

Extraordinary Licensing, Exemptions and Objections Committee

Notice of Meeting

A meeting of the Licensing, Exemptions and Objections Committee will be held in the Council Chamber, Forum North, Whangarei on:

**Thursday
1 August 2013
11.00am**

Committee of:
Council

Committee
Cr M R Williams (Chairperson)
His Worship the Mayor (Deputy Chair)
Cr S J Deeming
r S L Morgan
Cr J D T Williamson

1. Application for a special licence under Section 73 of the Sale of Liquor Act 1989 by Absolute Caterers Limited for the Northland Rugby Union ITM games to be held at Toll Stadium

Reporting officer Reiner Mussle (Team Leader: Environmental Health)

Date of meeting 1 August 2013

Time	Hearing	Name
10.00am	Determination of an opposed special licence application	Absolute Caterers Limited

Hearing Procedure

- The Chairperson opens the proceedings by introducing the Agency and asking the parties to introduce themselves and their witnesses.
- Reporting Officer briefly outlines the application.
- The Council officer's report and recommendation, which has been circulated prior to the hearing, is taken as read.
- Questions of clarification / cross examination of Reporting Officer by all parties.
- The licence applicant (Absolute Caterers Limited) or their representative present their case.
- Questions of clarification / cross examination of the applicant, by all parties (Police, Ministry of Health, Licensing Inspector and Agency members).
- Objectors / other submitters present his / her case, including any supporting evidence in support of the objection.
- Questions of clarification / cross examination of objector by all parties.
- Reporting Officer states any changes to the original recommendation, adding any comments on the statements by the objector or the affected parties.
- Any final questions of clarification from Agency members.
- The Chairperson adjourns the hearing to deliberate on its decision based on the evidence submitted.
- Written decision within 15 working days.

Cross examination permitted through the chairman

The applicant and the objector(s) will appear and be heard at the hearing whether personally or represented by legal counsel and also entitled to call, examine and cross examine witnesses. The licensing inspector is otherwise permitted to ask questions of parties when appearing on matters relating to opposed applications (see s106) and this could also be permitted.

To ensure order is maintained at the hearing the following rules are suggested for cross examination.

- a Questions should always be put through the Chairperson.
- b The Chairperson should commence by asking the objector to state his/her case seeking advice in so doing as to whether witnesses will be called.
- c Upon completion of the objectors case the Chairperson should seek advice as to whether any of the other parties (applicant and licensing inspector) wish to cross examine the objector (Police) or their witnesses and then allow relevant questions.
- c The same procedure should then be undertaken in respect of the affected party (the applicant).

Commission of inquiry

The Agency, when hearing an objection to a Liquor Licence is deemed to be a Commission of Inquiry.

In reply please quote: 51/02/351 LL1301229 TRIM: 13/56039

Or ask for: Reiner Mussle

Date 22 July 2013

**Report To The WHANGAREI DISTRICT LICENSING AGENCY
In Terms Of Section 78 of the Sale Of Liquor Act 1989**

Application For A Special Licence

Applicant:	Absolute Caterers Limited
Event:	Northland Rugby Union ITM Cup (5 games)
Location :	Northland Event Centre - Toll Stadium 51 Okara Drive, Whangarei

1. The application

Application has been made by **Absolute Caterers Limited** to the Whangarei District Licensing Agency for a Special Licence under Section 73 of the Act to be able to sell and supply alcohol during the Northland Rugby Union ITM Cup games scheduled for following days and times:

- 24 August 2013 – 1.30pm to 5.50pm;
- 8 September 2013 – 1.30pm to 5.50pm
- 26 September 2013 – 4.30pm to 8.50pm
- 9 October 2013 – 4.30pm to 8.50pm
- 12 October 2013 – 1.30pm to 6.50pm.

The events are to be held at Northland Event Centre – Toll Stadium. The application was received on the 26 June 2013 and is attached to this report as appendix 1.

Contained within the application are individual 'Event Management Plans' specifically prepared for each event, which deal with managing each event and any risks associated with large scale public events.

