

Application	19/033/2018
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	of an application by
<u>IN THE MATTER</u>	Piopio Cosmopolitan Club Incorporated for the renewal of a club licence pursuant to section 127 of the Act

HEARING at the Waitomo District Council Chamber on Thursday 4 October 2018

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr J Gower, Cr Whitaker

APPEARANCES

Mr C Fredericks – President, Piopio Cosmopolitan Club Incorporated
Mrs D Young – Secretary, Piopio Cosmopolitan Club Incorporated
Mr L Norris - Licensing Inspector
Mrs N Zeier – Medical Officer of Health
Senior Constable J Fitzgerald - Police
Mr B Burr - Objector

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The club licence 19/CLUB/003/2015 in respect of the premises situated at 42 Moa Street, Piopio and known as Piopio Cosmopolitan Club is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee and subject to an inspection by the Licensing Inspector to confirm that:
 - a) The CCTV monitor is located in a satisfactory position above the bar.
 - b) Signage has been erected in the carpark advising that the property is owned by Piopio Cosmopolitan Club Incorporated and that glass and alcohol is banned.

2. The present conditions of the licence are replaced as follows:
- (a) Alcohol may be sold only on Monday to Sunday, from 9.00am to 1.00am the following day.
 - (b) The club must always have a secretary.
 - (c) The club must inform the District Licensing Committee of the name of a new secretary within 10 working days of their appointment.
 - (d) All proceeds from the sale of alcohol belong to the club.
 - (e) Alcohol may be sold or supplied to:
 - i) a member of the club,
 - ii) any member of any other club where this club has an arrangement for reciprocal visiting rights,
 - iii) a person who is invited and accompanied by the members listed in i) or ii) above.
 - (f) The area where alcohol is to be sold and consumed is described in the plan date stamped as received by the Waitomo District Licensing Committee on 7 September 2018 and no alcohol is to be taken out of this area.
 - (g) The entire premises is undesignated (persons under 18 can be in the area).
 - (h) A holder of a manager's certificate or a properly notified manager must be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the public of this fact.
 - (i) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
 - (j) The licensee must maintain and display a Host Responsibility Policy and ensure all bar staff and committee members receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
 - (k) Alcohol must not be sold or supplied to minors or intoxicated persons. The licensee must display appropriate signs at every point of sale detailing restrictions on the sale and supply of alcohol to such persons.
 - (l) Drinking water must be freely available and this must be clear to customers while the premises are open for the sale and supply of alcohol.
 - (m) A range of non-alcoholic and low-alcohol drinks must be available at all times when the premises is open for the sale of alcohol.
 - (n) Food must be available for consumption on the premises at all times the premises is open for the sale of alcohol in accordance with the menu submitted with the application for this licence, or variations of a similar range and standard. Where catered finger foods, buffet or a la carte meals are not provided, there must be a minimum of food four choices available

(excluding nuts and crisps and the like).

- (o) A telephone must be freely available for customers to call for transport and staff must assist if required. Telephone numbers for alternative forms of transport from the premises must be displayed.
- (p) No BYO alcohol is permitted on the premises while alcohol is available for sale.
- (q) The Licensee must ensure the following are displayed;
 - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
 - iii) A sign in a prominent place identifying the duty manager.

Reasons

1. This is an application by Piopio Cosmopolitan Club Incorporated for renewal of a club licence in respect of the premises situated at 42 Moa Street, Piopio. The club licence has been valid since 1990. The club is an incorporated society and is therefore entitled to hold a club licence.

Objection

2. The application was advertised, and an objection has been received from Mr Burr, a resident of 37 Napinapi Road, Piopio and also a member of the club. Section 128 of the Act provides that a person may object to the renewal of a licence if he or she has a greater interest in the application than the public generally. Given that Mr Burr is a member of the club, the licencing committee accepts that he has a greater interest than the public generally and is entitled to object to the renewal of the licence.

