

Decision Hearing 0028/2017

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **PERKY'S LIMITED** pursuant to S.127 of the Act for the renewal of an on-licence in respect of a conveyance situated at Butson/Lapsley Jetty, Queenstown, known as "Perky's Bar & Coffee Shop"

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr L A Cocks
Mr J M Mann

HEARING at QUEENSTOWN on 31 October 2017

APPEARANCES

Mr G M Todd – for the applicant
Ms S H Swinney – Queenstown Lakes Licensing Inspector – to assist
Sergeant T Haggart – N Z Police – to assist

DECISION OF THE COMMITTEE

- [1] Before the Committee is an application by Perky's Limited (hereafter called the company) for the renewal of its on-licence in respect of a conveyance situated at Butson/Lapsley Wharf, Queenstown and known as "Perky's Bar & Coffee Shop".
- [2] This is the company's first application for renewal, the licence having fallen due to expire on 7 October 2016. Public notification of the renewal was not made within the required timeframe. We are satisfied that the error was not willful and as there are no natural justice issues, a waiver is granted under s.208 of the Act.
- [3] The licence was first issued by the Committee 'on the papers' in a minute dated 28 September 2015. In the minute the concerns of the Police relating to safety matters were addressed. Reference was also made to the Inspector's report, and her concerns about whether the vessel was a premises or a conveyance.

- [4] There was a point of difference between this vessel and other licensed vessels that undertake charters and host functions while travelling on Lake Wakatipu. This was a vessel that wished to sell and supply alcohol while moored and held at the wharf. Under the Building Act 2004, a building does not include a conveyance. Consequently the company was unable to obtain a certificate from the territorial authority that the proposed use of the vessel met the requirements of the building code. (s.100 (f)). Under the Sale and Supply of Alcohol Act 2012, the definition of premises includes a conveyance. However a conveyance is defined in s.5 of the Act as an aircraft, coach, ferry, hovercraft, ship, train, or other vehicle, used to transport people.
- [5] In its minute the Committee made the following comments at paragraph (6).
- No more charter trips are to take place on this vessel although it will need to be maintained on a regular basis. Every three months the vessel has to be taken to the Frankton Arm for engine checks and to eliminate potential "Didimo" growth from the hull. Every two years the vessel needs to be put into dry dock for a full service. The vessel still holds current Maritime New Zealand certificates to indicate it is able to sail in New Zealand waters. It is also the emergency backup assistance boat to the "Earnslaw" and takes part in training exercises with the "Earnslaw" when required.*
- [6] Following the filing of the renewal application, the Inspector issued a comprehensive report in which she asked two questions seeking further clarification from the Committee on the status of the vessel.
- (1) When the vessel leaves the port to assist the TSS Earnslaw is this substantial enough to meet the conveyance definition?
 - (2) If the vessel is a conveyance are there a number of trips which quantify the vessel as a conveyance under the Act or do there need to be any trips or use of the vessel at all?
- [7] The Inspector also stated that the applicant had operated the business without concern or issue and the business was popular with out of town guests and higher end clientele. It provided a point of difference from other licensed premises in Queenstown. The renewal application was duly set down for a public hearing.
- [8] At the hearing it became clear that the vessel in question no longer takes part in training exercises with the "Earnslaw" and there have been no calls for emergency back-up assistance. This was a matter that assumed some importance because in our original decision, we had determined that the vessel was a conveyance based on its backup assistance with the "Earnslaw". Accordingly there was a need to establish how often the vessel was being used to transport people in order to retain our original acceptance of its status as a conveyance.

- [9] On behalf of the company, Mr Todd took issue with the process. He argued that the original decision was correct and legitimate and no reason had been established for the Committee to move away from its original findings. He asked what had happened since the original decision which could possibly lead to a reversal of the grant of a licence given that the company had invested a large amount of capital in the business since the licence was first granted. He suggested an alternative measure under which the company would unwillingly disable the engine.
- [10] The Committee took time to consider the issues. We noted that under the Act there is no longer a requirement that alcohol can only be supplied while the conveyance is in motion. There is no guide as to how often people should be transported and there is no requirement as to who such people should be. In those circumstances previous decisions on the issue were of little assistance.
- [11] The Licensing Inspector had expressed concern about setting a precedent should the licence be renewed. However a condition of the present licence states that alcohol may only be sold or supplied when the vessel is moored and held in its present position. It is unlikely that those vessels that currently sell alcohol while on the lake would wish to be restricted to the supply of alcohol while the vessel was moored.
- [12] In the event we decided that if the company gave an undertaking that the vessel will be taken to Frankton Arm (or a similar destination in terms of distance) at least once every three months, we would be satisfied that the company is doing enough to warrant the vessel being categorised as a conveyance. Accordingly we would renew the licence on receipt of such an undertaking. Additionally the result would be consistent with our original decision. A minute was issued to this effect.
- [13] On behalf of his client, Mr Todd has now responded to the minute and confirmed that the company will agree to the imposition of a condition on the renewed licence incorporating the Committee's suggestion. No undertaking is necessary. We therefore confirm that the conveyance licence may be renewed for three years on the existing conditions including a further condition as follows: At least once in every three months the licensee will ensure that the vessel travels on the lake to Frankton Arm (or a similar destination in terms of distance).

DATED at Queenstown this 16th day of November 2017



Mr E W Unwin
Chairman

