

**IN THE MATTER** of the Sale and Supply of Alcohol Act  
2012

**AND**

**IN THE MATTER** of an application by **WANAKA ROAD  
WINE HOLDINGS LIMITED** pursuant  
to s.127 of the Act for renewal of an  
off-licence in respect of premises  
situated at Coal Pit Road, Gibbston,  
Queenstown, known as "Mount  
Edward Winery"

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Mr L Cocks  
Mr M Clearwater

**HEARING** at QUEENSTOWN on 8<sup>th</sup> June 2017

**APPEARANCES**

Mr A D F Forsyth – as agent for Wanaka Road Wine Holdings Limited – applicant  
Ms S H Swinney – Queenstown Lakes Licensing Inspector – to assist  
Sergeant T Haggart – NZ Police – to assist  
Mr E C Matheson and Ms A Bajurin – objectors - in person

**RESERVED DECISION OF THE COMMITTEE**

**Introduction.**

[1] Wanaka Road Wine Holdings Limited (hereafter called the company) has applied for the renewal of its off-licence in respect of premises situated at 34 Coal Pit Road, in Gibbston near Queenstown known as "Mt Edward Winery". The business is a winery and has been operating on the site since 1998. The company regards itself as one of the long standing wineries in the area with an enviable reputation. The company grows grapes and makes wine on the site pursuant to a Resource Consent granted on 17 February 2006.

[2] There is a tasting room at the rear of the building where the winemaking occurs. The company has held an off-licence for many years although the great majority of the wine (90%) is exported or sold wholesale. Of the remaining 10% of production, the majority (90%) is sold via the internet or by mail order. Accordingly only 1% of the wine that is produced is sold to the public via visits to the site. Furthermore the

opportunity to taste and purchase wine is by appointment only. The company only allows two or three visits per week and none during the harvest period. In summary, the physical sale of wine to the public plays a minor part in a major business.

[3] The current off-licence allows sales of wine between 9.00am and 5.00pm seven days a week. No changes were sought to the conditions of the licence. The business is located in the Gibbston character zone which allows the location and operation of wineries. Mr A D F Forsyth is the company's general manager and one of its winemakers. He has held these positions since 2003. He is neither a shareholder nor a director of the company. The company's directors are currently John Newey Buchanan and Robert James Cameron.

[4] In accordance with the Act, the Police, Inspector and Medical Officer of Health inquired into the application. Neither the Police nor the Medical Officer of Health had matters in opposition. In her report, the Inspector advised that she was satisfied that the company was a suitable entity to be involved with the ownership and management of licensed premises.

[5] The application attracted an objection from Mr E Matheson a neighbour. His objection related to excessive noise emanating from the premises. His main concern was music. The Inspector noted that the issue had become emotive for the objector and that he and his partner wished to voice their concerns at a public hearing. A further issue was raised during discussions between the Inspector and the objectors involving dogs roaming on or near their land and causing a nuisance. The winery is located next to a Community Reserve and the objectors live on the other side of the reserve.

### **The Application.**

[6] Mr Forsyth has a long history with the wine industry and has lived in the area for 23 years. He has been a wine maker and a manager for two other wineries during this time. As stated above, he has been with the company for 14 years. He is a director of the New Zealand Winegrowers Pinot Noir Board as well as being the present Chair of the LUMA Light Festival Charitable Trust. He argued that the company involves itself heavily in the community. He is the holder of a Manager's Certificate and is the only certificated manager employed by the company. In the 19 years of operation the company has never before had an issue either with the running of the winery or the operation of the licence.

[7] It was perhaps unfortunate that the company did not seek legal advice prior to the hearing. It is abundantly clear that there is an ongoing neighbourhood disagreement between the objectors and Mr Forsyth. Rather than deal with the relevant issues to be decided by the Committee, both parties chose to use the hearing as a type of 'battleground' to air their respective grievances. The level of personal antagonism between Mr Forsyth and the objectors appeared to be quite toxic. Mr Forsyth argued that the objection was vexatious and vindictive and related back to when the objectors moved in approximately four years ago. What is not clear is whether he was saying so from a personal perspective or on the company's behalf.

[8] Mr Forsyth addressed the issue of dogs occasionally wandering. He owns a dog which visits the winery. In addition there is a dog named 'Gracie' which is owned by Mr Forsyth's partner, Ms L Coutts. Ms Coutts works full time at another winery

and takes the dog with her. Neither the dog nor the owner resides at the winery but both have visited from time to time. On 2<sup>nd</sup> May 2016 when the dog was a puppy it ran into the Matheson property and was called back. A complaint was lodged with the Council. There is yet another dog called 'Georgie' which is owned by Ms A Riederer, the company's winemaker. This dog is known to run to the neighbour's fence and bark at the neighbours' dogs. Complaints have been lodged with the Council about dog behaviour on 28<sup>th</sup> June 2016, 23<sup>rd</sup> September 2016, and 29<sup>th</sup> April 17.

[9] Mr Forsyth refuted any suggestion of lack of control for the incident dated 23<sup>rd</sup> September and quoted the comments from the animal control officer as follows: "Duncan was very cooperative in providing the info and seemed happy to work with us, and from what's been said it really just sounds like an issue between neighbours." The complaints pointing out that the issue was not raised in the original objection.