Reports

3. The Medical Officer of Health and Licensing Inspector do not oppose the application. However, the Licensing Inspector did raise a number of issues including the fact that it is not currently a condition of the licence that a certificated duty manager be on duty at all times.
4. No report was received from Police within the required 15 working day period. However, the licensing committee issued a direction seeking a report from Police on or before Friday 7 September 2018, commenting on the matters raised by the objector, in particular the concerns relating to consumption of alcohol in the carpark and any incidents of violence/disorderly behaviour in the club carpark or on the club's licensed premises, since the club licence was last renewed on 24 July 2015.
5. In response a report was received from Senior Constable Tony Schrafft on 29 August 2018 and from Sergeant Craig Lindstrom on 4 September 2018.
6. As a result of the issues raised by the Licensing Inspector and the objection from Mr Burr, the matter was set down to be heard at a public hearing pursuant to section 202(3). The Licensing Committee conducted a site visit prior to the hearing.

The Sale and Supply of Alcohol Act 2012

7. The purpose of the Act is to put in place a new system of control over the sale and supply of alcohol (s 3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4).
8. In deciding whether to renew a club licence the licensing committee must have regard to sections 131 and 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is the applicant suitable?
 - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - e) Does the applicant have appropriate systems, staff and training to comply with the law?
 - f) Have the police, inspector and medical officer of health raised any relevant considerations?
 - g) Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?
 - h) Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?
 - i) Does the application comply with the Waitomo District Local Alcohol Policy?
9. Section 132 provides that the licensing committee may vary or cancel any conditions applying to the licence before its renewal.

Is Piopio Cosmopolitan Club Incorporated is a suitable applicant to hold a club licence?

10. The Licensing Inspector does not report any concerns regarding the suitability of the club to hold a club licence and in particular notes the stable, experienced management within the club. Mr Fredericks, is a dry stock farmer, holds a manager's certificate and has been the President for the past 10 years. The Secretary, Mrs Young, has also held the position of Secretary for the past ten years. The licensing committee is satisfied that Piopio Cosmopolitan Club Incorporated is a suitable applicant to hold a club licence.

Are the days and hours during which the applicant proposes to sell alcohol reasonable?

11. Piopio Cosmopolitan Club Incorporated proposes to continue operating as a club from 9.00am to 2.00am the following day Monday to Sunday. However, the Waitomo District Local Alcohol Policy (LAP) limits club trading hours to 9.00am to 1.00am the following day. At the hearing Mr Fredericks agreed that the club's hours should be changed to 9.00am to 1.00am the following day to comply with the LAP. The licensing committee is satisfied that these are appropriate hours of operation and are recorded as a new condition of the licence. Therefore, the application now complies with the Waitomo District Local Alcohol Policy.

Is the design and layout of the premises suitable?

12. The club premises is spacious and tidy. It has a snooker room, a gaming room, a dining area and two outdoor decks including one at the side of building adjacent to the carpark and one at the rear of the

premises. The deck at the rear of the building has steps leading down to the grass and this area has a netball hoop and sandpit for children.

