

2. Report - Decision of the Licensing, Exemptions and Objections Committee

Reporting officer C Brindle (Senior Meeting Co ordinator)

Date of meeting 14 August 2013

This item is in accord with Council's vision, mission and values statement.

Background

On the 1 August the Committee heard an application By Absolute Caterers Limited pursuant to section 73 of the Sale of Liquor Act 1989, for a special licence in respect of a series of events (rugby games) at Toll Stadium.

Attached is the decision for information.

Attachment

[Decision Absolute Caterers](#)

IN THE MATTER of the Sale of Liquor Act 1989
AND
IN THE MATTER of an application by ABSOLUTE CATERERS LIMITED pursuant to s 73 of the Act for a special licence in respect of a series of events (rugby games) at Toll Stadium, 51 Okara Drive, Whangarei

BEFORE THE WHANGAREI DISTRICT LICENSING AGENCY

Chairman: Councillor Merv Williams

Members: Councillor John Williamson

Councillor Shelly Deeming

Councillor Sharon Morgan

HEARING at WHANGAREI DISTRICT COUNCIL on 1 August 2013

APPEARANCES

Mr Reiner Mussle – Whangarei District Licensing Inspector

Mr Robert Enright – Legal counsel for the Licensing Inspector

Mr John Lynch – for applicant

Ms Alice Hyndman - legal counsel for applicant

Senior Constable Graeme Wright, New Zealand Police – in opposition

DECISION OF THE AGENCY

- 1) This decision relates to an application made by Absolute Caterers Limited under s 73 of the Act on the 26 June 2013 for a special licence to cover a series of five ITM cup rugby games at Toll Stadium, 51 Okara Drive, Whangarei. The applicant wishes to sell and supply alcohol during the following days 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.
- 2) The applicant wishes to sell alcohol at the matches in cans and has provided with the application a comprehensive assessment on the public safety risk of selling alcohol in cans at the stadium during the matches. The Police and the Medical Officer of Health (MOH) have opposed the application on the grounds that the applicant will not accept a condition of licence which prohibits the sale of alcohol in cans. The Police clarified at the hearing that no other issues are being raised to oppose the grant of the special licence and that concerns relating to food and hours of operation (referred to in the Police objection) are not being pursued. The objection by the MOH states that the objection is solely based on the issue

relating to cans. The Licensing Inspector has reported on the matter and recommended that the special licence be granted.

- 3) In accordance with the provisions of the Act the matter has been set down for a public hearing.
- 4) At the commencement of the hearing the Police applied for a direction from the Agency that requested that any evidence be confirmed under oath or affirmation and that parties be permitted to cross examine witnesses of opposing parties. The Agency heard submissions from the parties and decided that, in light of the request made and the circumstances of the case, it was appropriate to grant leave to have witnesses give evidence under oath or affirmation and be cross examined. Where relevant that evidence is referred to below.
- 5) In determining an application the Agency is required by s 79 of the Act to have regard to the following matters:
 - (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 be 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.

Under the Sale and Supply of Alcohol Act 2012 as from the 18 June 2013, the Agency must also have regard to the following additional matters when deciding to issue a special licence:

1. The object of the Act (Sale and Supply of Alcohol Act 2012)
2. 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.
3. The design and layout of the premises concerned
4. Whether the applicant has appropriate systems, staff and training to comply with the law.

The background to the application and the Inspectors Report

- 6) The Licensing Inspector in his report outlined that ITM cup games occur annually and that special licenses had previously been issued. The applicant, Absolute Caterers Limited provides catering services at the Toll stadium for events at the stadium. 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. The Police advised that they wished to introduce a national policy which would excluded the sale of alcohol in cans at large scale events in stadia through out the country. The policy would apply to events at Toll Stadium irrespective of the fact that the use of cans historically at Toll Stadium had not given rise to any can throwing and rugby events were generally well managed. The Police based their policy on the back of the LLA decision on the appeal by *Eden Park Catering Limited* and upon the joint ALAC/ Police report entitled " Guidelines for Managing Alcohol at Large Scale Events" and dated August 2010.