[10] Ms Bajurin rang the Council on 1<sup>st</sup> May this year saying that there had been no follow up in respect of a previous complaint about the dogs. An officer called and advised that the dogs were compliant from a Dog Control standpoint. Mr Forsyth advised that he was well aware of an owner's responsibility to keep dogs under control and that all dogs either wear a perimeter collar or are kept under direct control. He again suggested that it was all part of a vindictive and vexatious campaign. From our licensing perspective, not only was the relevance of the issue dubious but we considered that there had to be a better way of dealing with such a problem.

[11] In respect of the noise issue, Mr Forsyth correctly pointed out that this had nothing whatsoever to do with the sale and supply of alcohol, nor was it based on any potential impact on the good order and amenity of the locality should the off-licence be renewed. He argued that the only time that music was played was during the six week of harvesting and manufacturing in May or April of each year. He submitted that the harvest period involved a happy and convivial bunch of people who liked music. He noted that there had never been any complaints for 15 years until Mr Matheson and Ms Bajurin moved in. He produced letter of support from previous neighbours.

[12] Mr Forsyth contended that the company had made changes as a result of the complaints. The company no longer processes fruit late at night but stops at 8.00pm and waits till the following day. Furthermore new processing equipment has been purchased which operates at a reduced noise level. Finally, a new portable music system has been purchased. There are no loud bass speakers. He acknowledged that there had been numerous complaints since 2014, with resultant visits from noise control officers. On the other hand the number of complaints had reduced over the period and the last season had produced no noise complaints at all. He noted that only one complaint had been deemed to be justified.

### **The Licensing Inspector.**

[13] Ms Sian Helene Swinney is the Team Leader for Alcohol Licensing in Queenstown. Apart from her report, she gave evidence to clarify and amplify the official record of complaints to the Council about dogs and noise. The Inspector had researched the noise complaints and produced a summary of a total of 16 noise

complaints over the months of April and May in 2013. However, she could find no record of any complaints in 2014 or 2015. The summary of noise complaints is as follows:

|              |   |
|--------------|---|
| 5.4.2013 (2) | Loud stereo – stopped before arrival                          |
| 9.4.2013     | Complaint attended. No noise found                            |
| 10.4.2013(2) | Noise complaint. Large outdoor speaker found outside. Not on. |
| 11.4.2013    | Complaint loud stereo – not attended                          |
| 12.4.2013    | Loud stereo – not visited                                     |
| 17.4.2013(2) | Loud stereo – logged but not attended                         |
| 18.4.2103(2) | Loud Stereo – loud stereo – no action                         |
| 28.4.2013    | Loud stereo – no action                                       |
| 30.4.2013(2) | Loud stereo – logged but not attended                         |
| 5.5.2103     | Loud stereo – switched off - not attended                     |
| 13.5.2013    | Stereo music ‘slightly’ loud. Was turned down.                |

[14] The Inspector helpfully produced the Resource Consent document dated 17<sup>th</sup> February 2006. This gave Mount Edward Wines Limited permission to undertake earthworks and redevelop and extend the existing winery and tasting facilities. There were no less than 25 conditions but importantly, two of the conditions related to noise levels as well as outside speakers.

### **The Objectors.**

[15] Ms Ana Bajurin and Mr Earl Matheson reside at 18 Coal Pit Road, a property that they have owned since December 2012. The winery was an operating business when they purchased their home. Ms Bajurin gave evidence and complained of harassment and threats since they had made their initial noise complaint directly to Mr Forsyth in February 2013.

[16] On that morning, the music was being played on a system that had both, bass and treble as well as volume. Mr Forsyth’s reaction was less than sympathetic, although he subsequently wrote a letter of apology stating that he had not meant to be so abrupt and acknowledging that it was “a bit early for some banging music”. He offered two phone numbers to ring and stated that they would try not to play too early or too late. He stated that the music would only happen for four weeks when they would be “working and playing hard”.

[17] Ms Bajurin stated that she attempted to speak directly with Mr Forsyth from time to time but it became clear to her that he was starting to resent the calls and her texts, and at any event took little notice of their concerns. Accordingly they contacted the Council. However, they noted that the noise level seemed thereafter to escalate rather than reduce. In other words, she argued that the tension between themselves and Mr Forsyth had developed from that time.

[18] Eventually the objectors ceased calling the Council due to the number of times that a complaint would be made following which the noise would abate prior to the noise control officer arriving. She stated they were concerned about being charged for any future visit. The only alternative was to arrange for a professional assessment of the noise levels. No such assessment was undertaken although they did keep a diary of the noise nuisance from March until early June of this year. The document was produced and relates to sixteen days involving either music, or dogs or waving from the winery.

[19] Ms Bajurin also complained of harassment from Mr Forsyth over a period of time once again escalating following the lodging of the objection to the renewal of the licence. This was reflected not only in the behaviour of dogs, but also characterised by inane waving and tooting of the car horn every time he saw them. She complained that since the filing of the objection the staff at the premises had started to follow his example of waving in a ridiculous fashion. For his part Mr Forsyth argued that he advised the staff to be pleasant and neighbourly. Either way he undertook that this aspect of the company's conduct towards its neighbour would cease.