13. The Licensing Inspector reports that the site plan does not clearly delineate the licensed area or principal entrance and does not include the grassed area. The existing licence does not refer to an associated plan and the plan held on file date stamped 30 April 2010 is not entirely clear as it shows several licensed areas and does not show the principal entrance. In addition, one of the security lights covering the car park area is currently not working and there is only one CCTV monitor and it is located in the office. The Licensing Inspector reports that it would be more appropriate for a CCTV monitor to be located in the bar area where it can be easily monitored by bar staff.
14. The licensing committee observed on the site visit that the CCTV monitor is now located on a shelf under the bar. Mr Fredericks explained that it shows all of the CCTV camera footage for areas that staff can't see easily from the bar. This is a definite improvement on the previous location in the office, however as discussed at the hearing, this location may be difficult to see at a glance without bending down and could be easily obscured if more than one staff member is working in the bar. Mr Fredericks agreed that it could be relocated to a position above the bar, in a location where it can be seen by staff but not customers. Mr Fredericks gave evidence that all security lights are now working.
15. The club has submitted a new site plan date stamped 7 September 2018 and it clearly shows the principal entrance, the licensed area, being the whole premises, the two decks and the grassed area at the back. In addition, it shows the location of the security lights and CCTV Cameras.
16. The licensing committee wondered whether the grassed area at the rear of the building accessed from the deck should be licensed, especially given there is a small blind spot in the corner on the left side of the area. However, Mr Fredericks explained that the club would like the whole grassed area to be licensed in case parents need to go in that area to supervise children. Mr Fredericks states that patrons usually only have drinks on the deck, however given that the club has a family focus and activities for children out on the grass, on rare occasions patrons may walk into that area with a drink.
17. There is no opposition from the Licensing Inspector, Police or Medical Officer of Health to the rear grassed area being licensed. There are two CCTV cameras that cover most of this area and staff can see all of the grassed area when they walk around the deck, therefore the licensing committee agrees that this area should be part of the licensed area. Given the lack of clarity with the site plan held on file, the licensing committee considers that the plan date stamped 7 September 2018 should be accepted and referenced in the licence conditions.
18. The licensing committee is satisfied that the premises has a suitable design and layout to meet the requirements of the Act. It is well appointed and able to be monitored effectively by the staff of the premises. The premises is currently undesignated, and this is appropriate for this type of social club with a family focus.

Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?

19. The club does not propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food.

Does the applicant have appropriate systems, staff and training to comply with the law? Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?

20. The Licensing Inspector states in his report that there is a Host Responsibility Policy, Date of Birth Chart, Intoxication Assessment Tool and Prohibited Persons sign displayed at the main bar. In addition, a manager's register is maintained. There are four staff members that hold manager's certificates. However, there is no evidence of a staff training plan or staff training conducted over the past three years, apart from the regular attendance by the club president and senior bar manager at the Club Champs workshops on the Sale and Supply of Alcohol Act 2012. In addition, the club licence does not require a certificated duty manager to be on duty at all times and it may be appropriate to include a condition of the licence requiring a manager to be on duty at all times.
21. The objector Mr Burr raises concerns that a staff member with a criminal conviction, who is not the holder of a manager's certificate is left in charge of the bar and has incited violence. In addition, there is no management of junior bar staff. Mr Burr says there is a culture of violence at the club. On one occasion a farmer was hit with a baseball bat. Mr Burr was himself a victim of an assault in the premises. The perpetrator has been charged and convicted of common assault and possession of an offensive weapon on 28 June 2018. Mr Burr says this is one of many assaults happening on club premises and one month after this incident another farmer got a black eye in another assault.
22. In addition, Mr Burr says that the club permits consumption of alcohol in the club car park and this has led to at least one incident of violence when his son was hit from behind when he left the club and went into the carpark. The club allows persons *"of undesirable, negligible and suspicious character onto the premises who have a propensity to be violent and with seemingly no consequences"*. Mr Burr says that Mongrel Mob gang members have threatened his family with retaliation via text messages. Mr Burr was accused of using excessive force on the night of the assault and was barred from attending the club from 24 May 2018 to 24 August 2018.
23. Mr Fredericks states that on the night of the assault he was the Duty Manager and was at the club until 10.30pm. The staff member referred to by Mr Burr has been working at the club for three years and is very experienced. However, this staff member and her partner worked for Mr Burr in the past and have some personal differences with Mr Burr. The criminal conviction referred to is benefit fraud six years ago and the staff member now has a clean slate. The "undesirables" referred to by Mr Burr arrived in the carpark after the club closed and Mr Burr's son insulted a member of the group and a disturbance occurred on the footpath. Members of the club leaving the premises quickly intervened and stopped it.
24. Mr Fredericks states that the senior staff are very stable, and the part timers usually stay for around two years. The list of members is updated weekly and kept at the bar along with a list of affiliated clubs. The sign in book is also at the bar where staff can monitor it easily.
25. Mr Fredericks states Mr Burr has stated to members that he is not happy with the way he/the club handled his suspension. However, the standard approach in the club for any sort of fight is a three-month suspension. The committee decided that all three club members involved in the fight should get the same three-month suspension.
26. Mr Fredericks gave evidence that the carpark is a "real important part of Piopio as a whole". The large carpark is owned by the club, however the club is happy for the carpark to be available for public use. Several businesses in Piopio rely on it for their customers to use. Upwards of 100 cars use

