC. The role of the Police is to **lodge matters in opposition with sufficient details to tell the applicant the nature of the case it must answer at subsequent hearing (should one be set down)**.

MOoH Evidence

28. The Medical Officer of Health (MOoH) covering Westland is Dr. Cheryl Brunton. Mr. Rodney Beckett is the delegated officer for the MOoH.
29. Mr. Beckett’s letter of opposition was effectively a replica of Sergeant Glue’s letter.
30. In his Brief of Evidence, he elaborated further stating that there was no evidence in the application of the procedures on how the applicant planned to manage multiple guests in multiple guest rooms for 15 hours a day 7 days a week.
31. He believed mini bars were problematic and he was critical of Compliance Manager Kimberley Smith who had stated that mini bars were one of the best ways to moderate alcohol consumption in guest rooms.

² PAULIN v SCOTT [2013] NZARLA 489

32. It is troubling for the DLC to see the duplication of reports between the Police and MOoH. We discuss this later in this decision.
33. It was put to Mr. Beckett, by counsel for the applicant, that they could not understand why mini bars are a problem for the Police and the MOoH in Westland, yet not for the rest of New Zealand in many hundreds of hotels.
34. Mr. Beckett stood by his opposition and believed there were potential risks that the company did not appear to understand or are prepared to manage.
35. We note that the contents of the proposed mini bars are modest, and the pricing structure would also deter inappropriate or excessive consumption. The DLC also fails to see merit in this argument submitted by the MOoH.

Inspectors Evidence

36. Mr. Wayne Knightbridge is an experienced alcohol licensing inspector and reported on this application. He believed the designations and licensed area needed review but otherwise he had no issues with the renewal.

The Law

37. Section 3 of the Act states the purpose of the Act as follows:
 - (1) ***The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –***
 - (a) ***to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and***
 - (b) ***to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.***
 - (2) ***The characteristics of the new system are that–***
 - (a) ***It is reasonable; and***
 - (b) ***Its administration helps to achieve the object of this Act.***
38. Section 4 states the object of the Act as follows:
 - (1) ***The object of this 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.***
 - (2) ***For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –***
 - (a) ***Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and***

- (b) **Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).**

39. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of a licence:

131 Criteria for renewal

(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):

(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

The clauses in 105 that we must consider are:

105 Criteria for issue of licences

(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) 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:

(g) 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:

(h).....

(i).....

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

Section 103 of the Act says: Police, Medical Officer of Health, and inspector must inquire into applications.

(1) On receiving an application for a licence, the secretary of the licensing committee concerned must send a copy of it, and of each document filed with it, to—

(a) the constable in charge of the police station nearest to—

*(i) the premises for which the licence is sought; or
(ii) the secretary's office, where the licence is sought for a conveyance; and
(b) an inspector; and
(c) the Medical Officer of Health—
(i) in whose district the premises are situated; or
(ii) in whose district the applicant's principal place of business in New Zealand is situated, where the licence is sought for a conveyance.*

(2) The inspector must inquire into, and file with the licensing committee a report on, the application.

*(3) The Police and the Medical Officer of Health—
(a) must each inquire into the application; and
(b) if either has any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it.*

(4) The licensing committee may assume that, if no report is received from the Police or Medical Officer of Health within 15 working days after sending the copy of the application to them, the Police or Medical Officer of Health does not oppose the application.

(5) The secretary must send to the applicant a copy of any report filed with the licensing committee under this section (underlining our emphasis)

Section 105(1)(a) The Object of the Act

40. Section 105(1)(a) of the Act requires the licensing committee to have regard to the Object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
41. Similarly, we must ensure that our administration of the Act is reasonable and contributes to the achievement of the Object of the Act and benefits the community as a whole as prescribed in the Purpose of the Act.
42. We will assess the other criteria before returning to decide whether the Object of the Act can be achieved by the renewal of this licence.

Section 105(1)(b) Suitability of the Applicant

43. The applicant must be a suitable entity to hold an ON Licence. Suitability is not established in a vacuum, it is based on proven performance and properly dealing with challenges that occur from time to time, especially in late night taverns and hotels.