[20] In summary, Ms Bajurin submitted that Mr Forsyth was unsuitable to hold a liquor licence, or manage or train staff, or even represent the wine industry in a professional and personal capacity. She said that she had tried to deal with the matters in various ways and that the objection to the licence renewal was the last resort. She submitted that the only reasonable outcome was;

- (a) No music to be heard beyond the boundaries of the winery from any source.
- (b) Immediate cessation of the waving behaviour by Mr Forsyth and staff.
- (c) Dogs to be kept under control at all times and not permitted to roam freely around the reserve.
- (d) No association or interaction between the winery, manager and staff without third party involvement.

### **The Committee's Decision and Reasons.**

[21] Pursuant to s. 131(1) of the Act we are required to have regard to the following matters when considering the application. (Note we have highlighted the criteria that could be considered to be relevant to these proceedings).

- (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, and food, and if so, which services;*
- (h) *whether the applicant has appropriate systems, staff, and training to comply with the law;*
- (i) ***any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129;***
- (j) ***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;***

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

[22] In coming to a decision in this matter we have been confronted by a number of difficulties. Initially it was thought that the objectors were concentrating on the amenity and good order of the locality. But the refusal to renew this off-licence would have no effect on the amenity and good order of the locality as described by the objectors. Such noise as is generated would continue as the production of wine takes place. Apparently the workers like to work to music. And whether the off-licence is granted or not, dogs may continue to roam.

[23] Secondly, there is the Resource Consent decision which governs the issue of noise. In particular Condition 24 provides that all commercial activity shall be conducted on the site so that noise levels do not exceed 50 dBA L<sub>10</sub> during the daytime and 40 dBA L<sub>10</sub> and 70 dBA L<sub>max</sub> during night time. There are exemptions for agricultural machinery, wind machines, frost fighting devices and bird scaring devices and so on. Under Condition 22 there is further condition for the winery operations preventing outside speakers.

[24] There are resource management rules governing the way the company operates and noise is specifically regulated. While this may present the objectors with practical problems in terms of cost, there is a process that is available for the laying of complaints and the assessment of the veracity of such complaints. The consequences of breaching the resource consent conditions can be commercially devastating. The same reasoning applies to the control of dogs. There are rules and procedures and potential consequences if the rules are broken.

[25] The third difficulty is that the objectors have concentrated on the issue of the applicant's suitability, but it is Mr Forsyth's suitability that has become the issue. There is no way of knowing whether the company's directors are even aware of the allegations. It is our view that they should now be made aware.

[26] On a renewal application, it is up to an applicant to establish its suitability to continue to hold the licence in its present form. In *Page v Police* (unreported HC V Christchurch AP 84/98 24 July 1998) Panckhurst J commented on the issue of suitability in this way.

*"Section 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example, the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual."*

[27] What we are discussing here is a boutique winery which has been growing grapes and selling wine successfully for many years. It has never fallen foul of laws or regulations. It has been described as suitable by a Licensing Inspector. Wineries by their nature are not regarded as high risk in terms of the Act's object. Importantly there is no evidence before us to indicate that the directors have either encouraged or condoned Mr Forsyth's alleged behaviour.

[28] We do not find it necessary to make factual rulings in relation to the allegations and counter allegations of the parties. The personal antagonism that exists between Mr Forsyth and the objectors is not relevant to the issues we have to decide. On the other hand we are bound to point out that from our perspective the issues are ridiculously simple to resolve.

[29] We need to make it clear that the inability to control the escape of noise can reflect on the suitability of a licensee to continue to hold a licence. The escape of noise such as music particularly in a country environment is an example of bad management quite apart from being bad manners. If the escape of loud music or the actions of dogs were somehow associated with the selling of alcohol, then we might well have the jurisdiction and the power to make a difference. But in this case they are not. Therefore the objectors must rely on either the Resource Management Act or the Dog Control Act for remedial action. If the conditions of the resource consent or the rules about the control of dogs are being ignored there are remedies and consequences under those respected Acts.

[30] Absent a link between the selling of alcohol pursuant to an off-licence, and the music from the winery, the company is entitled to have its licence renewed and we have little hesitation in doing so. We do not impose a condition that the company submit to the Inspector a noise management plan. However, if in the course of time the company decides to continue with its present practice of playing music for its employees it may like to consider such a course of action.

[31] In summary, we confirm that although he represented the company at the hearing, Mr Forsyth is its manager. There is no evidence linking the company to any of the allegations. This is an application to renew an off-licence not a Manager's Certificate. We are unable to provide the outcomes requested by the objectors (see paragraph 20 above). They are beyond our jurisdiction. The continuation of the off-licence will have no impact on the amenity and good order of this locality, and will not undermine the objects of the Act. For the reasons we have attempted to articulate, the off-licence is renewed for three years on its present conditions.

**DATED** at QUEENSTOWN this 16<sup>th</sup> day of June 2017



Mr E W Unwin  
Chairman