

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **OPONONI HOTEL LIMITED** pursuant to s.127 of the Act for the renewal of an ON Licence in respect of premises situated at 19 Hokianga Harbour Drive, Opononi known as the "Opononi Hotel."

HEARING BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: John Thorne
Member: Martin McPherson

HEARING at Opononi on 20 October 2023.

APPEARANCES

Mr. David Grindle– counsel for the applicant **Opononi Hotel Limited**
Mr. Anthony Petrie- the applicant
Mr. Nilesh Shetty- for the applicant
Ms. Priscilla Manukau- for the applicant
Ms. Te Orakiri Graham– Alcohol Licensing Inspector – to assist.
Sergeant Michelle Row – Police Alcohol Harm Prevention Officer (AHPO)– to assist.
Ms. Wendy Antrobus- representing the Medical Officer of Health- (MOoH) to assist.

ORAL/RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 8th of September 2022, Opononi Hotel Limited applied for the renewal of their On Licence that was set to expire on the 20th of September 2022. It was duly advertised, and no public objections were received within the prescribed time.
2. The applicant sought the rollover of the existing conditions including the licensed hours of **Monday to Saturday 10.00am to 1.00am the following day and Sunday 10.00am to 11.00pm**. These hours are within the default national maximum trading hours for an On Licence.
3. The hotel contains an older, tavern-style bar, with gaming machines in an enclosed enclave. There is a separate dining room, a garden bar and deck areas. The current designation of the premises has “Every Bar” as a Supervised Area. There is also a large unlicensed accommodation wing attached to the hotel.
4. The MOoH did not raise any final matters in opposition in their report but intimated that they did raise concerns earlier in the process about outdated documents and lack of detail in the application. The Police similarly had no matters in opposition.
5. The Inspector reported on the 24th of August 2023 and stated that despite two serious complaints about the operation of the premises in 2021 and 2022 she found “*no reason to believe the applicant was not suitable to hold a licence.*”¹
6. The application was sent to the Committee uncontested for consideration on the papers. However, the Committee decided to set the matter down for a public hearing, pursuant to Sections 202(1) of the Act, as we were concerned about the nature of the allegations and the apparent lack of detail around the complaints and the outcomes of those investigations.
7. We suspected that there may well have been some managerial deficiencies behind the incidents, and we wanted to hear directly from the applicant on what happened, and what they have done, to ensure there would be no reoccurrences of this nature.

¹ Inspectors report page 58 of the agenda.

8. We said at the outset of the hearing that our expectation of applicants in remote rural locations to operate compliantly has an elevated mantle. They don't have the regular oversight from the Police and other agencies that occur in the big cities. The responsibility lies firmly with Opononi Hotel Limited and it's staff. It is the applicant who must create a positive finding in the eyes of the Committee at renewal time.
9. We also expect the agencies to report to us with any concerns that they hold relating to the operation of businesses, against the criteria for renewal found in Section 131 of the Act. Indeed, they would be remiss to not advise the Committee of any adverse occurrences, incidents and offences recorded during the renewal period.
10. Section 131(1)(d) says, at renewal time, we (the Committee) **must** have regard to the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

Applicant's Evidence

11. Counsel for the applicant provided a somewhat dismissive opening, intimating that because the renewal was uncontested by the agencies, it would be unlawful for the Committee to not approve it.
12. The applicant, Mr. Tony Petrie, appeared to share that view. When asked by the Committee Chair if he understood why the matter was being heard, he replied that he did not know.
13. As we have stated in the introduction to this decision it is the task of the DLC to review the previous three years of operation at renewal time. There is no guaranteed right of renewal. To hold an alcohol licence is a privilege not a right. A fresh assessment of suitability and being 'fit for purpose' is required at every renewal.
14. The first complaint related to staff refusing to provide food in the bar at about 9.30pm on 21 May 2021. The complainant said they were allowed to remain on the premises drinking alcohol until 11.30pm. The following night they obtained food earlier in the evening but noted the kitchen closed at about 9.30pm and again they were supplied alcohol until around 12.00pm.
15. The Inspector reported that a meeting was held with the duty manager who acknowledged the deficiency and instigated a 'late night menu' that we are told is now always available. This was a good response by the applicant but what we didn't have to assist our assessment of these incidents was an

explanation as to why it happened. (We comment on this point later in this decision.)