- 7) Last year the Agency placed a condition on the grant of the special licence for the ITM games, which while allowing cans, never the less required that cans be fully opened to mitigate any perceived risk from use as a missile. Following discussions with the licensing inspector, Police and staff from the Northland District Health Board , there was agreement that as from the 1st of January 2013 cans would not be sold at Toll Stadium during major events such as rugby games. The Inspector said that he was party to the agreement at the time on the understanding that the police national policy was applied consistently across the country. The Inspector's evidence was that his subsequent investigations indicate that the police have not applied the policy consistently. The applicant's evidence was that, on further investigation, established from discussion with other stadia that other stadiums were being permitted to use cans and there appeared to be an inconsistency in the application of the police policy . There was also some question as to whether the 'policy" was specific in relation to banning cans or whether Police simply endorsed the more general recommendations set out in the ALAC report indentified above. The ALAC report identifies that it is desirable to avoid use of cans at major events as a matter of "best practice" however it also clarifies that this is not an absolute rule and the local circumstances of each stadia and the merits of each application must be considered.

- 8) On this basis the applicant undertook an analysis of the risk posed by the use of cans at Toll Stadium and made application for a special licence seeking not to have a condition prohibiting cans placed upon the licence should it be granted. The Licensing Inspector has investigated the application and recommended that the application be granted without any condition relating to the containers in which alcohol may be sold. Although there was an agreement reached about non use of cans for the 2013 ITM season, this does not prevent the applicant exercising statutory rights to have its application on its merits. The existence of the agreement is only one consideration and (as outlined above) the applicant's agreement was predicated on a nationally consistent process (which has not happened in practice)

The application

- 9) The application from Absolute Caterers Limited relates to 5 national rugby games to be held at Toll Stadium during August, September and October 2013. The applicant has provided event management plans for each of the five games. The management plans adequately cover all aspects of the management of each event to which we have to have regard.

- 10) The applicant also provided a report which assessed the use of cans at Toll Stadium including the matter of potential harm if the cans are used as missiles. The assessment indicated that at Toll stadium, there is minimal risk of crowd behavior which could contribute to can throwing due to the family mix of people who typically attend rugby games (30% female,45% male and 25% children) and there is not generally significant, obnoxious or aggressive drunken behavior.

- 11) Mr John Lynch, is the Events Manager at Toll Stadium. He gave evidence that Absolute Caterer Limited had sold alcohol in cans at numerous events at Toll Stadium during the time he has managed the stadium. Over three years from 2010 a total of 63,848 cans had been sold at events including 16 national rugby games. There had not been a single incident recorded involving the use of cans as missiles or other incidents involving cans. Toll Stadium has an incident control point programme which records incidents at all events and the management of security at the Stadium is such that tighter controls are currently in place during national rugby games than provided at games during Rugby World Cup 2011 events.
- 12) Mr Lynch said that Absolute Caterers Limited had looked at selling alcohol in ways other than cans, namely wet pour systems or in PET (polyethylene terephthalate) form. The use of wet pour is not a viable option as Toll Stadium as it was not designed to use wet pour systems. There is no space to install such systems in the relevant areas. The use of PETs is not a viable option because supply is not guaranteed and the minimum order is 1000 cases, considerably more than would be sold in the 5 ITM games.
- 13) Mr Lynch said that he had ascertained that the following cities/stadiums have recently been granted licences which enable cans to be sold:
- (1) Hamilton/Waikato/Chiefs
 - (2) Tauranga/Bay of Plenty
 - (3) Invercargill/Southland
 - (4) Nelson/Tasman.

He noted that these stadiums are similar to Toll stadium, in that they are smaller regional/provincial stadiums.

The Police and Medical Officer of Health opposition

- 14) Both the Police and the Medical Officer of Health opposed the application. The Police state in a written objection dated 16 July 2013 from Senior Constable Graeme Wright, that the reason for their objection was based around issues concerning food, hours and the use of cans at the Toll Stadium. The Police state that the Police, Council and Licensee have been involved with the issue of cans at the stadium and Police namely Inspector Phillips has made it very clear to all involved that Police would object to any application at the stadium if cans were to be used this year. The Police objection is based on an appeal case from the Liquor Licensing Authority for Eden Park, where it was held that cans at large stadium events are a risk. As noted the issues raised as to food and hours were withdrawn by Police.
- 15) In a letter of objection to the Whangarei District Licensing Agency dated the 18 July 2013, Dr Clair Mills, the Medical Officer of Health, advised that the matters of food and hours had been resolved but the Medical Officer of Health would be supporting the NZ Police opposition to the use of cans at Toll Stadium as this is seen as a pertinent safety issue. Dr Mills as an objector, did not attend the hearing and her evidence could not be tested by the Agency and other parties. The Agency is of the view that it is incumbent on an objector such as the Medical Officer of Health to appear at such public hearings as a matter of proper process or at least have representation.
- 16) Senior Constable Graeme Wright gave evidence for the Police. Senior Constable Wright read a submission on the matter of objection prepared by Inspector Tracy Phillips the Area Commander for Whangarei/Kaipara. Inspector Phillips did not appear at the hearing and her evidence could not be tested by the Agency or other parties attending.
- 17) The crux of the Police objection is the Police have a policy of not permitting cans at large scale events at stadiums. The policy is born from concerns about the harm caused by cans being used as missiles at large scale events both in New Zealand and overseas but in

particular at Eden Park and Westpac stadium. Police see wet pour as a viable alternative to PETs and cans.