2. Summary

The ITM cup games occur annually. Last year Police raised concerns about the sale of alcohol in cans at all stadia, which could potentially be used as 'missiles' in the stadium environment. A compromise was reached and a condition was placed on the grant of the special licence for the ITM games, which while allowing cans, never the less required that cans be fully opened. Following discussions with enforcement agencies, there was agreement that as from the 1st of January this year cans would not be sold at Toll Stadium during major events, such as rugby games.

The applicant has now requested that the enforcement agencies review the 'no cans' requirement and has provided a comprehensive report in support of this position. The report is attached in appendix 2.

Police have considered the application, but indicated that they require that the 'no cans' condition continues to apply to the special licence.

The Police have opposed the application and in terms of section 106(2) of the Sale of Liquor Act the matter has been set down for a public hearing before the Whangarei District Licensing Agency.

3. Section 79 of the Sale of Liquor Act 1989 & Section 142 of the Sale and Supply of Alcohol Act 2012 considerations

In considering an application for a special licence, section 79 of the Sale of Liquor Act 1989 and since 18 June 2013 the transitional provisions relating to section 142 (1) (a),(e) and (g) of the Sale and Supply of Alcohol Act 2012 apply.

These provide that the Agency shall regard to the following matters:

Section 79 of the Sale of Liquor Act 1989 considerations:

- (a) The nature of the particular occasion or event or series of occasions or events in respect of which the licence is sought.
- (b) The suitability of the applicant.
- (c) The days on which and the hours during which the applicant proposes to sell liquor.
- (d) The areas of the premises or the conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas.
- (e) The steps proposed to be taken by the applicant to ensure that the requirements of the Act in relation to the sale of liquor to prohibited persons re observed.
- (f) The applicants proposal relating to –
 - (1) the sale and supply of non alcoholic beverages and food, and
 - (2) the provision of assistance with or information about alternative forms of transport from the licensed premises:
- (g) Any reports made under Section 78 of the Act.

The Section 79 considerations are now individually dealt with:

(a) Nature of Event

The application is for a series of national rugby games – Northland Rugby Union ITM Cup to be held at the local Toll Stadium, as has been to case during a number of previous years.

The application again focuses specifically on the three proposed satellite bar areas and the spectator areas surrounding the playing field, marked I, G and H on the applications 'stadium map'. The applicant proposes to sell alcohol, for a limited duration, at these bars, which serve those spectators who choose to occupy the grass embankments on either side of the goal posts or on the embankment / open air seating area directly opposite the grand stand. The area is defined in a plan (as also contained in the Event Management Plan) and attached to this report as appendix 3. The area will be subject to full compliance with the aforementioned management plan.

It is important to note that although the application covers the entire stadium complex / area, the applicant legally only needed to deal with parts of the complex, i.e. the aforementioned areas surrounding the playing field, as the various levels and part of the grand stand are already licensed under the applicant's On-licence. However, the applicant chose to include all areas in their Event Management Plan to ensure appropriate management of the entire event and to limit the risk that the longer hours (held for some of the areas in the building) might have had on the entire event.

The Agency has granted special licences to the applicant for this and similar events in previous years and no additional areas are being proposed in this application.

The applicant has proposed to provide a sufficient number of certificated managers and security personnel to monitor and control host responsibility with respect to alcohol consumption and crowd behaviour, which includes monitoring by CCTV.

(b) Suitability of Applicant

The applicant is a limited company. Dwight Shepherd and Renee Shepherd are the shareholders of the company. The applicant company is the official and exclusive caterer at the Northland Event Centre – Toll Stadium and since November 2010 has been the holder of an On-licence (002/ON/8/2013) as well as a Caterers Off-licence (002/OFF/13/2011) for the centre.

