

Notice of Decision



Decision No. 57/ON/432/2016 and Decision No. 57/CERT/1298/2015

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Mickwoz Limited pursuant to s.127 of the Act for renewal of an On-Licence in respect of premises situated at 9 Tavern Drive, Greta Valley known as "Greta Restaurant Bar"

AND

IN THE MATTER

of an application by Michael Hugh George Evans pursuant to s.224 of the Act for renewal of a Manager's Certificate

BEFORE THE HURUNUI DISTRICT LICENSING COMMITTEE

Chairperson: Councillor M Black

Members: Councillor R Davison
Councillor M Ward

HEARING at the Hurunui District Council Chambers, Amberley on 6 August 2019 at 9.30am.

APPEARANCES

Mr Michael Hugh George Evans – The Applicant and Director of Mickwoz Limited

Mr David Hyde – Witness for the applicant

Constable Genevieve Craddock – New Zealand Police

Ms Dianne Morrison – District Licensing Inspector

Kait Murray – Committee Secretary

Mrs Kelly Marchant – District Licensing Committee Secretary/Advisor

DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction.

1. This is an application by Michael Hugh George Evans for renewal of a Manager's Certificate and an application by Mickwoz Limited for renewal of an On-Licence in respect of premises situated at 9 Tavern Drive, Greta Valley, known as "Greta Restaurant Bar".
2. The general nature of the business to be undertaken is that of a Tavern with the hours authorised for the sale of alcohol between Monday to Sunday from 9.00am to 2.00am the

following day. The following area is designated as supervised – the main bar. No changes to the conditions of the licence have been sought by the applicant.

Application for renewal of manager's certificate

3. Mr Michael Evans submitted his application to renew his manager's certificate on 5 April 2019. Mr Evans has been a duty manager at the Greta Restaurant Bar since May 2015. He was previously the licensee and duty manager of the Springfield Hotel from 2002 to 2006.

4. The Police report was received on 16 April 2019. This showed opposition to the renewal application under section 222 (a) the applicants suitability to be a manager.

5. The Licensing Inspector opposed the application for renewal of manager's certificate on 1 May 2019 stating that *'through his own actions and comments Mike has brought into question his suitability to continue to hold a managers certificate.'*

6. Both the Licensing Inspector and the Police had concerns regarding the applicants behaviour since a failed Controlled Purchase Operation (CPO) on 4 November 2017.

7. This behaviour comprised emails, telephone calls and messages via differing media streams, expressing his unhappiness about the CPO, and the costs associated with licensing fees when there is a 'holding' in place.

Application for renewal of On-Licence

8. Mickwoz Limited, trading as Greta Restaurant Bar, has held an on-licence since May 2015 and submitted an application for renewal of On licence on 7 May 2019. Michael Evans (Mike) and Sharmaine Evans are the company directors and shareholders.

9. The application was duly advertised and no objection or notice of desire to be heard has been received.

10. The Police reported in opposition to the renewal application mainly under section 105 (1)(b) citing the issues relating to the suitability of the applicant and whether the applicant has appropriate systems, staff and training to comply with the law.

11. The Medical Officer of Health's report dated 22 May 2019, did not oppose the renewal application. It commented:

'I have been advised that both Police and the Licensing Inspector may have concerns regarding the suitability of the applicant, and will leave that matter for the respective agencies.'

12. The Licensing Inspector's report dated 11 June 2019 opposes the application for renewal on the grounds of staff, training and systems and suitability.

She states:

'Mr Evans' comments have been at odds with the Purpose of the Act. In addition, the failed CPO means the premises had not been conducted in a manner such that it meets the Object of the Act, i.e. the sale, supply and consumption of alcohol should be undertaken safely and responsibly.'

13. In 2016, following the first year of trading, the Inspector reported:

'Michael, and his wife Sharmaine, have been the licensees and duty managers at the Greta Valley Tavern for the last year. The Inspector is not aware of any issues associated with his management of the premises and the conduct of the sale and supply of alcohol.'

The Greta Valley Tavern have been visited on several occasions during routine monitoring visits by combinations of enforcement agency officers, i.e. Police, Public Health and the Licensing Inspector. The premises have been well managed and no signs of intoxication were identified during the visits. Michael was the duty manager during the majority of these visits.'

Witness

14. Mr David Hyde appeared as a witness in support of the application for licence renewal. David has lived locally to the tavern for 46 years.

15. In 2005, to avoid the potential closure of the tavern, David, along with three other local couples, purchased the business to ensure the local community had 'somewhere to go'. They found the pub a financially challenging venture and after three years leased it to another operator.