- 18) Police contend that the Eden Park Limited Decision provides the basis of a policy prohibiting cans at stadiums and further say that the Police policy is consistent with the ALAC guidelines for Managing Alcohol at Large Scale Events in banning cans at stadium events. Police use the ALAC guideline as their policy document.

The Agency's reasons for its decision

- 19) The issue in this case is whether the applicant meets the statutory criteria outlined above. The Agency is satisfied that it does, subject to resolution of the objection by the Police and MOH. The crux of the Police and MOH objection concerns the validity of the concerns raised and the weight that can be placed on the objections. Neither the Medical Officer of Health nor Inspector Phillips attended the hearing and they did not elect to give evidence which could then have been tested by the parties. The key issue on test is the matter of risk to harm from the use of cans and the question of safety where the cans might potentially be used as missiles at one of the 5 rugby matches. Senior Constable Graeme Wright gave evidence and we have had regard to that evidence including his cross examination. These issues need to be balanced against the other evidence and the relevant statutory criteria.
- 20) The Agency is mindful of that it must consider the matter of safety in the context of the object of the Sale and Supply of Alcohol Act 2012. The object of the 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 minimized.*
- 21) We have heard from the applicant about the matter of can safety and the steps that they have taken in the past to minimize risk of harm from cans being used as missiles. The Agency considers that the applicant is a good operator with a sound track record in relation to the management of large scale rugby events where alcohol is sold. The Agency considers that the applicant can manage the sale and supply of alcohol in cans in such a way that harm to those attending the games will be reasonably minimized. The evidence produced by the applicant relating to safety at Toll Stadium was not seriously challenged.
- 22) The Agency in reaching its decision has taken into account the comprehensive event and alcohol management Plans for each of the 5 games.
- 23) The Agency supports the use of the *ALAC guideline for managing Alcohol at Large Scale Events* and recognizes the structure that it brings to alcohol harm minimization. However the Agency does not agree with the Police that the provisions relating to the prohibition on the sale of cans at large stadia must be applied in a blanket fashion. On Page 7 of the document the following proviso is made:
- The guidelines(including the standard guidelines on page 12) are not intended to be prescriptive-they simply provide useful advice, guidance and recommendations for people planning alcohol management at large events. The guidelines also assist regulators in a similar way, but are not intended to prevent decisions on an event case-by-case basis.*
- The Agency is guided by this provision.
- 24) Much has been made of the decision in the matter of the appeal by *Eden Park Catering Limited*. [2012NZLLA 135]. Mr Rob Enright legal counsel for the licensing Inspector advised that the decision is not of direct assistance in the matter of this application from Absolute Caterers Limited a position also taken by legal counsel for the applicant. The Eden Park

appeal decision has not been promoted by the Alcohol Regulatory and Licensing Authority as having blanket relevance as case law to stadia.

- 25) The Medical Officer of Health did not appear in support of her objection but her written evidence, like the written material from Inspector Phillips has never the less been considered. As noted neither elected to give evidence. For that reason we have preferred evidence in matters where there is conflict. This includes evidence given by the applicant's witness and the Inspector in support of the application.
- 26) Finally while there may have been an agreement between the enforcement parties that Absolute Caterers Limited would not serve cans for the 2013 ITM season, this cannot prevent the applicant from exercising a statutory rights to apply for a special licence. The application should be considered on its merits by reference to the statutory criteria and this is what we have done.

The Decision

- 27) For the reasons given above we grant the application from Absolute Caterers Limited for a special licence to cover a series of Northland Rugby Union ITM games to be held on the following dates 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.
- 28) In making this decision the Agency must signal to the applicant that the Agency will monitor the conditions of the licence and should unacceptable risk to the public attending the games be evident as the result of the use of cans then the agency would expect the Inspector or Police to consider making an immediate application for suspension or cancellation of the special licence in accordance with s 133 of the Sale of Liquor Act 1989. The applicant has given assurances as to public safety and it must ensure that it continues to manage public safety risks properly in accordance with those assurances.

DATED AT WHANGAREI this 6th day of August 2013



Councillor Merv Williams
Chairman