The On-licence held by the applicant provides for the sale, supply and consumption of liquor in the level 1 concourse, the grand stand and the lounges and corporate suites situated on levels 2 and 3 within the facility for the days and hours, as the premises are being operated as a conference and function venue, but not other than on the following days and hours:

Monday to Sunday 8.00 am to 12.00 midnight

It is important to note that the On-licence does not restrict the type of drinking vessel in which liquor is sold, within this licensed area and that the licensee is therefore legally entitled to sell cans within all areas of the Toll Stadium building, except from the three temporary bar areas, proposed in this special licence application. This means that patrons can consume liquor from cans within the stadium building, including the grand stand, but are currently not allowed to consume liquor from cans in the areas surrounding the playing field, as this area is not covered by the licensee's On-licence.

In accordance with national protocols the playing field and the spectator areas surrounding the field were initially specifically excluded from the On-licensed area. This was done to allow the Agency to receive and determine special licence applications for these areas and for the applicant to focus individual special licence applications on a variety of different potential events. By doing so, it was argued, the Agency had better control over which events will be liquor licensed, to be able to risk manage these potentially variable events and to specify appropriate conditions, as and when required for these external areas.

The applicant has a sound track record relating to the management of special licensed events. In addition to the 24 major rugby events mentioned in the licensee's application, the company hosted, at least, eight additional special licensed events at Toll Stadium, as well as close to 100 special licensed events at other venues, none of which have raised any issues relating to the misuse of cans or, to my knowledge, any other risk of violence. No questions have been raised as to the suitability of the applicant to hold a special licence or to manage a safe event.

(c) Days / Hours applicant proposes to sell alcohol

This application proposes to sell alcohol at three satellite bar areas, which will be set up around the playing field area during the five ITM rugby games. In terms of the application a special licence is sought for these external bar areas for the following day and hours:

- 24 August 2013 – 1.30pm to 5.50pm;
- 8 September 2013 – 1.30pm to 5.50pm
- 26 September 2013 – 4.30pm to 8.50pm
- 9 October 2013 – 4.30pm to 8.50pm
- 12 October 2013 – 1.30pm to 6.50pm.

Please note that these hours are much shorter than those allowed by the existing On-licence for the various levels within the stadium. Although the licensee could technically operate within the stadium building under the hours of the On-licence, the attached management plan proposes to substantially restrict the total hours of operation during the proposed games, but that hours for the internal bar areas will be slightly longer than those sought for the areas surrounding the playing field, as part of this special licence application.

(d) Designations

It is recommended that the special licensed areas be undesignated as to ensure that unaccompanied minors can enter the venue and watch the games. Strict liquor management provisions will ensure no alcohol is sold or supplied to minors.

(e) Provision relating to prohibited persons

The applicant's Event Management Plan proposes to deal with prohibited persons, such as minors and intoxicated patrons. The initial focus is on assessing the spectators at the gates by security staff and deals with signs of intoxication and bag/persons searches. This also relates to a number of prohibited items and may result in an eviction or refusal to allow entry.

The Event Management Plan further fully satisfies the requirements relating to sufficient numbers of duty managers or manager's holding General Manager Certificates during the event. Bar staff and duty managers will be in constant contact via communication devices.

The applicant proposes to limit maximum serves to four (4) per person for beer and two (2) serves per person of wine. This will be further managed, by further reducing serve limits; switching to low alcoholic drinks; or partial / total bar closure, if required.

(f) Provision of low-alcoholic beverages, non alcoholic refreshments and food

- (1) In keeping with previous practices the applicant proposes to sell and supply low-alcoholic beverages, such as “Steinlager Premium Light” beer.

Non-alcoholic beverages, such as various Coke products, Pump water; juices, tea & coffee and water will be available.

Substantial food items will be available continuously throughout the event from a variety of food stalls. These will be supplied by both Absolute Caterers and a number of invited traders. The applicant, in their initial application, indicated that they would provide the following food items:

Hot chips, Hot Dogs, Hamburgers, American Hotdogs, Candy Floss and Ice creams.

This meant that the licensee proposed to provide at least four (4) substantial food items (Hot chips; Hotdogs; Hamburgers and American Hotdogs) during the event.

The Sale of Liquor Act stipulates that at least three (3) substantial food items need to be provided for this type of event. Therefore, the applicant exceeded this legal requirement by one item.