16. David commented that *'It is a well maintained building and it is always clean and tidy which is indicative of the pride they have in the business. It is a very nice place to take 'out of town' visitors for a drink and a meal'*

17. He added *'In the time Mike has operated the business, I have never seen or experienced any unruly behaviour and it has always been a great environment to catch up with other locals. As the community is reasonably isolated and very much a farming area, it is great to have an opportunity to meet up with other farmers for a catch up. Most farmers spend long hours working on their own and this is good for the community to have a well run place like this'*

18. David finished his statement by saying *'I feel that many others in the community would support this and would be devastated if it was to close'*

Committee Decision and Reasons

MANAGER'S CERTIFICATES

S.227 Criteria for renewal

In considering an application for the renewal of a manager's certificate, the licensing authority or licensing committee concerned must have regard to the following matters:

(a) the applicant's suitability to be a manager:

(b) any convictions recorded against the applicant since the certificate was issued or last renewed:

(c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm:

(d) any matters dealt with in any report made under section 225.

S.225 Reports and applications for renewals

(1) On receiving an application for the renewal of a manager's certificate, 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, where the applicant is the manager of any particular premises; or

(ii) the secretary's office, where the applicant is the manager of any particular conveyance; or

(iii) the applicant's place of residence, in any other case; and

(b) an inspector.

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

(3) The Police must inquire into and, if they have any matters in opposition, file a report on the application within 15 working days after receiving the application.

(4) The licensing committee may assume that, if no report is received from the Police within 20 working days after the application is referred to the Police, they have no matters in opposition to the application.

(5) The secretary must send to the applicant a copy of any reports filed with the licensing committee under this section.

LICENCES:

S.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.

(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

S.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

(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.

S.129 Police, Medical Officer of Health, and inspector must inquire into application

The obligations of the secretary, Police, Medical Officer of Health, and inspector set out in section 103 apply to an application for a renewal of a licence.

S.103 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 the Police or Medical Officer of Health received the copy of the application, 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.

19. All opposed reports seem to indicate a change in behaviour and attitude since the failed CPO which could suggest a lack of acceptance of fault and understanding of the responsibilities held by licensees.

20. During the hearing, Mike Evans admitted that he '*stuffed up*' and also '*possibly over reacted*' during the initial period after the failed CPO by posting comments on facebook. He later commented that he will not be using social media again regarding the pub.

21. Mike indicated he has made some major changes to the way they operate the business since the CPO, including only hiring staff who hold a managers certificate and using the 'On Licensed Premises' Toolkit. He acknowledged the fact that he is not the best at paperwork, but that he would employ someone to help with bookkeeping duties if necessary, for any future renewal applications.

22. Mike contended the accusation made by both the Police and the Licensing Inspector, that he has a poor and disrespectful relationship with the Police, saying it '*couldn't be further from the truth*'. He produced a newspaper article he had initiated, showing NZ Police assisting him getting to his mothers funeral, and the name of a policemen friend as evidence.

23. The District Licensing Committee acknowledge that whilst Mr Evans has admitted fault for the social media statements, and understands why agencies undertake Controlled Purchase Operations, there still appears to be a lack of understanding about the staff, systems and training requirement of the Act.

24. It is understood by the Committee, that Mr Evans believes he has a valid reason for everything he does, but he needs to continue working within the Sale and Supply of Alcohol Act 2012 if he is to retain both his Manager's Certificate and On –Licence.

25. Mike Evans stated in his closing statement that he *'agreed with everything that had been said and has no problem working with the Licensing Inspector'*, and that he is *'sure we can move forward'* and agrees to the Licensing Inspectors comment for a shortened renewal period.

Conclusion and Conditions

26. The Hurunui District Licensing Committee (DLC) has determined that Mr Michael Evans must work with the Licensing Inspector, and the reporting agencies if and when requested, to undertake all training and advice as both duty manager and a licensee, to result in the premises being operated in a compliant and positive manner that meets the Object of the Act.

27. Mr Michael Hugh George Evans - Application for renewal of Manager's certificate 57/CERT/1298/2015 and Mickwoz Limited – application for renewal of On-Licence 57/ON/432/2016 shall be renewed for a period of 18 months from the date of decision.

28. All other conditions of the licence shall remain unchanged.

29. The Sale and Supply Alcohol Act Section 154 states: Any party to any proceedings before a licensing committee who is dissatisfied with the decision or any part of the decision may appeal to the licensing authority against the decision or any part of the decision.

30. S.155. An appeal under section 154 must be made by the appellant giving notice of appeal to the licensing authority within 10 working days after the date on which notice of the decision is given to that party

The notice of appeal must—

- (a) be in writing; and
- (b) specify the grounds of appeal in sufficient detail to fully inform the licensing authority and other parties of the issues in the appeal; and
- (c) be sent to the secretary of the licensing authority; and
- (d) be accompanied by the prescribed fee.

Due to a practice direction from the Alcohol Regulatory and Licensing Authority we authorise the issue of a replacement licence with a new number and notice of renewal.

DATED at Amberley this 19 August 2019

Mani M. Black.

Chairperson

Hurunui District Licensing Committee