44. There has been nothing presented to us to doubt the suitability of the applicant and its management team and the appointed certificated managers. There have been no adverse incidents reported at this hotel.

45. Overall, we find the applicant a suitable entity to hold an alcohol licence.

Section 105(1)(c) Relevant Local Alcohol Policy

46. There is no Local Alcohol Policy (LAP) in Westland. There is nothing for us to consider.

Section 105(1)(d) The days and hours of operation of the licence

47. The current operating days and hours are **Monday to Sunday 11.00am to 3.00am the following day**. These hours are unremarkable and within the default national maximum trading hours for ON licences.

Section 105(1)(e) The design and layout of any proposed premises

48. There are no unique issues with the design and layout of the premises and this hotel is like hundreds of others with alcoves and accommodation wings surrounding the main office, bars and restaurants.

49. However, the licensee must adequately staff a sprawling hotel like this one, to ensure that patrons are supervised in the public areas of the hotel.

Section 105(1)(f) 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;

50. No 'other' goods are sold on the premises.

Section 105(1)(g) 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, and food, and if so, which services.

51. Accommodation is offered to tourists and travelers.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law.

52. The applicant advises that there are five staff with manager's certificates attached to the business and others going through the LCQ process. This is adequate to cover the potential licensed hours. Clearly a certificated Duty manager must always be on duty whenever alcohol is available for sale,

supply and consumption.

53. The company holds and maintains multiple staff polices and training manuals. Regular training is undertaken and documented.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

54. The Police and the Medical Officer of Health are opposed to the renewal citing a number of deficiencies that **they believe** will result in inadequate management of patrons in their rooms should mini bars be installed, and that there are insufficient controls and supervision around the consumption of 'BYO' alcohol. We discuss this stance in greater detail below.
55. The Inspector does not oppose the renewal but recommends that the licensed area be clearly defined, and the designations be reviewed.

Reasons for the Decision

56. Section 3 of the Act requires us to act **reasonably** in the exercise of our duties and to regulate with the aim of helping to achieve the Object of the Act.
57. We believe that there were no, formally raised, 'matters in opposition' from the MOoH or the Police. To the contrary, they have posed a series of questions and requests in which they required further information before they could be 'satisfied' that the provisions of the Act were being met.
58. The Act is very clear on the roles of the Police and the MOoH as reporting agencies:

Section 103 Police, Medical Officer of Health, and inspector must inquire into applications³

The Police and the Medical Officer of Health—

*(a) **must each inquire** into the application; and*

*(b) **if either has any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it.***

59. It does not give them a mandate to file an identical report with a list of perceived deficiencies in the application. If it is incomplete by all means the Police and MOoH liaise with the Inspector to have additional information provided **if** is on the list of mandatory prerequisites.

³ Sale and Supply of Alcohol Act 2012 Section 103

60. If they plan to oppose, their reports should contain clear ‘matters in opposition’ with sufficient detail there in for the applicant to know what is required of them.
61. Mr. Beckett stated under cross-examination that Section 295 of the Act required the agencies to collaborate, which is why the MOoH opposition, and the Police opposition, were the same.
62. Section 295 says:

295 Duty to collaborate⁴

The Police, inspectors, and Medical Officers of Health within each territorial authority’s district must—

- (a) establish and maintain arrangements with each other to ensure the ongoing monitoring of licences and the enforcement of this Act; and*
- (b) work together to develop and implement strategies for the reduction of alcohol-related harm.*

63. Section 295 does **not say** that they must, or even can, **report together raising the same concerns** when reporting on applications. Parliament has explicitly prescribed that there be three agencies, the Police, the MOoH and the Inspector who **must each** enquire into and report on applications (if the Police and MOoH have matters in opposition).
64. Each has their own area of expertise and responsibilities, and **they should primarily enquire into and report under their own banner**. By all means they should collaborate around the **monitoring of licences premises and enforcement activities** such as Controlled Purchase Operations and late night compliance inspections. That is what Section 295 says.
65. In plain terms the Police are primarily the enforcers of the Act, the inspectors are the regulators and are required to ensure licensees comply with the conditions of their licences. The MOoH should be the commentators on public health and safety matters. As ARLA said in **General Distributors [2014] NZARLA 185,186,187**⁵

Further, the questions set out in the questionnaire would normally be more properly posed by a Licensing Inspector, with the Health Board’s role being directed at matters of public health and safety.