However, both the Medical Officer of Health and Police initially questioned the type and number of items proposed, despite the fact that the number of items was deemed sufficient under the Act. As a result, the licensee subsequently supplied copies of two of the menus on offer, in order to fully clarify the food provision.

The two menus provided (see appendix 4) now expand on the initial food variety by including four additional substantial food options.

As a result, the MOH in her report dated 18 July 2013 (see appendix 5) is now satisfied with regard to the food options proposed. The Police in a report dated 16 July 2013 raised concerns relating to food, but this matter has subsequently been resolved, as indicated in an email from the attending Alcohol Harm Reduction Officer dated 17 July 2013 (see appendix 6 & 7 respectively).

- (2) Transport from the venue

The applicant proposes that all bars have signage provided with taxi numbers displayed, which is usual practise.

(g) Other matters to be considered in terms of section 78 (Sale of Liquor Act) reports.

Police report

The police in a report dated 16 July 2013 (see appendix 6) have opposed the application, based upon the applicants request to be allowed to sell beverages in cans. Police base their opposition upon the “Eden Park” decision and argue that cans are a ‘safety risk’ to spectators.

Historically the use of cans has been allowed at all special licensed events throughout the district. There is no evidence that cans have posed a safety risks. As far back as March 2012 the Police National Alcohol Harm Coordinator in an email to the Whangarei Alcohol Harm Reduction Officer indicated that they were ‘trying to get cans out of large scale and sporting events’.

Police ultimately based this direction on the outcome of a Liquor Licensing Authority decision, related to the hearing of an appeal brought by Eden Park Catering Limited, the detail of which will be discussed later in this report.

As a result of this direction the Whangarei Police, Alcohol Harm Reduction Officer and I met with the management of Absolute Caterers Limited and the Northland Event Centre to discuss this 'new direction'. Advice was also obtained from Liquor Licensing Authority staff, who stated that, if we had no issues or concerns regarding the use of cans at our local stadium, we should adopt an "*if it ain't broke, why fix it*" approach and that the Eden Park case was not seen as 'case law' by the Authority. The Authority further indicated that they would only get involved if there's '*opposition or if things go pear-shaped*'. As a result of this advice and after obtaining an indication from a number of other Agency inspectors nationally, which revealed that this was not a national direction followed by all Agencies, a decision was taken that the use of cans was not an issue in Whangarei and that the use of cans could be continued, at the stadium. At the time the caterer and the centre manager were advised of this approach.

During August last year, Absolute Caterers applied for a special licence under s.73 of the Act for last year's ITM rugby games and the Police, District Commander indicated that this application would be opposed, if cans were sold. Further discussions between all parties ensued and as a result Police, reluctantly, agreed to sign off on that season's special licence for the remaining ITM games, subject to certain conditions, i.e. that the cans were depressurised and fully opened, before handed to the patron and that the stadium / caterer worked towards the implementation of a "no cans" policy by 1 January 2013. Again this expectation was discussed and communicated to the applicant and all affected parties.

The stadium's management and the caterer has subsequently adhered to this expectation and decanted all beer into cups during a number of subsequent events, although reluctantly due to various practical difficulties.

In addition, the applicant and the stadium's management further expressed the opinion that Whangarei was being singled out in this regard as they had obtained evidence that nationally other stadia were still being allowed to sell cans during similar or even larger events. The applicant therefore argued that there was no Police 'Policy' in relation to this matter and that there seemed to be little national consistency, as some were 'banning' cans and others didn't.

The 'Eden Park' Decision (2012 – NZLLA 135) see attached appendix 8

As outlined above, Police base their opposition of this special licence application on the 'Eden Park' decision.

The decision relates to an application by Eden Park Catering Limited to the Liquor Licensing Authority appealing an earlier decision by the Auckland District Licensing Agency to grant a special licence for the Super 15 rugby events at Eden Park stadium.

In its decision to issue the licence the Auckland District Licensing Agency imposed a condition, in respect of "*the containers in which liquor may be sold*", which stipulated that "liquor is only sold in plastic or polystyrene cups or PEP (plastic) bottles.