16. The second incident was in October 2022 where it was alleged that Priscilla Manukau was the certificated manager on duty and appeared to be intoxicated when approached by a patron when they asked her to turn the loud music down. Again, this properly generated a meeting between the Inspector and the then General Manager of Opononi Hotel.
17. In the Inspector's report to the Committee, she told us that she advised the licensee *"that this would be recorded against the licence for future renewals.....The Inspector also discussed this with Priscilla and advised that should this allegation be true, this will impact her managers certificate negatively."*² (We comment on this point later in the decision.)
18. Mr. Grindle called three witnesses for the applicant. First, we heard from a director of the company, Tony Petrie, and then from his recently appointed General Manager, Nilesh Shetty. Thirdly, Priscilla Manukau spoke to us about the incident in October 2022.
19. Mr. Petrie told us that he has been involved in the hotel from 2007 with the Lloyd family, and then he took over fully in 2014.
20. He said he wanted the business to be successful not only for business reasons but also for the community at large. He employs about 20 staff, mostly locals, and agreed that it was difficult to get suitable experienced staff at this isolated location. He has employed Nilesh Shetty as the General Manager since December 2022.
21. He said he is in touch with Mr. Shetty daily and he also visits the hotel for 2-3 days a week. He says patronage of the business has been increasing annually in the region of 15% and he is keen for the hotel to be a source of pride for the community.
22. He told us that he has a policy of full compliance with the requests from the agencies and has no problem having to operate within the licensing rules.
23. He said the lack of food incident was unacceptable and they have put measures in place to prevent any reoccurrences. Unfortunately, he was unable to tell us why it had happened. He assumed that it may have been quiet, and staff just chose to close the kitchen on their own initiative. They now have a formal sign-off form that must be signed by the Duty Manager and the Chef on duty. (A copy was provided to the Committee).
24. He said he did not see any final outcome in the nature of a warning letter or

² Inspectors report third paragraph page 59 of the Agenda

similar from the council.

25. In response to the allegation of an intoxicated Duty Manager in October 2022 he advised us that he was called to a meeting with council staff, and it was his evidence that Priscilla Manukau was not working on the day in question and that Kate Bidois was the manager on duty. He conceded that the named Duty Manager was Priscilla Manukau who, he said, had worked the day before but had failed to take her name down when finishing her shift. He believed Inspector Graham was aware of that explanation. Notably the applicant chose not to call Kate Bidois to give evidence before the Committee.
26. He said staff now know that they must put their name up at the start of their shift and take it down when they finish.
27. During questioning he confirmed that it was a strict rule that staff cannot drink whilst on duty at the hotel. They were allowed to socialise and drink at the hotel when off duty and also allowed to play the pokies which we find quite concerning.
28. Mr. Petrie said he was 'in two minds' about operating pokie machines at the Hotel. He believed they provided entertainment for patrons and provided funds for local initiatives. He clearly preferred earning income from the pokies over acknowledging, and minimising, the harm they cause in depressed communities especially like the Hokianga.
29. We then heard from Nilesh Shetty. He told us he has worked for Mr. Petrie since 1 December 2022. He says he is in daily contact with Mr. Petrie who oversees his performance.
30. Mr. Shetty is responsible for all staff on site including the accommodation block, cleaning and bar staff. He said it was a challenge to obtain experienced staff and to get them to turn up for work. He has 20 staff on the books most of whom are part-timers. He meets regularly with staff for training days with external trainers and Hospitality NZ. He produced an example of their training records signed off by staff members.
31. He was questioned closely about detecting minors or refusing serve to intoxicated persons. He said they did operate an incident book but there was very few entries and they seldom had to cut patrons off for drinking to excess. We find this comment a little surprising as the Police later told us that alcohol plays a very large part in the offences they deal with in the community.
32. Mr. Grindle then called Priscilla Manukau to speak to us. She said she had been working at the hotel for 7 years and works about 20 hours a week on average and part of her role is to organise the training days.

33. We were impressed with her candor, and she told us that she was wrong to leave her name up when she was off duty. She did recall the incident when she was approached by a patron who asked her to turn the music down. She was unable to explain why she did not go and find the On Duty Manager. She said she told the patron that she was 'a manager' but not the duty manager on that day.
34. It remains unknown as to her state of sobriety and even if she was off duty it is certainly not a good look for staff to be found affected by alcohol on the premises.
35. It was also certainly within her ability to get the music turned down if it was too loud.

Police Evidence

36. Sergeant Michelle Row is an experienced Police Officer who has recently become the Alcohol Harm Prevention Officer for Te Tai Tokerau and appeared to assist the Committee at this hearing.
37. She said the Police do experience challenges policing the Hokianga district. Alcohol is a significant contributor to the offences they have to deal with from domestic violence, drink driving and assaults.
38. When asked about the contribution to that harm arising from the Opononi Hotel and its patrons, Sergeant Row said they were largely compliant, and it was mainly at the large outdoor events that are held during the summer that have historically caused some issues.

Inspectors Evidence

39. Inspector Graham stood by the contents of her report and acknowledged that the resolution processes and outcomes around the two incidents should have been better documented and placed before the DLC at renewal time.
40. She was asked about her statement in her report that she had spoken to Priscilla about the allegation of being intoxicated on duty. She said that that was not correct and agreed that she should have interviewed Priscilla but had not done so. She withdrew that comment from her report.

MOoH Evidence

41. Mrs. Antrobus confirmed that the MOoH was unopposed to the application.

The Law

42. Section 3 of the Act states the purpose of the Act as follows:

- (1) ***The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –***
 - (a) ***to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and***
 - (b) ***to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.***
- (2) ***The characteristics of the new system are that–***
 - (a) ***It is reasonable; and***
 - (b) ***Its administration helps to achieve the object of this Act.***

43. Section 4 states the object of the Act as follows:

- (1) ***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.***
- (2) ***For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –***
 - (a) ***Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and***
 - (b) ***Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).***

44. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of a licence:

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.