it each day to turn around in it and park in it. Local shearers, sports teams and emergency services staff park their vehicles in the carpark and car pool to their destination. In addition, a large number of Motorhome travellers park in the carpark at night and are provided with some power connections. Apart from the street it is the only safe place to park. It is so important to the community that, Waitomo District Council has been helping to maintain it. Therefore, the club considers that it is vital for the carpark to be left open for the good of the whole community.

27. Mr Fredericks agrees that some people do bring alcohol into the carpark at night. However, following discussions with Police, the club has removed a lot of undergrowth from the trees/bushes at the far end and have upgraded the lights to LED so that the whole carpark is brightly lit up at night.
28. Mr Fredericks states that while the club has not recorded staff training, it has been taking place on a regular basis. Most staff have recently completed the HPA online Servewise course. Twelve months ago the club was shut so that all staff and some committee members could attend Club Champs. All staff attend training several times a year and this can be seen in the written statements from staff confirming the high level of supervision and training they receive. At the hearing, Mr Fredericks presented a copy of a new Health Promotion Agency folder that was given to the club by the Licensing Inspector. The licensing committee can see that the club is now using this very useful resource to record all staff training that each staff member receives. In addition, a number of other things are recorded in the folder including the manager's register, any incidents of concern and members who are banned from the club for a period of time.
29. After questioning by the Licensing Inspector, Mr Fredericks admitted that the club recently hosted a funeral wake for James Richie for members of the public and the club did not have a special licence for this event. Mr Fredericks admitted that this was an error on the part of the club and states that the club does usually apply for a special licence for the annual Christmas function.
30. Mr Fredericks does not consider that it is necessary to have a duty manager on duty at all times. This is because the current system works well. Mr Fredericks lives five minutes away and if a staff member needs assistance he can get to the club very quickly. Because it is a small town, the club has difficulty retaining part time staff and volunteer club members with manager's certificates are busy with their own families and employment. On an average night there may only be eight members in the club. On the busiest nights which are Wednesdays and Friday, there could be up to 40 members in the club, and never more than 50 members unless there is a big occasion.
31. In his report to the licensing committee Senior Constable Tony Schrafft states that there have been two disorder jobs outside the Piopio Cosmopolitan Club in the past six months. The first occasion involved a club member leaving the premises. He was confronted by persons who had not been inside the club and a fight ensued. The second incident involved persons arriving with alcohol in the carpark area. Some disorder occurred, and which result in a club member assisting in moving on the intoxicated aggressor. Both instances were captured on the club's security cameras and reviewed by Police. There were no complaints made to Police and insufficient evidence to prosecute. As a result of these incidents, Police suggested improved lighting of the carpark and the trimming of trees in the area. Both of these suggestions to improve safety have been completed by the club.
32. Sergeant Craig Lindstrom confirms that Mr Burr was the victim of a common assault inside the premises on 15 April 2018. A review of Police records over the past three years show a further two incidents. On 27 October 2015 a known person who was not a member and had previously been barred entry, attempted to gain entry. Entry was refused by staff. That person and two associates returned at closing time and accosted patrons as they were leaving, resulting in a small scuffle

between them. No formal complaints were received.