66. The Inspector has not opposed the renewal.
67. The Police and the Inspector have the power of entry into licensed premises

⁴ Sale and Supply of Alcohol Act 2012 Section 295

⁵ General Distributors [2014] NZARLA 185,186,187

under section 267 of the Act. That was the time to raise concerns if it was thought that the application was incomplete or deficient.

68. When reporting on new or renewal applications it is **not the time** for any of the agencies to require, or demand, additional measures be put in place, or an opposed report will be lodged with the DLC. If an agency has **matters in opposition**, they must clearly state them in a report and the DLC will determine whether there is a risk to be abated or a benefit to be secured and set the matter down for hearing.
69. We see no issue with the plan to place mini bars in the guest rooms. The offering of two small bottles of wine and two beers is very modest and in line with the applicant's other premises and hundreds of other hotels.
70. The Police and MOoH also raised concerns about guests consuming alcohol in their rooms that they have purchased off-site, and the potential of them becoming intoxicated in their rooms. They asked how the applicant planned to monitor that behaviour and what measures would be put in place to prevent it.
71. We accept that potentially this could occur but in reality, the guest has rented the room and is entitled to the private occupation of that space as long as their conduct does not interfere with other guests.
72. We also have clear evidence from the applicant, and no evidence to the contrary from the agencies, that there has been any history of intoxication occurring on these premises.
73. On the grounds of the reasonable administration of the Act, we see no obligation on the DLC to require the licensee to overtly monitor alcohol consumption in guest rooms unless, as we have said, the guest's conduct causes a nuisance to others.
74. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has reduced the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be increased by **more** than a minor extent by refusing the renewal.
75. On balance, we do not find that the amenity and good order of the area has been reduced by more than a minor extent, nor would the amenity and good order of the area increase by more than a minor extent if the renewal was refused.
76. There is nothing preventing the installation of mini bars now should the Licensee choose to do so.

77. We have concluded that the Object of the Act will be met, and we approve a renewal of the licence with a revised designation regime and a clear plan of the licensed area as presented at the hearing and dated 14 August 2024.

The Decision

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves an application by **WAIHO INVESTMENTS LIMITED** for the renewal of an ON Licence in respect of premises situated at 44 State Highway 6, Franz Josef known as “Scenic Hotel Franz Josef Glacier” **on refreshed conditions.**

The Licence is renewed for three (3) years from 20th of December 2023 subject to the following conditions and a replacement licence is to be issued.

1. Alcohol may be sold and supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 11.00am to 3.00am the following day, and**
2. **Any alcohol previously placed in an area or unit (commonly known as a mini-bar) of a hotel room may, at any time on any day, may be sold or supplied in that room to any guest who is entitled to occupy that room, or to a person whom that guest permits to be in that room.**
3. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is present on the premises to dine or is residing or lodging on the premises.
4. The following parts of the premises are designated as **Supervised Areas: The Moa Bar. The remainder of the property, including the restaurants and accommodation blocks, are undesignated.**
5. Drinking water is to be provided to patrons, free of charge, from a water supply prominently situated on the premises.
6. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages,
7. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the

sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,

8. **A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed in the premises,**
9. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
10. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons.
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - c. A copy of the licence is to be attached to the premises so as to be easily read by persons attending the premises.

The premises are as set out on the plan submitted with the application and date stamped **14 August 2024**. A note to this effect is to be made on the licence.

DATED at Hokitika this 27th day of August 2024



Murray Clearwater
Commissioner
For the Westland District Licensing Committee



NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision has no effect until 10 working days have passed from the date on which a copy this decision is given to the parties.