

Application

19/005/2018

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND
IN THE MATTER

of an application by
Dimac Limited
for the renewal of an off-licence
in respect of the premises situated
at Hotel Access Road, Waitomo known as
The Tomo Bar & Eatery

DECISION OF THE DISTRICT LICENSING COMMITTEE

1. The off-licence 19/OFF/001/2015 in respect of the premises situated at Hotel Access Road, Waitomo and known as The Tomo Bar & Eatery is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee.
2. The licence is subject to the following conditions:
 - (a) Alcohol sales for consumption off the premises may be made from the off-licence point of sale from 7.00am to 10.00pm Monday to Sunday.
 - (b) No alcohol may be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on Anzac Day.
 - (c) The area where alcohol is to be sold is described on the plan dated stamped as received by the District Licensing Committee on 28 September 2018.
 - (d) The entire premises is designated as a supervised area (no persons under 18 years can be in the area unless with their parent or legal guardian).
 - (e) A holder of a manager's certificate must be on duty and on the premises at all times alcohol is sold.
 - (f) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
 - (g) A Host Responsibility Policy must be maintained and displayed at all points of sale and the licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.

- (h) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions.
- (i) Drinking water must be freely available and displayed whenever alcohol is being supplied by way of complimentary tastings.
- (j) 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 Dimac Limited for the renewal of an off-licence in respect of the premises situated at Hotel Access Road, Waitomo known as The Tomo Bar & Eatery.
2. The application was advertised and no objection or notice of desire to be heard has been received. The Liquor Licensing Inspector and Medical Officer of Health have provided reports and do not oppose the application. No report has been received from Police in the required 15 working day period, therefore it may be assumed there is no opposition to the application (section 103(4)). Accordingly, the matter is decided on the papers (section 134).
3. 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).
4. In deciding whether to renew an off-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?
5. The licensing committee must have regard to section 116 in deciding what conditions apply to an off-licence.

Should the licence be renewed?

6. The Licensing Inspector has advised the licensing committee that the tavern style on-licence held for the same premises was suspended for 24 hours from Saturday May 2016, following a decision of the Alcohol Regulatory and Licensing Authority ([2016] NZARLA 124 – 125 Michael Barry Henwood v Dimac Limited & Ian McErlich). This relates to an incident on 1 August 2015, when Police conducted a compliance check and intoxicated persons were found in the premises. As a consequence, Dimac Limited has one negative holding. This breach of the Sale and Supply of Alcohol Act 2012 occurred shortly after the on-licence was last renewed on 20 March 2015.
7. This incident raises concerns about the suitability of the company to hold an off-licence. However, no further breaches of the Act have come to the attention of the licensing committee and it is now more than three years since the incident. Secondly, the Licensing Inspector is satisfied that the Dimac Limited has appropriate staff, systems and training in place to ensure compliance with the Act. It is noted that evidence of staff training is recorded in the staff training log, with the last training conducted in November 2017. Therefore, having regard to these factors, the licensing committee is satisfied that Dimac Limited is a suitable application to hold an off-licence.
8. Dimac Limited seeks to continue operating off-licence sales from 7.00am to 11.00pm Monday to Sunday. However, these hours do not comply with the Waitomo District Local Alcohol Policy, which prohibits an off-licence being issued or renewed with hours exceeding Monday to Sunday from 7.00am to 10.00pm. No information has been provided by Dimac Limited about why the company should operate outside the hours specified in the Waitomo District Local Alcohol Policy. These hours have been set after extensive community consultation and are consistent across the whole district, therefore the licensing committee considers they should also apply to Dimac Limited. Therefore, it is a condition of the off-licence that the hours are amended to Monday to Sunday from 7.00am to 10.00pm.
9. The Waitomo District Local Alcohol Policy also requires that a premises holding an off-licence and an on-licence shall ensure that there is a separate point of sale and supply for the off-licence if a totally separate area or premises is not practical. When the Licensing Inspector conducted an inspection, he noted that there was no separate point of sale for off-licence sales available, and that they were being conducted at the same bar/servery area as that used for the on-licence sales. Following a direction from the licensing committee, the Licensing Inspector has conducted another site inspection and now confirms that a separate point of sale for off-licence sales has been installed and is now identified in the amended site plan dated 28 September 2018, therefore the licensing committee is satisfied that this now complies with clause 4(c)(iii) of the Waitomo District Local Alcohol Policy.
10. Some other issues have been raised by the Licensing Inspector. Firstly, the manager's register was not filled out correctly and there was some confusion in the application in regard to which certificated duty managers were actually employed at the premises. Secondly, the District Licensing Committee has not been informed about appointments of duty manager's in accordance with section 231 of the Act, despite verbal assurances given by Mr Dimond at a recent public hearing for the renewal of his manager's certificate. Thirdly, the site plan was incomplete and there was confusion about the designation of the premises.
11. Following a direction of the licensing committee, director of Dimac Limited, Mr Dimond, has provided updated information and has confirmed that the company is seeking a supervised designation for the whole premises. Mr Dimac has confirmed that five duty managers are employed at the premises, has provided an updated manager's register and has made the appropriate notifications about changes to duty managers.
12. Standing back and considering all information provided, the licensing committee is satisfied that the application is in keeping with the object and requirements of the Sale and Supply of Alcohol Act 2012. The licensing committee is satisfied that suitable measures will be taken to ensure that

alcohol is sold and supplied responsibly, and that harm caused by inappropriate or excessive consumption of alcohol is minimised.

13. 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 and 17 CCTV cameras. In accordance with the recommendation of the Licensing Inspector the CCTV monitor has now been moved to sit on the bar where it can easily be viewed by staff and is now operational.
14. The licensing committee is satisfied that the renewal of the off-licence will not reduce the amenity and good order of the locality by more than a minor extent. There have been no reports of any nuisance or vandalism or noise problems associated with this premises in the past three years.
15. The licensing committee is satisfied that alcohol is sold, displayed and promoted in a responsible manner and in accordance with the requirements of the Act.
16. The conditions for this licence have been replaced to ensure that they are consistent with licences issued since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory obligations to display signage and the maintenance of a manager's register.

Conclusion

17. The licensing committee is satisfied that the grant of the off-licence with the appropriate conditions will ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol.
18. Therefore, the application for the issue of the off-licence is granted.

Dated this 28th day of September 2018



Sara Grayson
Commissioner
District Licensing Committee