33. On 28 April 2015, a scuffle was reported between a local patron and a group of unknown persons at the front entrance. The group were moved outside by staff and the matter was resolved. Sergeant Craig Lindstrom confirms that the club has responded positively in the past to any suggestions forwarded by Piopio Police regarding compliance and behavioural issues when identified or reported.
34. Senior Constable Fitzgerald attended the hearing and gave evidence that there was an incident with a chair, not a baseball bat, about four or five years ago. There was an incident in April this year involving Mr Burr's son, but he would not make a complaint. Overall, Senior Constable Fitzgerald does not think that drinking in the carpark is a problem, however it appears that some incidents may not be reported to Police.
35. Senior Constable Fitzgerald suggests that the club could erect some signs prohibiting glass in the carpark. Having regard to the object of the Act, Senior Constable Fitzgerald thinks that it would be a good idea to make it a condition of the licence that a certificated duty manager be on duty at all times.
36. After hearing all of the evidence the licensing committee is satisfied that the club has an appropriate Host Responsibility Policy and staff training programme which demonstrates suitable measures will be undertaken in regard to responsible sale and supply of alcohol and that harm will be reduced. It is a condition of this licence that all committee members and bar staff are trained in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012. The licensing committee is satisfied that the club has sufficient Duty Managers who serve on these premises to ensure the responsible sale and supply of alcohol. The licensing committee is satisfied that from now on Mr Fredericks will ensure that a special licence is always applied for when non-members of the club are invited to attend an event that is not organised for the benefit of club members and in keeping with the objectives of the club.
37. The licensing committee appreciates that Mr Burr has taken the time to raise some serious issues. It is very concerning that Mr Burr suffered an assault in the club and perceives a culture of violence. Mr Burr states that he does not want to close the club down but wants the club to have better staff and systems in place to make the club safer. In particular, Mr Burr wants the carpark to be safe at night and for patrons to get to their cars safely.
38. Police agree that the carpark can be made safer but are not concerned that there is an on-going pattern of disorderly behaviour in the club carpark. However, this is difficult to assess given that it appears that some incidents may not be reported to Police.
39. The bottom line is that the club has an obligation to ensure that the inside and outside of the premises is a safe place and that any alcohol related harm is minimised.
40. The licensing committee accepts the recommendation of Police, the Licensing Inspector and Mr Burr, that the club be required to have a duty manager on duty at all times. Due to the fact that some incidents of disorder have occurred inside and outside the club in the past three years, the club does sometimes have some higher risk activities to manage and this is most properly carried out by properly trained staff. This risk is elevated by the fact that the club wishes to continue permitting the public to use the carpark at night, and as a result, non-members of the club do sometimes bring alcohol into the carpark. In addition, it is generally accepted that a social club of this nature, where alcohol is the primary focus, in contrast to a small sporting club where sport is

the focus, naturally has some risk of alcohol related harm and that this risk is mitigated by properly trained staff.

41. The licensing committee understands the difficulties that the club encounters retaining qualified staff in a small town. However, if the club does not have sufficient staff to cover all nights, then it will have to make a decision about which nights it can adequately cover and which nights the club will need to remain closed.
42. In addition, the licensing committee has formed the view that if the club is going to permit the public to use the carpark at night, it must take further steps to ensure the safety of patrons as they leave the club. The club is to be commended for trimming the bushes and installing the brighter LED lights. The club has also agreed to install signage stating that the carpark belongs to Piopio Cosmopolitan Club Incorporated and that glass and alcohol is banned from the carpark. Senior Constable Fitzgerald has agreed to assist the club to source appropriately worded signage. Mr Frederick has agreed to install the signage in several locations of the carpark, at the front and rear of the area, where people will be most likely to see it. The licensing committee expects that the club will take steps to immediately report any breaches of this rule or disorderly behaviour to Police and/or trespass any persons who are responsible for disorderly behaviour in the carpark.
43. While there have definitely been some incidents of disorderly behaviour in the carpark and inside the premises that are of concern, the licensing committee is satisfied that the renewal of the club licence will not reduce the amenity and good order of the locality by more than a minor extent. This is because, there has not been an on-going pattern of disorderly behaviour involving members of the club.

Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?

44. The licensing committee does not have any evidence to suggest that the club has sold, displayed, advertised or promoted alcohol in an irresponsible manner.

Conclusion

45. Therefore, the application for the renewal of the club licence is granted. The conditions for this licence have been replaced to ensure that they are consistent with club licences issued since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory obligations relating to clubs, the display of signage and the maintenance of a manager's register.

Dated this 10th day of October 2018



Sara Grayson
Commissioner
Waitomo District Licensing Committee