The Agency and Police in their submissions for the appeal hearing to the Authority concentrated on public safety considerations and denied claims by the appellant that all stadia permitted the use of depressurised cans.

During this case the appellant (Eden Park Catering Limited) did not satisfy the Authority that the decision by the Auckland Licensing Agency, in its original hearing of the application, was wrong and that this resulted in a miscarriage of justice. In addition the Authority commented that in this case, it was not the Police or the Agency who had to prove that cans were harmful, but for the appellant (the caterer) to prove that they were not. Ultimately the Authority upheld the earlier decision by the Auckland District Licensing Agency, because the appellant did not produce evidence to support his case that cans were not harmful or that a miscarriage of justice had occurred.

The fundamental differences between the 'Eden Park' decision and this application is that Absolute Caterers Limited has provided detailed evidence relating to the public safety aspects of the use of cans and in this respect the 'Eden Park' decision cannot directly be applied.

Report from the Medical Officer of Health

The Medical Officer of Health (MOH) in a report dated 18 July 2013 (see appendix 5) has indicated that she is supporting the Police's opposition to the use of cans at Toll Stadium, as this is seen by her as a "pertinent safety issue". However, the MOH has indicated that subject to the removal of cans from the planned event, she would have no objection to the issue of the licence.

Section 142 (1) (a, e, and g) of the Sale and Supply of Alcohol Act 2012 since 18 June 2013 requires the Agency to have regard to the following considerations

- (a) Object of the Act is that –
- the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (e) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence.
- (g) The design and layout of the premises concerned.

These Section 142 provisions are now considered individually:

(a) The Object of the Act

The application has been assessed against the object of the Act and has been deemed to be able to fully comply with the object of the Act, as stipulated.

(e) Amenity and Good Order provisions

‘Amenity and good order of the locality’ is defined in the Sale and Supply of Alcohol Act 2012 (SSAA) as:

In relation to an application for or for the renewal of a licence, means the extent to which, and the ways in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable.

Section 106 provides that in forming an opinion on whether amenity and good order of a locality is likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, regard must be had to the following matters, as they relate to locality and compatibility.

- Current, and possible future, noise levels
- Current, and possible future, levels of nuisance and vandalism
- The number of premises for which licences of the kind concerned are already held
- The purposes for which the land near the premises concerned is used
- The purposes for which those premises will be used if the license is issued.

Toll Stadium is situated in an open space environment under the Whangarei District Plan and is surrounded by business environments. The locality is predominantly commercial or industrial in nature and the nearest residential area is the Morningside area some distance away to the west across Okara Drive. People attending rugby matches would either drive or walk through the surrounding commercial area and there would be little, if no access, through the Morningside residential area. The event is unlikely to generate nuisance or vandalism and noise from the rugby matches would be limited to crowd cheering and PA announcements, all having little impact in the nearest residential area.

Reports have been sought from councils Community Services Department relating to reported graffiti and crime associated with ITM games in the past and also from council noise control contractor relating to noise complaints about the venue. No matters of concern are raised.

I, as council’s, Environmental Health Officer / Licensing Inspector, am not aware of any Amenity or Good Order concerns relating to this venue or proposed activity.

On this basis, I am of the view that the amenity and good order of the locality would be unlikely to be reduced, by more than a minor extent, by the effects of the issue of the licence.

(h) The design and layout of the premises concerned

The “Guideline for Crime Preventions through Environmental Design (CPTED) for licensed premises” developed by the Alcohol Advisory Council of New Zealand highlights specific design objective that licensed premises should adhere to, to raise awareness of crime prevention and to continue to improve standards in

licensed premises. Although these principals were mainly designed for On & Off licensed premises, the appropriate design and layout of premises does apply to special licensed events, such as these.

The application has been assessed under this heading and in light of the type and number of security / bar managers and CCTV systems deployed, as well as other event management plan provisions proposed during the event, has been deemed to fully comply with the principals and benefits of this guideline.

