

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **RODD &
GUNN NEW ZEALAND LIMITED**
pursuant to s.99 of the Act for an
on-licence in respect of premises
situated at 2 Rees Street,
Queenstown to be known as “The
Lodge Bar”

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 21st July 2016

APPEARANCES:

Mr T Daly - representing the applicant
Sergeant T D Haggart - NZ Police – in opposition
Dr D W Bell – Medical Officer of Health – to assist
Ms S H Swinney – Licensing Inspector – to assist

DECISION OF THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

[1] This application by Rodd & Gunn Limited (the company) for a new on-licence in respect of premises situated at 2 Rees Street in Queenstown was heard at a public hearing on 21st July 2016. The application is unusual in that the company seeks to licence part of its retail space as an upmarket lodge style bar operation. The company was represented by its Brand Manager Mr Terrance Daly. He stressed that this was a “one-off” application, and that contrary to earlier advice, the company intended to introduce this new concept only in Queenstown.

[2] The basic idea behind this proposed investment is to make the experience of shopping at the Queenstown “Rodd & Gunn” branch, more interesting, exciting and enjoyable. The company prides itself in the high quality clothing and accessories that its brand represents. The idea behind the proposal is to complement the shopping experience by providing an intimate bar with a small fireplace and a full kitchen serving platters and the like. Proposed trading hours are from 10.00am to 11.00pm seven days a week. The space available limits patrons to 25 plus one member of staff. In a word the company intends to create a “memorable experience” for its guests.

[3] The company designed the proposed bar as an extension of its retail store so that patrons or customers could pass seamlessly from the store to the bar and vice versa. It is proposed that patrons could enter the bar through the clothing store from Rees Street, or via the principal entrance from the footpath on the lake front. It was this aspect that clearly caused the greatest amount of concern to the members of the Committee as well as reporting agencies, even though the intention was to have a separate till from the till currently being operated in the clothing store. In terms of s.36 (e) of the Act, (which deals with premises in which off-licences cannot be granted), the proposed premises would be situated within a shop.

[4] This was not the only issue facing the company quite apart from its lack of preparation for the hearing (neither of its two witnesses had the benefit of a brief of evidence). Although a minor omission, the first advertisement was in the name of Rodd & Gunn Limited (which is a non-existent company). There were no public objections and the Committee confirms a waiver under s.208 of the Act. The other major concern was that building work was well under way when the Committee visited the site. The company had already invested a considerable amount of capital prior to the hearing.

[5] There was evidence at the hearing that three pre-lodgement meetings had been held between the Licensing Inspector and the company's agent. At the meetings the company's agent was advised that because the application was unusual, there could well be a public hearing, and the application might not be granted.

[6] Following the hearing, the Committee considered the application. The members unanimously decided that the application in its present form should be declined. A brief summary of their reasons is as follows:

- (a) First, in the Queenstown Lakes District there are 439 alcohol licences and hundreds of retail outlets. To allow a retail outlet to establish a bar within its premises in order to enhance the retail experience could well create a significant precedent that could result in the establishment of a number of similar alcohol outlets. All a retail store would have to do was establish suitability and host responsibility as well as the other statutory requirements, and a licence would likely follow.
- (b) Secondly, allowing internal access between a retail store and a public bar runs the real risk of normalising the supply and consumption of alcohol. Alcohol is a drug with potentially harmful consequences. The licensing of alcohol outlets is no longer as liberal an exercise as it was under the Sale of Liquor Act 1989. As was stated in **The Warehouse Limited** [2008] NZLLA 1673:

“The danger of reducing liquor to the level of an, any-day/any-time/any-place commodity should not be underestimated.”

- (c) In principle we do not accept the concept of a tavern style licence within a store. It may be that a cafe or restaurant style licence would receive a more positive response as there are examples of small cafes in large departmental stores some of which may well be licensed. However we expect that the hours of trade would correspond with the hours that the store was open. It needs to be stressed that the cafes we are aware of are not nearly as

elaborate as the current proposal. Our view was that to grant the application in its present form was contrary to the Object of the Act as set out in s.4:

The object of this Act is that -

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(d) Finally, we refer to the decision of Moore J in **Auckland Medical Officer of Health v Birthcare Auckland Limited [2015 NZHC 2689]** and in particular to the comments at paragraph [50] as follows:

“There is no reason in principle why the “causal nexus” approach adopted under the 1989 Act and approved in decisions of this Court, should not continue to be relevant and applicable under the new Act. Indeed, it was not suggested in argument that a different legal test should be adopted. Under both Acts the relevant enquiry is the same; the Authority is required to have regard to the s.105 criteria (or in the case of a renewal the s.105 criteria as modified by s.131) and then step back and consider whether there is any evidence to suggest that granting the application will be contrary to the object of the Act contained in s.4 (1). Namely that the sale supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol should be minimised.”

[7] We considered the criteria in s.105 of the Act as well as the evidence and submissions of the company and the Licensing Inspector, and the submissions of the Police and the Medical Officer of Health. The company is suitable, has appointed a certificated manager and he is well aware of the company's responsibility to ensure that alcohol is supplied in a safe and responsible manner. We then stood back and considered whether there was any evidence to suggest that granting the application in its present form would be contrary to the object of the Act in s.4 (1). There was. Because of the proposed design and layout we believe that granting the application with access through to the clothing store would seriously undermine the Act's objectives.

[8] On 22nd July 2016 we issued a Memorandum in which we advised the parties of our view on the matter and we added these comments:

Given that the building work is well underway, the Committee advises that if the proposed doors between the retail shop and the proposed “Lodge Bar” were converted into a solid wall, so that there was no internal access between the retail clothing shop and the “Lodge Bar”, then the application would be granted.

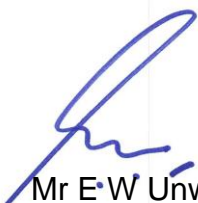
Additionally, the Committee would have no concern if the applicant company decided to make a separate entrance/exit for the retail shop opening towards the lake, provided a clear physical demarcation between the two businesses is maintained.

[9] We gave the company ten working days to advise whether or not it would like a full decision setting out the Committee's decision with reasons or whether it wished to amend its application. On 29 July 2016 Mr Day advised that the company wished

to amend its application so that there is no internal access between the retail clothing shop and "The Lodge Bar".

[10] Accordingly we grant the application in its amended form although the licence will not issue until a Code Compliance Certificate has been received by the Agency. The licence will be subject to the normal conditions with trading hours between 10.00am and 11.00pm seven days a week subject to the restrictions in s.47 of the Act. The area marked green (the bar) in the Inspector's report will be designated as supervised at all times, and after 9.00pm the whole area will be designated as supervised.

DATED at QUEENSTOWN this 15th day of August 2016



Mr E W Unwin
Chairman