

IN THE MATTER

of the Sale and Supply of Alcohol

Act 2012

AND

IN THE MATTER

of an application by **POG MAHONES INTERNATIONAL LIMITED** pursuant to s.137 of the Act for a Special Licence in respect of premises situated at 14 Rees Street, Queenstown, known as "Pog Mahones"

MEMORANDUM OF THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin

Members: Mr J M Mann

Mr L Cocks

Introduction.

[1] On 14 February 2014, Pog Mahones International Limited (the company) submitted a special licence application to enable it to trade between 6.00am and 8.00am on Sunday 16 March 2014. The event was to be the televised screening of the final of the Six Nations Rugby tournament. The game was scheduled to start at 6.15 am and finish at 7.45am. Normal trading would commence at 8.00am. A maximum attendance of 50 patrons was suggested. The company advised that a full breakfast menu was available.

[2] There was no opposition from the Police but the Medical Officer of Health (MOH) opposed the application based on the issue of the proposed trading hours, and whether a televised sporting contest constituted an event. However it was indicated that opposition would be reconsidered if there was a significant closure period between the end of the special licence and the beginning of regular trading.

[3] The company was contacted by the Inspector on 12 March 2014, and agreed to a new proposal to allow for trading between 6.00am and 8.30am, following which the premises would be closed from 8.30am to 11.00am. However, MOH confirmed the opposition and suggested that it would be helpful to have a hearing to clarify this aspect of the legislation, in particular whether a televised sporting contest constituted an 'event'. There was no time to have a hearing prior to 16 March so the application was set down for a public hearing on Monday 12 May. On Friday 9 May the company withdrew its application advising that it had decided to concentrate on its current application for a special licence for the forthcoming Football World Cup. The Committee decided to continue with an informal hearing to enable it to hear from the Medical Officer of Health in order to see whether

some guidelines could be issued. We are grateful to MOH for the helpful submissions that were made.

The Informal Hearing.

[4] The basis for the MOH concerns was that increased availability of alcohol would lead to increased consumption and the link between consumption and harm was well established at community level. It was accepted that if consumption occurred in a regulated setting such as licensed premises, then the level of risk associated with increased consumption may well be reduced, but not necessarily the harm occurring as a consequence of such increased consumption. The contention was that the event had been created in order to extend trading hours and normal activity.

[5] The MOH case rested on the comments made by the Liquor Licensing Authority in a Christchurch case viz: **Armstrong [2003] NZLLA 927**. The events in that case were 'Super Rugby games' to be televised on Good Friday and Easter Sunday. One game on Good Friday involved the home team playing on its home ground in Christchurch. The local District Licensing Agency had granted applications to watch about six hours of 'Super Rugby' games on the Good Friday only. The Police had appealed and the Authority upheld the appeal on the basis that patrons would not be 'attending the event'.

[6] However the Authority clearly had reservations on the issue. It made these comments at paragraph [47]:

"We regret having to rule in this way because there is clearly a public demand for televised sporting events in licensed premises. If agencies adopt a more robust approach and allow special licences for watching televised events that is a matter for them. It is not for this Authority to rewrite the plain words of a provision in a statute where no ambiguity exists. It seems to us that the public demand for the ability to watch events on television has to be met by a change in the law."

[7] It was not long before the Authority softened its approach. In **Reynolds [2004] NZLLA 246** the Authority was persuaded that watching a televised event fell within the parameters of a special licence. It commented as follows:

"Nevertheless, it is our view that there may be occasions where events are televised which would justify the granting of a special licence. There may also be times where a special licence would be granted to sell liquor to persons attending a social gathering which involves the common purpose of watching an event on television. There would need to be an element of control over who could attend the occasion or social gathering. That element of control in respect of the occasion might well be reflected in the pre-selling of tickets or a charge for admission.

In either case ordinary members of the drinking public would be excluded. The occasion might include a meal and/or guest speakers and/or other entertainment based around the television broadcast. In the case of a social gathering there would have to be a connection between the common purpose of the members of the group and the event being broadcast. In cases such as the above, it will not be the nature of the event being televised which would be the determining factor, but the nature of the occasion being promoted."

Conclusions.

[8] We would have granted the current application. It was a one off occasion and the times were carefully truncated to fit around the game. The company was prepared to close for a significant period after the game. Numbers were not high. If the price of a ticket been able to be used towards the purchase of a breakfast that would have been a 'game breaker' for us.

[9] In summary we agree that special licences can be issued by this committee for televised events of international significance. Such events are not contrived and they should not be seen as an artificial way of extending trading hours. Good licensees are trusted and expected to manage such events effectively and in accordance with the Act. We therefore expect the agencies to work with applicants in such circumstances to assist in trying to ensure that alcohol harm does not arise. After all, given the national maximum trading hours, we are only talking about four hours trading in the majority of cases. On the other hand, these guidelines should not give rise to a sense of automatic entitlement. Licensees still carry the onus of demonstrating that the special licence is not merely an extension of trading hours. The committee will be very interested in the way the event is to be controlled, to ensure that members of the public who are just there to drink, are excluded.

[10] Our expectations are as set out in the **Reynolds** case (supra). We would expect to see banners or bunting or a temporary grandstand, and certainly security at the door and the availability of appropriate food for the duration of the licensed period. Pursuant to s.147 (1) (h) a condition of any such special licence would be that the public would be excluded from the premises for any televised event. In the case of a large number of games such a World Cup it would be hoped that there was an opportunity to close the premises for a period between games, but that depends on the schedule. In the case of a long term event such as the World Cup we would retain the right to cancel or suspend the Special Licence if the licensees appeared to be incapable of undertaking the sale and supply of alcohol safely and responsibly.

DATED at QUEENSTOWN this 20 day of May 2014



E W Unwin

Chairman