The clauses in 105 that we must consider are:

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:

(h).....

(i).....

(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](#).

Section 105(1)(a) The Object of the Act

45. Section 105(1)(a) of the Act requires the licensing committee to have regard to the Object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly.
46. Similarly, we must ensure that our administration of the Act is reasonable and contributes to the achievement of the Object of the Act and benefits the community as a whole.
47. We will assess the other criteria before returning to decide whether the Object of the Act can be achieved by the renewal of this licence.

Section 105(1)(b) Suitability of the Applicant

48. The applicant must be a suitable entity to hold an ON Licence. Suitability is not established in a vacuum, it is based on proven performance and properly dealing with challenges that occur from time to time especially in late night taverns and hotels.
49. In our view direction comes from the top. An absentee licensee has to rely on his on-site staff to follow the law. However, Mr. Petrie told us that he does

spend 2-3 days on site every week. We accept there is no requirement for a licensee to be on premises at all times, but he must ensure that he has competent managers acting in his stead when he is not there.

50. It appears to us that he is prepared to invest in his staff with training and maintaining adequate staffing levels at the Opononi Hotel. Credit is given for that. **Despite his initial view, we believe that it is now crystal clear to Mr. Petrie as to the reasons why this matter was set down for a hearing.**
51. After standing back and examining the totality of the evidence before us, we find that Opononi Hotel Limited is a suitable entity to hold an ON Licence.

Section 105(1)(c) Relevant Local Alcohol Policy

52. There is no Local Alcohol Policy (LAP) in the Far North. There is nothing for us to consider.

Section 105(1)(d) The days and hours of operation of the licence

53. The current operating days and hours are **Monday to Saturday 10.00am to 1.00am and Sunday 10.00am to 11.00pm** and are within the default national maximum trading hours for ON licences.
54. There is no evidence of late night intoxication or violent offending emanating from the premises. However, we do find it remarkable to be told that staff seldom cut patrons off and refuse alcohol service. Every bar in New Zealand has patrons that drink to excess from time to time. The key is to closely manage those patrons before they become intoxicated, and they then have to be refused service and removed from the premises.
55. We remind the applicant that it is an offence against Section 249 of the Act to allow persons to become intoxicated on licensed premises.

Section 105(1)(e) The design and layout of any proposed premises

56. There are no known issues with the design and layout of the premises now we have discussed a new designation regime for the venue.
57. We discussed at length with the applicant the need for the Duty Manager to be 'on duty' **within the licensed area** at all times when the bar is open.

Section 105(1)(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;

58. No 'other' goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food are sold on the premises.

Section 105(1)(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.

59. Gaming machines are operated on this site.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law.

60. The applicant advises that there are four staff with manager's certificates attached to the business and another six are going through the LCQ process.
61. The ball is firmly in the court of Mr. Petrie and his General Manager to ensure that their policies and training documents are up to date so that the business is equipped to deal with the challenges that do come to all late-night licensed premises.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

62. The Police submitted a report that did not oppose the renewal.
63. The Medical Officer of Health has no matters in opposition.
64. The Inspector correctly reported on the two incidents that we have commented on. It would have been helpful to the DLC if the allegation of intoxication was put to Ms. Manukau directly and the response provided to the DLC. There should also have been a formal resolution decided upon, either finding the complaint sustained, or not established.
65. The outcome should have been formally notified to Mr. Petrie, and a copy placed on the file and provided to the DLC at renewal time.

Reasons for the Decision

66. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of helping to achieve the Object of the Act.

67. We note that there are no matters in opposition formally raised by the MOoH or the Police. The Inspector has not opposed the renewal.
68. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has reduced the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be increased by more than a minor extent by refusing the renewal.
69. On balance, we do not find that the amenity and good order of the area has been reduced by more than a minor extent.
70. We have decided that the Object of the Act can be met, and we approve a renewal of the licence with a revised designation regime.
71. The BWOFF must be renewed immediately .

The Decision

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves an application by **OPONONI HOTEL LIMITED** for the renewal of an ON Licence in respect of premises situated at 19 Hokianga Harbour Drive Opononi known as the "Opononi Hotel" on refreshed conditions.

The Licence is renewed for three (3) years from 20th September 2022 subject to the following conditions and a replacement licence is to be issued.

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours **Monday to Saturday 10.00am to 1.00am the following day and Sunday 10.00am to 11.00pm;**
2. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is present on the premises to dine or is residing or lodging on the premises.
3. The following parts of the premises are designated as **Supervised Areas: The Main Bar, Gaming Room, Deck and Garden Bar. The Restaurant and adjoining deck are undesignated;**
4. Drinking water is to be provided to patrons, free of charge, from a water supply prominently situated on the premises;

5. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and **low-alcohol beverages**,
6. **Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,**
7. **A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed in the premises,**
8. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
9. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises.

DATED at Opononi this 24th day of October 2023



Murray Clearwater
Commissioner
For the Far North District Licensing Committee



NOTE

Sections 153 to 155 of the Act relating to the right to appeal this decision are in effect. This decision has effect from the date on which a copy this decision is given to the applicant.