4. Summary report

I have investigated this application and specifically the attached request to again utilise cans during these and similar events in future and after initial concerns, make the following comment:

- Police and the Medical Officer of Health, who have opposed the application, have made no comment on the safety assessment provided by the applicant.
- Police have previously indicated that they do not have a National “no cans” Policy and as a result there are still stadia in New Zealand, namely Waikato Stadium in Hamilton and the stadium in Tauranga, that have taken a ‘local solutions to local problems’ approach by not banning cans outright, but rather ensure that cans are not causing a safety risk by the implementation of strict and specific conditions and security measures, similar to what the caterer in this application proposes.
- Police solely depend upon the ‘Eden Park’ decision as a basis for the objection. The Liquor Licensing Authority in the ‘Eden Park’ appeal decision found that the Auckland District Licensing Agency acted in accordance with the Act and had the right to stipulate any condition on the special licence, such as the one related to the “*type of vessel in which liquor may be sold*”. In addition, the Authority found that the applicant (the caterer) provided no evidence in support to their claims that cans did not pose any dangers at Eden Park. Clearly, Eden Park Stadium is a much larger venue and therefore poses a much higher risk relating to the use of cans, which is therefore more difficult to mitigate and as a result the Auckland District Licensing Agency, rightly so, implemented a condition to ban cans from that stadium. The issue of public safety was not tested during the appeal and I believe the ‘Eden Park’ decision was not meant to be used as ‘case law’, as evident by the lack of direction from the Authority and should therefore not be directly used as the basis for a decision on the Whangarei application.
- While the local Police have chosen to use the ‘Eden Park’ decision as the basis to implement a national ban on the use of cans in stadia, the Liquor Licensing Authority in the decision made no comment about its wider use as a ‘test case’. Indeed the decision dealt with the right of a District Licensing Agency to place a condition on a special licence, not the question of public safety.
- The evidence provided in this case by Absolute Caterers Limited in their application highlights that in Whangarei and more specifically at the Toll Stadium cans have never been found to have caused any injury or safety concerns/risk, despite the fact that the licensee has until recently been selling cans at a large number of large-scale events. More importantly, the applicant in their strict compliance with their Event Management Plan provisions will ensure that cans will not pose any risk to spectators.
- I have liaised with other Agencies throughout the country, which highlighted that although most stadia did no longer sell cans this was as a result of either the stadia having sophisticated dispensing systems available or by mutual agreement between the various parties. However, a smaller number of regional stadiums, such as the stadium in Tauranga and the Waikato Stadium in Hamilton has continued to allow cans. At the Waikato stadium cans were allowed during the past three ‘Super 15’ seasons, with no public safety issues being reported. This strategy of ‘local solutions to local issues’ was implemented by the Hamilton City Council, as a result of clear evidence that cans have historically not caused any public safety issues at this stadium and due to the caterer’s implementation of and ongoing adherence to very strict security measures. These security measures at the Waikato Stadium appear almost identical to the measures already implemented at Toll Stadium, by Absolute Caterers Limited, as contained in their Event Management Plans. The measures include, but are not limited to, strict security at gates, bars and throughout the venue, including CCTV surveillance and alcohol management systems.

5. Recommendation

In conclusion, I recommend that the Whangarei District Licensing Agency grants the application and issues a special licence to Absolute Caterers Limited for the Northland Rugby Union, ITM Cup games scheduled for following days and times, subject to the applicant's compliance with the provisions of the individual Event Management Plans:

- 24 August 2013 – 1.30pm to 5.50pm;
- 8 September 2013 – 1.30pm to 5.50pm
- 26 September 2013 – 4.30pm to 8.50pm
- 9 October 2013 – 4.30pm to 8.50pm
- 12 October 2013 – 1.30pm to 6.50pm

Reiner Mussle

LIQUOR LICENSING INSPECTOR

Attachments

Appendix 1 – 8 Application for a Special Licence under Section 73 of the Sale of Liquor Act 1989 by Absolute Caterers Limited for the Northland Rugby Union ITM games to be held at Toll Stadium